NATIONAL MARINE FISHERIES SERVICE, ALASKA REGION
OFFICE OF ADMINISTRATIVE APPEALS

In re the transfer of certain Quota Shares	)	
	)	Appeal No. 02-0009
MATTHEW PANCRATZ,	)	
Appellant	)	
	)	DECISION
vs.	)	
	)	
VASILY A. SHARABARIN,	)	May 21, 2003
Respondent	)	
	)	

STATEMENT OF THE CASE

On April 18, 2002, Matthew Pancratz, represented by Juneau attorney Bruce B. Weyhrauch, filed an appeal with this office objecting to the transfers of certain of his halibut quota shares (Transfers No. 12635 and 12638) to Vasily A. Sharabarin that were approved by the Restricted Access Management (RAM) program on October 16, 2001. Prior to filing the appeal, Mr. Pancratz made a demand on NMFS that it either reverse RAM's approval of the transfers and return the quota shares to him or, alternatively, pay him for the value of the shares, which amounted to $153,000. NMFS refused his demand on March 27, 2002.

On April 12, 2002, six days before filing this appeal, Mr. Pancratz filed a Complaint for Injunctive Relief and Damages, and a Motion for Temporary Restraining Order and Preliminary Injunction against RAM and NMFS in the United States District Court for the District of Alaska. The complaint alleged that RAM's transfer of Mr. Pancratz's QS to Mr. Sharabarin was wrongful and unlawful.

On April 19, 2002, at the request of the parties, District Judge H. Russel Holland issued an order directing this office to conduct a full evidentiary hearing on the issues raised by Mr. Pancratz in the underlying dispute and whether he complied with the requirements of 50 C.F.R. §679.43(d), regarding the filing of a timely appeal with this office. Judge Holland also ordered this office to issue a decision on the issues raised by the plaintiff, and specified that the decision shall contain findings of fact and conclusions of law.

On October 28, 2002, I issued an order joining Mr. Sharabarin as respondent in this appeal. Mr. Sharabarin is represented by Homer attorney C. Michael Hough. An oral hearing was held on December 18-19, 2002, in Juneau. Both parties and their attorneys attended the hearing in person. Others in attendance as witnesses were: RAM Program Administrator Philip J. Smith; RAM Transfer Officer Clydina Bailey; and Debra L. Moore, President of Northern Enterprises Permit and Boat Brokerage, Inc., in Homer, Alaska. Ms. Moore was the broker for the transfers

that are the subject of this appeal. In the fall of 2001, she misappropriated more than $153,000 paid to her by Mr. Sharabarin for the purchase of the quota shares.[1] These funds were never paid to Mr. Pancratz or to his designated third party for his benefit.[2] Ms. Moore was subsequently convicted of felony theft charges and was sentenced in August 2002 to four years in state prison. Thus, Ms. Moore testified from the Hiland Mountain Correctional Center in Eagle River, Alaska.

The hearing was continued on December 31, 2002. In attendance via teleconference were both parties and their attorneys, and Mr. Sharabarin's wife, Marina Sharabarin.

On February 13, 2003, I ordered the record closed. On February 19, 2003, I denied Appellant's request for reconsideration of my order excluding new evidence and closing the record. On February 21, 2003, Mr. Weyhrauch withdrew as Mr. Pancratz's attorney and since that time Mr. Pancratz has represented himself in this appeal.

ISSUES

1. Did Mr. Pancratz file a timely appeal in accordance with 50 C.F.R. §679.43(d)?

2. Should RAM's approval of Mr. Pancratz's transfer applications be reversed on the grounds that RAM failed to properly notify him of the approval?

3. Should RAM's approval of Mr. Pancratz's transfer applications be reversed on the grounds that RAM did not obtain original notarized signatures on the transfer applications or sales agreement?

4. Should RAM's approval of Mr. Pancratz's transfer applications be reversed on the grounds that RAM did not have an agent authorization?

5. Should RAM's approval of Mr. Pancratz's transfer applications be reversed on the grounds that RAM did not have full disclosure of the financial implications of the transfer?

SUMMARY OF THE DECISION

The Appeals Officer concluded that Mr. Pancratz's appeal was timely filed in accordance with 50 C.F.R. § 679.43(d). The Appeals Officer also concluded that RAM's approval of the quota share transfer applications should not be reversed for any of the grounds stated by Mr. Pancratz. The Appeals Officer concluded that RAM properly mailed notice of the transfer approvals to Mr.

---

[1]Ms. Moore pleaded no contest to one count of first degree theft after her arrest in January 2002. She had been accused of misappropriating $335,000 from several of her brokerage clients. She claimed that she lost the money in a Nigerian investment scam.

[2]Mr. Pancratz wanted the net proceeds from the sale to be paid to Alaska Exchange Corporation, Anchorage, an intermediary for his planned 1031 tax-deferred exchange.

Pancratz as required by 50 C.F.R. § 679.41(b)(1); that the application packets contained the required original notarized signatures of the parties; that Mr. Pancratz's broker was properly authorized to handle the transfers; and that the applications contained the appropriate financial disclosures. The Appeals Officer affirmed NMFS's refusal to void the approval of the quota share transfers and return the quota shares to Mr. Pancratz or to reimburse him for their value.

ANALYSIS

1. Did Mr. Pancratz file a timely appeal in accordance with 50 C.F.R. §679.43(d)?

Matthew Pancratz filed this appeal on April 19, 2002. Under 50 C.F.R. §679.43(d), an appeal must be filed within 60 days after the issuance of the initial administrative determination (IAD) that is being appealed. In this instance, RAM did not issue a written IAD. In Tiger, Inc.,[3] however, we concluded that under certain circumstances an IAD could exist without the issuance of a document entitled "Initial Administrative Determination." We stated that the findings of NMFS staff concerning the eligibility for, transfer, or use of quota shares (QS) under the IFQ program constitute an IAD.[4] Therefore, I conclude that RAM's determinations that approve or deny applications for the transfer of QS constitute IADs.

In this case there are two events that could constitute an IAD. The first was RAM's approval of the transfer applications on October 16, 2001. The second was NMFS's formal denial of Mr. Pancratz's written demand that RAM void the transfer and return the QS to him, or alternatively, that RAM reimburse him for the value of the QS.[5] That denial came in the form of a letter from Lisa Lindeman, NOAA General Counsel for the Alaska Region, on March 27, 2002.

If RAM's October 16, 2001, transfer application approval was the appealable event in this case, then the appeal filing deadline would have been the 60th day following its issuance, which was Saturday, December 15, 2001. Under 50 C.F.R. §679.43(d)(2), the deadline would have been extended to the next federal business day, Monday, December 17, 2001. Since the appeal was not filed with this office until four months later, it would appear initially that the appeal was untimely. That is not my conclusion, however.

I am concerned about denying an appeal as untimely where the appellant may not have had legally adequate notice of appeal rights and the appeal filing deadline. As Mr. Pancratz rightly points out, "it is not at all obvious that the time limit for appeal set out in 50 C.F.R. §679.43(d)

[3]Appeal No. 95-0100, November 17, 1995.

[4]*Id.* at 7, n.6 (citing 59 Fed. Reg. 28,281 (1994)).

[5]Letter of Bruce B. Weyhrauch to Lisa Lindeman, NOAA General Counsel for the Alaska Region, March 12, 2002.

applies to share transfers."[6] There is, after all, nothing in the QS transfer regulations [50 C.F.R. §679.41] stating or implying that RAM's determination of a transfer application constitutes an IAD or that it could be appealed to this office. By contrast, regulations governing the initial allocation of QS provide that "an initial determination denying QS . . . may be appealed following the procedure described in §679.43."[7] Also, as Mr. Pancratz again pointed out, RAM did not advise him that he could appeal the transfer or that there would be a time limit for doing so.[8] As previously stated, Mr. Pancratz did not receive a formal written IAD when RAM approved the QS transfers. If he had received a formal written IAD, it would have advised him of his appeal rights and the appeal filing deadline.[9]

Despite our decision in Tiger, Inc., because the regulations are not more clear about appealing transfer application determinations, I question whether NMFS has provided adequate notice to the public generally, or to Mr. Pancratz in particular, that RAM's determinations of QS transfer applications constitute IADs which may be appealable. Because of my concern that the notice may not be consistent with due process, I decline to conclude that Mr. Pancratz's failure to file an appeal by December 17, 2001, makes this appeal untimely.

Instead, I find that the appeal filing period in this case should be measured from March 27, 2002, the date on which NMFS formally denied Mr. Pancratz's written demand. I note that all of our appeals to date have resulted from RAM's *denial* of something sought by an applicant. Even in Tiger, Inc., in which RAM *thought* it had granted everything the applicant had requested, we concluded that RAM's issuance of QS actually constituted a denial of a portion of the applicant's claim. In the instant appeal, by contrast, RAM's approval of Mr. Pancratz's transfer applications did not deny him anything.

One would not normally expect an applicant to appeal the approval of an application.[10] Under 50

---

[6]Appellant's Prehearing Brief at 10.

[7]50 C.F.R. §679.40(a)(9).

[8]Appellant's Prehearing Brief at 10.

[9]As RAM Program Administrator Philip J. Smith testified, RAM has never issued a formal IAD for the approval or denial of a QS transfer application. [Hearing, December 19, 2002, Tape 6B at 483.] Mr. Smith further testified that "To the best of my recollection, our office has never formally denied an application as contemplated in the regulations and notified the parties. Had we done so, we would have initiated an Initial Administrative Determination formally notifying them of the denial, and making them aware of their opportunity to appeal that determination." [Hearing, December 19, 2002, Tape 7B at 43.]

[10]Mr. Smith testified that "we assume . . . that by acting favorably upon an application submitted by the parties, that we are satisfying what the parties were seeking, and therefore the action of approval should not give rise to an appeal." [Hearing, December 19, 2002, Tape 6B at 497.] In fact, this case is the first time in the nine years the IFQ program has been in operation that the approval *or* disapproval of a QS transfer application has been appealed to this Office. During that time, RAM has made

C.F.R. §679.43(b), only a person whose interest is directly and *adversely* affected by an IAD can bring an appeal. In this instance, it would be difficult to find that RAM's approval of the transfer applications *per se* had an adverse effect on Mr. Pancratz's interest. Consequently, it is not clear that the October 16, 2001, IAD is even appealable, although I do not decide that question.

NMFS's denial of Mr. Pancratz's demand to void the transfer, however, clearly had a direct and adverse effect on his interest in the QS or their value. For this reason, it is more appropriate to consider the March 27, 2002, denial of the demand to be the appealable event in this case. Thus, I find that the deadline for Mr. Pancratz to file his appeal was Tuesday, May 28, 2002.[11] Therefore, I conclude that the filing of this appeal on April 19, 2002, was timely and in accordance with 50 C.F.R. §679.43(d).

2. Should RAM's approval of Mr. Pancratz's transfer applications be reversed on the grounds that RAM failed to properly notify him of the approval?

Mr. Pancratz asserts in his appeal that he never received notice from RAM that it had approved the two QS transfer applications in this case. He argues that the evidence in the record shows that RAM faxed notice of the approvals to his broker, Ms. Moore, in October 2001, but failed to mail notice to him as required by 50 C.F.R. §679.41(b)(1). He states that he did not authorize RAM to send notice to another person instead of to him, or to use any other communication mode except mail. Mr. Pancratz asserts that if RAM had mailed notice to him in accordance with the regulation, he would have learned sooner that his broker was misappropriating his funds and could have taken steps to stop it. [Appellant's Prehearing Brief at 17-18.]

The applicable language of 50 C.F.R. §679.41(b)(1) is as follows:

> Persons who submit an Application for Transfer to the Regional Administrator for approval will receive notification of the Regional Administrator's decision to approve or disapprove the Application for Transfer, and, if applicable, the reason(s) for disapproval, by mail posted on the date of that decision, unless another communication mode is requested on the Application for Transfer.

Mr. Pancratz does not argue that this regulation guarantees him a right of actual, individualized notice. Rather, he argues only that RAM had a duty to mail notice to him at the time the transfers were approved. RAM, too, views this regulation as requiring only that RAM send notice by mail, unless requested to do otherwise. RAM Program Administrator Philip J. Smith stated in his affidavit and in his testimony that RAM's standard procedure is to send notification letters to both the seller and the buyer by first-class mail. [Smith Affidavit, December 17, 2002, at 4, ¶21; Hearing, December 19, 2002, Tape 7A at 515.] RAM Transfer Officer Clydina Bailey

---

determinations on more than 10,600 QS transfer applications. [Philip J. Smith affidavit at 2, ¶10.]

[11]The 60th day following March 27, 2002, was Sunday, May 26. Memorial Day fell on May 27, so the appeal filing deadline was extended to Tuesday, May 28. *See,* 50 C.F.R. § 679.43(d)(2).

testified that originals of transfer approval letters are sent by mail to both parties at the address RAM has on record. [Hearing, December 19, 2002, Tape 7B at 554.]

Although the regulation literally says that applicants "will receive notification," the regulation can only mean that RAM is required to send notice, not to guarantee that the notice is actually received. A requirement of actual notice would substantially delay NMFS approval of transfer applications. Nothing in the regulatory history of the IFQ program suggests such a result was intended or even contemplated. Thus, I conclude that RAM's duty is to send notice, and to do so in a manner reasonably designed to reach the parties.

The regulation itself states that notice must be sent by mail. It does not specify any particular class or type of mail. Although Mr. Pancratz states in his appeal that it would be preferable to send notifications via certified mail, he does not argue that certified mail, or any other particular form of mail, is required. [Appellant's Prehearing Brief at 17.] It is common knowledge that U.S. Postal Service first-class mail is a generally reliable method of communication, and that mail which has the proper postage affixed is normally delivered as addressed, or is forwarded to the addressee. First-class mail that cannot be delivered is normally returned to the sender. Finally, RAM's experience has been that parties typically inquire about the status of their applications if they do not receive notice within a reasonable time after submitting them for processing. [Philip J. Smith testimony, December 19, 2002, Tape 7A at 528.] Thus, I find that RAM's practice of using first-class mail is reasonably designed to reach the parties and is sufficient to meet the mailing requirement of 50 C.F.R. §679.41(b)(1).

The issue, then, is whether RAM mailed notice to Mr. Pancratz, not whether he actually received notice. The question of whether Mr. Pancratz received notice is relevant only to the extent that it may tend to prove whether RAM complied with its duty to send the notice. In due course I will analyze Mr. Pancratz's assertion that he did not receive notice. An analysis of the evidence in the record that is relevant to the question of whether RAM properly mailed notice to Mr. Pancratz follows.

A. Notices sent to Mr. Sharabarin

Mr. Sharabarin produced two originals of RAM's notice of the approval of these transfers. [Exhibit EE.] These are dated October 15 and 16, 2001, are on original NMFS blue letterhead, and are signed in blue ink by Philip J. Smith. Although these notice letters show Mr. Sharabarin's permanent address in Molalla, Oregon, he testified that he requested that notice of the approvals and the new QS certificates be sent to him c/o Northern Enterprises in Homer, Alaska, and that he believes he picked them up there in October 2001 before he went fishing in Alaska. [Hearing, December 31, 2001, Tape 8A at 475.] Both of the original transfer applications in RAM's file for Mr. Pancratz list the Northern Enterprises address as Mr. Sharabarin's temporary mailing address. [Applications at 1, Block D, box 6.] This evidence supports a finding that RAM mailed notice to Mr. Sharabarin as instructed and at the time the transfers were approved. Together with the thorough, detailed testimony of Mr. Smith and Ms. Bailey that RAM's standard procedure was to mail notice to both parties, the implication of this evidence is that RAM mailed notice to Mr. Pancratz at his permanent address at the same time

they mailed Mr. Sharabarin's documents to the broker.

B. RAM's Approval Cover Sheets

The Approval Cover Sheets that RAM staff used with regard to these transfers show in the "Notes" section that RAM faxed the transfer approval letters to the broker, Northern Enterprises, and mailed the buyer's documents to her in an envelope provided by the broker. [Exhibit 6 at 1-2.] The cover sheet notes do not state that notice was mailed directly to the parties. Mr. Pancratz argues that these cover sheets prove that RAM sent notice only to the broker. [Appellant's Prehearing Brief at 17.] Mr. Smith testified, however, that the transfer approval letters are routinely mailed to both the buyer and seller, and that this fact would not be noted on the Approval Cover Sheets. [Hearing, December 19, 2001, Tape 7A at 532-564.] This is borne out by the Approval Cover Sheets from other transfers in Mr. Sharabarin's RAM file. [Sharabarin - Chernishoff transfer, March 29, 2002; Vasily Sharabarin - Marina Sharabarin transfer, October 4, 2001.] Ms. Moore testified that she received notice by fax from RAM on the same day the transfers were approved and that it was normal procedure for RAM to fax notice to her. She stated that RAM also customarily sends notice to her by mail after the fax notice: "RAM was very good about it. I don't recall a time when they didn't follow through with something by mail." [Hearing, December 18, 2002, Tape 3B at 387-397; 509-520.]

Based on this evidence, I find that the Approval Cover Sheets for the transfers in this case do not prove that RAM failed to mail notice to Mr. Pancratz. On the contrary, I find that the Approval Cover Sheets show that RAM staff carefully followed special instructions from the broker, and therefore it is likely that they were careful in other respects in handling these transfer applications. This inference supports a finding that RAM staff mailed notice separately to Mr. Pancratz at his home address, the only address they had for him. This finding is bolstered by the testimony of Mr. Smith and Ms. Bailey. Mr. Smith testified that RAM would send notice to a broker *instead* of to the parties only if RAM received explicit instructions to do so from the parties. [Hearing, December 19, 2002, Tape 7A at 532-542.] The applications and related documents in the record show that RAM received no instructions to mail Mr. Pancratz's original notice letters to anyone but him. Ms. Bailey testified that notice is mailed to the parties to a transfer *in addition to* any notification to the broker. [Hearing, December 19, 2002, Tape 7A at 554-571.]

C. Mr. Pancratz's assertion

Mr. Pancratz asserts that he did not receive notice of the transfers from RAM. He infers that if RAM had properly mailed notice to him he would have received it and, conversely, that because he did not receive notice by mail, RAM must not have mailed it to him. These are not the only possible explanations why Mr. Pancratz would not have received notice. The notice could have been lost in the mail;[12] it could have been improperly delivered to another person and discarded

[12]The chance that the notice could be lost in the mail arguably would be greater if RAM had mailed both notice letters to Mr. Pancratz in the same envelope, since it seems somewhat less likely that two separate envelopes would both get lost in the mail. The Approval Cover Sheets suggest that RAM did mail the notices for both transfers in the same envelope. Notes on the cover sheets instruct the RAM

by the recipient; it could have been delivered correctly to Mr. Pancratz's address but inadvertently discarded or misplaced before he could open it. Any one of these possibilities would account for him not receiving the notice. Thus, it is not a strong inference that Mr. Pancratz would have me make. Drawing the inference that RAM never mailed the notice also would require that I accept as fact his sworn but unsupported assertion that he did not receive RAM's notice.

In judging Mr. Pancratz's claim that he did not receive notice, I must weigh his statement against the evidence suggesting that RAM did mail the notice and against evidence of Mr. Pancratz's credibility.

I acknowledge Mr. Pancratz's difficulty in proving a negative. First-class mail generates no confirmation of delivery, and there are no documents in the record that support his claim. I give no weight to the absence of evidence in the record that the notice was returned to sender. The fact that the notice was not returned could mean that it was delivered to Mr. Pancratz, but it is equally consistent with the possibility that it was never sent to him or that it was lost in the mail. Therefore, this evidence is not particularly probative and I disregard it.

If Mr. Pancratz did not actually receive RAM's notice of the transfer approval, one might reasonably expect that he would have contacted RAM to inquire about it within a month or two or three after the applications had been submitted. Recall that Mr. Smith testified that parties typically do inquire about the status of their applications if they haven't received notice of approval within a reasonable period of time. [Philip J. Smith testimony, December 19, 2002, Tape 7A at 528.] One of the most striking aspects of Mr. Pancratz's version of events is his assertion that he did not learn until mid-January 2002 that the transfers had been approved three months earlier. [Appellant's Prehearing Brief at 2.]

He testified that he inquired about the transfer applications with his broker, Ms. Moore, about two or three weeks after submitting them to her, and was told that "things were slow in RAM because of [the terrorist events of] 9/11. And I had no reason to disbelieve her because that's what was going on at the time." [Hearing, December 18, 2002, Tape 1B at 272-278.] Mr. Pancratz also testified that when he met with Ms. Moore at her office just after New Year's Day 2002 she told him there were problems with the transfer applications and that she was "waiting on documentation," though he was not specific about what the problems were or what documentation was lacking. [Hearing, December 18, 2002, Tape 1B at 261-272.] Mr. Pancratz stated that during the two months between those two contacts Ms. Moore was never available when he called or visited her office. Nonetheless, he did not inquire with RAM or Mr. Sharabarin about the status of the transfers until mid-January 2002, and only after he learned that Ms. Moore's check had bounced. [Hearing, December 18, 2002, Tape 1B at 323-408.]

---

transfer clerks to "Hold all transfer documents for pending transfer" and "Waiting for completion of other transfer between Pancratz and Sharabarin." [Exhibit 6 at 1, 2.]

I find Mr. Pancratz's story implausible. Mr. Pancratz had completed other QS transfers through RAM before and knew or should have known how they were supposed to proceed. He knew, for example, that RAM sends out letters to the parties as soon as quota shares are transferred. [Hearing, December 18, 2002, Tape 1B at 140 and 307.] He presumably knew that the processing of transfers by RAM may take seven to ten days, but normally takes only one or two days, as Ms. Bailey and Mr. Smith testified. [Hearing, December 19, 2001, Tape 7B at 326; Tape 6A at 120.] I would have expected Mr. Pancratz to be more skeptical if Ms. Moore had actually told him that RAM's processing of the transfer applications was still not completed after almost three months. While clearly Ms. Moore was defrauding Mr. Pancratz, I do not believe it likely that she would use supposed delays at RAM as an excuse for almost three months since she must have realized that Mr. Pancratz could have easily learned the truth with a phone call to RAM.

For her part, Ms. Moore contradicted Mr. Pancratz's testimony. In response to his assertion that he first learned about the transfer approvals in mid-January 2002 when Ms. Moore informed him that she had misspent his funds, she testified: "No disrespect to Mr. Pancratz, but I recall speaking to him much earlier as to the actual transfer of the quota shares and had informed him that I was in the process of putting those funds in a check and getting them to Alaska Exchange, certainly much earlier than when I wrote that particular letter." [Referring to the letter of January 17, 2002, Exhibit 8.] Although Ms. Moore could not recall precisely when she first discussed the transfer approvals with Mr. Pancratz, she stated that it was probably within a couple of weeks after the transfer occurred, "if not earlier." That would have been late October or early November 2001. [Hearing, December 18, 2002, Tape 3B at 458-491.]

With due regard to the fact that Ms. Moore was convicted of a crime of dishonesty – highlighted by the fact that she testified by phone from prison – I find her statements on this point credible. She freely admitted her fraudulent conduct and acknowledged that during the time in question she had been stalling on completing the transfer in hopes of recovering Mr. Pancratz's money before her crime was discovered. [Hearing, December 18, 2002, Tape 3B at 465-473.] Ms. Moore was a cooperative witness and voluntarily testified at my request.

Some of Mr. Pancratz's other statements at the hearing raise doubts in my mind about his overall credibility and, therefore, about his assertion that he did not receive notice from RAM. He testified, for example, that because the sale of his quota shares was part of an [Internal Revenue Code Section] 1031 tax-deferred exchange he expected Mr. Sharabarin to pay the balance of the proceeds ($148,000) directly to the 1031 intermediary, Alaska Exchange Corporation (AEC), and not to pay the money to Ms. Moore.[13] [Hearing, December 18, 2002, Tape 1B at 289.] Yet,

[13]Mr. Pancratz asserts that because there was a 1031 exchange involved, Ms. Moore was not allowed to hold the QS sale proceeds. [Appellant's Summation at 7.] That does not appear to be accurate, however. Mr. Pancratz and Mr. Sharabarin signed an agreement assigning the proceeds from the sale to AEC. [Exhibit E at 15-16.] Paragraph 3 of the assignment "authorizes and directs" Mr. Sharabarin to deliver all payments under the sale contract to AEC, but does not prohibit him from sending the payments to AEC through Ms. Moore. In fact, AEC was aware even before entering into this

the QS sales agreement submitted to RAM, as well as the amended version Mr. Pancratz submitted at the hearing [Exhibit C], do not support his asserted understanding of the arrangement. Neither version of the contract provides that the buyer was to pay the balance of proceeds to AEC instead of to the broker, Ms. Moore.[14] Both versions of the sales agreement provide that Mr. Sharabarin was obligated to pay the balance of proceeds by a date certain, either October 10, 2001, or October 20, 2001. Given the large amount of money involved, I would have expected Mr. Pancratz to attempt to verify that Mr. Sharabarin had paid *someone* at the required time. Yet, in the weeks following the October 20 (or October 10) payment due date, he did not contact Ms. Moore, Mr. Sharabarin, or AEC to ascertain that payment had been made.

Mr. Pancratz testified that when he learned in mid-January 2002 that the $153,000 check to AEC had bounced, his first impression was that it had been sent to AEC directly from Mr. Sharabarin, not through Ms. Moore. [Hearing, December 18, 2002, Tape 1B at 408.] He seems to be suggesting that he had not expected Mr. Sharabarin to pay the balance until after the transfers were approved. He would have me believe that he assumed Mr. Sharabarin was still holding the money in January, still waiting for RAM to approve the transfers, and that neither Ms. Moore nor anyone else would be holding the funds in trust pending the transfer of the QS. Yet, it is apparent that Ms. Moore, Mr. Sharabarin, and AEC all understood that all the net proceeds from the transfers would be paid to AEC by Ms. Moore. She testified emphatically that the agreement she had with Mr. Pancratz had always contemplated that the money would go through her and "that was the normal course of business." [Hearing, December 18, 2002, Tape 3B at 492-509.] She also testified that she handled these transfers the same way she handled others in which a 1031 exchange was involved. [Hearing, December 18, 2002, Tape 3B at 550.]

When Ms. Moore ultimately informed Mr. Pancratz why her check to AEC had bounced, she obviously did not feel the need to explain to him why she had possession of all the proceeds in the first place. [Exhibit 8.] It is apparent from Ms. Moore's letter that she understood – and took for granted that Mr. Pancratz knew – that she was supposed to pay the $153,000 to AEC from the Northern Enterprises account. This evidence suggests that Mr. Pancratz in fact already knew that Ms. Moore had the proceeds and was supposed to write the final payout check to AEC, despite his testimony to the contrary.

In light of all the evidence I have now discussed, I find certain aspects of Mr. Pancratz's

---

assignment that Ms. Moore was to hold the proceeds and would pay the entire net proceeds in one check to AEC at the time of closing. [Exhibit E at 2, Moore letter faxed to AEC, October 12, 2001.] Although Ms. Moore, as Mr. Pancratz's broker, arguably could not serve as a "qualified intermediary" for the 1031 exchange, nothing in AEC's agreements or in tax law appears to prohibit her from receiving, holding in trust, and transferring to AEC the proceeds from the QS sale. [*See, e.g.,* IRS Publication 544, Sales and Other Dispositions of Assets, 2002, at 12-13.]

[14]I note, however, that Mr. Pancratz's copy of the sales agreement includes a hand-written amendment that directed the broker to "deposit earnest money with AEC (1031 intermediary)" instead of remitting to seller full payment for the quota shares. [Exhibit C at p. 2, ¶6.]

testimony to be not credible, in particular his assertions that he was unaware the transfers had been approved by RAM until mid-January 2002,[15] and that he expected Mr. Sharabarin to pay the balance of the proceeds directly to AEC rather than to Ms. Moore. Consequently, I view with skepticism Mr. Pancratz's claim that he never received notice of the transfers from RAM. Such a claim is easy to make and difficult to disprove. Mr. Pancratz has not presented sufficient evidence to corroborate his claim. I, therefore, do not accept as fact that he did not receive RAM's notice, and from his claim I draw no inference that RAM failed to mail notice to him.

Even if, *arguendo,* I were persuaded by the evidence that Mr. Pancratz did not receive RAM's notice, any inference I would draw from that fact about whether RAM mailed notice to him would still be outweighed by the evidence that RAM has regular well-established procedures for processing transfer applications, that RAM did send notice to Mr. Sharabarin and Ms. Moore, and that RAM apparently was careful in handling the applications in this instance, all of which raise the inference that RAM did properly mail notice to Mr. Pancratz.

I find by a preponderance of the evidence that it is more likely than not that RAM did mail notice of the transfer approvals to Mr. Pancratz at his permanent address on October 16, 2001. I conclude that RAM complied with its duty to mail notice as required by 50 C.F.R. §679.41(b)(1) and that, therefore, RAM's approval of Mr. Pancratz's transfer applications should not be reversed for failure of proper notice by RAM.

3. Should RAM's approval of Mr. Pancratz's transfer applications be reversed on the grounds that RAM did not obtain original notarized signatures on the transfer applications or sales agreement?

In his appeal Mr. Pancratz makes the following four assertions concerning signatures contained on the transfer applications and accompanying sales agreement that RAM reviewed in connection with the QS transfers in question:

A. The transfer applications did not contain Mr. Sharabarin's original signatures "as required by [RAM's] own instructions, and as impliedly required by its own regulations." [Appellant's Prehearing Brief at 18.] He states that an "insistence on original signatures from both of the parties here would have alerted RAM to the possibility that the documents had been somehow

[15]RAM's IFQ file for Mr. Pancratz contains a copy of the approval letter for transfer #12638, dated October 16, 2001, which Mr. Pancratz faxed to RAM on January 15, 2002, when he requested that a lien be placed on the quota shares. A second fax dateline shows that RAM had faxed the letter to someone on January 7, 2002. I presume that RAM had faxed it to Mr. Pancratz since it was in his possession when he re-faxed it to RAM. This evidence suggests that he was aware of the transfer at least a week before he was notified by AEC and Ms. Moore of the NSF check. I do not give this evidence any weight, however, because it was not addressed during the hearing or in the parties' briefs, and I cannot be certain when Mr. Pancratz received it. (I note that the fax dateline showing Mr. Pancratz faxed six pages to RAM on "01/01/2002" is obviously incorrect since his letter and RAM's receipt stamp both show a date of January 15, 2002.)

patched together and did not represent a true agreement." [Appellant's Prehearing Brief at 19.]

B. His own signatures on the application forms do not show a legible notary seal.

C. Mr. Sharabarin's signature on the QS sales agreement is a faxed copy not an original.

D. Both parties' signatures on the sales agreement are not notarized. [Appellant's Summation at 5, 7; Appellant's Prehearing Brief at 22.]

Mr. Pancratz argues that because of these alleged deficiencies RAM's approval of the transfer applications should be reversed.

Mr. Pancratz argues that all of the above alleged faults regarding signatures violate federal regulation 50 C.F.R. §679.41(c)(3), which states in relevant part: "[A]n Application for Transfer will not be approved until the Regional Administrator has determined that: . . . (3) The person applying for transfer and the person applying to receive the QS or IFQ have their notarized signatures on the Application for Transfer."

Mr. Pancratz also argues that RAM violated its own instructions that accompany or are printed on the application forms. [Exhibit 4, pp. 1, 2, 5.] Those instructions state:

> "NOTE: FAXED APPLICATIONS ARE NOT ACCEPTABLE. PLEASE SUBMIT ORIGINALS." The application form also includes a "LIST TO ENSURE YOUR APPLICATION IS COMPLETE," which includes "Copy of signed & notarized sales or gift agreement." [Application, Block B.]
>
> "The original application must be submitted – an application sent by facsimile will not be processed." [Instructions at 5 of 8.]
>
> "Application forms submitted to RAM must bear the original signatures of the parties – RAM will not process faxed applications." [Instructions for Blocks J & K at 8 of 8, ¶1.]

A. Mr. Sharabarin's signatures on the transfer applications

The record contains the original transfer applications that were mailed to, and reviewed by, RAM. They are found in Mr. Pancratz's IFQ file that was sent to us by RAM. Page 4 of the application form for Transfer Number 12635 is the signature page. It contains a signature in Block K above the printed name of Vasily A. Sharabarin. The signature is in black ink; the date of October 5, 2001, is in blue ink. It is attested by the signature and rubber-stamped official seal of Jo Ann West, a notary public in Oregon, whose commission was still valid on the date of signature. The same facts are true also for the corresponding page on the application form for Transfer Number 12638.

Mr. Pancratz asserts in his affidavit that none of Mr. Sharabarin's signatures in the transfer application packet reviewed by RAM are original signatures. [Pancratz Affidavit, April 11,

2002, at 3, ¶7.] Mr. Sharabarin affirmed in his prehearing brief that his signatures on the application forms are authentic. [Respondent's Prehearing Brief at 7, ¶19.] Mr. Smith testified that he determined to his satisfaction that the signatures on the transfer application forms were original signatures and were properly notarized. [Hearing, December 19, 2002, Tape 6A at 482-487.] Having personally inspected the signatures and notary seals, and based on the weight of the evidence, I find that the transferee's signatures in Block K of the application forms are Mr. Sharabarin's original signatures. I conclude, therefore, that the alleged lack of original signatures on the transfer applications cannot serve as grounds to reverse RAM's approval of the transfers on appeal.

B. Mr. Pancratz's signatures on the transfer applications

Mr. Pancratz asserts that his own signatures in Block J of the transfer applications are not accompanied by a legible notary seal. This could be true of the copies of the applications that are in Mr. Pancratz's possession, but my inspection of the original application forms in the RAM file shows that they have the embossed seal of Carol Grace, a notary public in Alaska. I find that this seal on both application forms is legible. I conclude, therefore, that the alleged lack of a legible notary seal on the transfer applications cannot serve as grounds to reverse RAM's approval of the transfers on appeal.

C. and D. The parties' signatures on the QS sales agreement

Mr. Pancratz asserts that Mr. Sharabarin's signature on the sales agreement reviewed by RAM is a faxed copy, not an original. Mr. Pancratz also asserts that neither party's signature on the sales agreement was notarized. He argues that the lack of original notarized signatures on the sales agreement is contrary to the instructions that appear in Block B of the transfer application forms, which specify that the application should include a "copy of signed and notarized sales or gift agreement."

Ms. Moore testified that she used Mr. Sharabarin's faxed signature on the sales agreement she submitted to RAM and that he was aware that she was doing so. [Hearing, December 18, 2002, Tape 3B at 74-84.] Mr. Sharabarin confirmed that his signature on the sales agreement is his authentic signature [Respondent's Prehearing Brief at 7, ¶19.] It is apparent from my inspection of the copies of the sales agreement in RAM's file that Mr. Sharabarin's signature is not the original and, in fact, that the agreement attached to each transfer application is a *photocopy,* not the original document. Thus, there is no dispute that Mr. Sharabarin's signature is not the original. It is also obvious from an inspection of the sales agreement that neither party's signature was notarized, and Mr. Sharabarin does not dispute this fact.

The question is whether RAM's approval of the transfers was proper despite the absence of original notarized signatures on the sales agreement and whether, therefore, RAM's approval should be reversed on appeal.

The QS transfer regulations, however, do not require applicants to submit, or RAM to obtain, the original sales agreement between the parties to a transfer. The language in Block B suggests that a transfer application would not be complete and will not be processed by RAM unless it

includes a copy of a signed and notarized sales agreement. This language is merely instructive or advisory to applicants, and it does not have the force of law or regulation. According to Mr. Smith, RAM does not view the instructions or form language as legal requirements. [Hearing, December 19, 2002, Tape 6B at 546-568.]

The language on its face states that the applicant is supposed to include a *copy* of the sales agreement. RAM apparently reads this language literally, as Ms. Bailey confirmed when she testified that the application form calls for a copy of sales agreement, not the original agreement itself. [Hearing, December 19, 2002, Tape 457-484.] By requesting a copy of the sales agreement, RAM implicitly is not requesting original signatures. I therefore find that the language of Block B does not implicitly or explicitly require, or even request, original signatures on the sales agreement that is submitted to RAM with the transfer application.

As for notarized signatures, Mr. Smith testified that RAM does not require notarized signatures on the sales agreement as a condition of processing or approving a transfer application, and that RAM has never denied a transfer for lack of a notarized signature on the sales agreement. [Hearing, December 19, 2002, Tape 6A at 379; Tape 7A at 193.] Ms. Bailey testified that the RAM staff who review transfer applications do not require notarized signatures on the sales agreement. She stated that the instructions ask for notarized signatures, but they are not required. [Hearing, December 19, 2002, Tape 7B at 484-501.]

Ms. Moore confirmed that in her experience this has been RAM's practice. She testified that she never submited notarized sales agreements to RAM, and that the standard QS sales agreement form that she created and has used since 1994 does not have a block for a notary signature and seal. [Hearing, December 18, 2002, Tape 3B at 575-593; Tape 4A at 8.]

Mr. Smith stated that it is far more important that the notarized signatures be on the application itself, not the sales agreement. [Hearing, December 19, 2002, Tape 6A at 379-394.] Unlike the sales agreement, the transfer application form must contain the notarized signatures of both parties. [50 C.F.R. § 679.41(c)(3).] Mr. Smith testified that original notarized signatures are required on the transfer applications primarily to protect the QS holder from misrepresentation by a third party. In contrast, RAM asks for a copy of the sales agreement to determine whether the parties are proposing something prohibited by the IFQ program. [Hearing, December 19, 2002, Tape 6B at 590; Tape 7A at 179.]

By a preponderance of the evidence I find that RAM does not require notarized signatures on the sales agreement submitted with a QS transfer application, despite the reference to notarized signatures in Block B of the transfer application form.

I conclude that since the request for notarized signatures on the sales agreement is not a legal requirement, RAM has the discretion to disregard the absence of notarized signatures on the

sales agreement when processing transfer applications.[16] I also conclude that the lack of original notarized signatures on the sales agreement does not invalidate RAM's approval of the transfer applications and cannot serve as the basis for reversing RAM's approval on appeal.

I note that even if RAM had required and obtained original notarized signatures on the sales agreement in this case, that would not necessarily have provided any additional protection of Mr. Pancratz's interests. Mr. Pancratz asserted that requiring original notarized signatures "would have alerted RAM to the possibility that the documents had been somehow patched together and did not represent a true agreement. . . . If [RAM] had at least insisted on original signatures, Mr. Pancratz would have been alerted to events that have led to this appeal." [Appellant's Prehearing Brief at 20-21.] The signatures on the sales agreement, however, were on a separate page four that contained none of the substantive provisions that Mr. Pancratz alleged were changed or omitted by Ms. Moore. Even if that page had contained original notarized signatures, subsequent changes could have been made to the first three pages of the sales agreement without being apparent to RAM.

I feel I must also point out that Mr. Pancratz's objections to the lack of original notarized signatures on the sales agreement are disingenuous since he himself signed the agreement with only a faxed signature from Mr. Sharabarin and did not insist on original notarized signatures. That fact is evident from Mr. Pancratz's own copy of the agreement that he produced at the hearing, which shows the exact same signatures that appear on the copies received by RAM. [Exhibit C at 4.]

4. Should RAM's approval of Mr. Pancratz's transfer applications be reversed on the grounds that RAM did not have an agent authorization?

Mr. Pancratz asserts that RAM's approval of the transfers was improper because the application packets did not include documentation authorizing Ms. Moore to act as his agent. [Appellant's Prehearing Brief at 20.] Mr. Pancratz further asserts that there was no authorization in RAM's file for Ms. Moore to even handle these QS transfers. [Appellant's Summation at 2.] Mr. Pancratz argues that the sales agreement was merely an offer to purchase quota shares and did not authorize Ms. Moore or Northern Enterprises to effect or complete the transfers, or to represent the parties before RAM. [Appellant's Prehearing Brief at 20; Appellant's Summation at 7.]

Mr. Pancratz argues that RAM's approval of the transfers should be reversed because it violated RAM's own instructions in Block B of the application form, which indicate that applicants are to supply "Documentation of Authorized Agent (if applicable)." [Exhibit 4, p. 1.] The instructions

[16] 50 C.F.R. § 679.41(c) does state that "an Application for Transfer will not be approved until the Regional Administrator had determined that . . . (9) Other pertinent information requested on the Application for Transfer has been supplied to the satisfaction of the Regional Administrator." This language merely recognizes that RAM (the Regional Administrator's delegate) has the discretion to determine what information is pertinent and sufficient.

for Blocks J and K, ¶ 2, also state that "representatives signing for a Transferor or Transferee must submit proof of authorization to submit this application on their behalf." [Exhibit 4 at 5.]

As with other instructions that accompany or are printed on the transfer application forms, these instructions do not have the force of law unless otherwise required by regulation. The QS transfer regulations do not contain any reference to agent authorizations. As previously discussed, however, the transfer regulations do require that applications for a QS transfer must contain the notarized signatures of both parties. [50 C.F.R. § 679.41(c)(3).] It appears that instructing and allowing parties to submit documentation of agent authorization substitutes for the required parties' notarized signatures when an agent signs the application on their behalf. I find that this is a practical and reasonable interpretation and implementation of the regulation by RAM. I conclude that in situations where an agent signs the application for one or both parties, RAM's approval would be improper unless if first obtained proof of agent authorization.

My conclusion is supported by Mr. Smith's testimony that, in RAM's view, an agent and a broker are not the same. He explained that an agent is authorized by power of attorney or otherwise to sign for one or both parties and to swear to the truth of a matter. He stated that a broker, on the other hand, expedites or facilitates the transactions by gathering and submitting the application and related documents and otherwise assisting the parties and RAM, but does not sign documents in place of a party. Mr. Smith stated that this is an important and meaningful distinction where the application bears the signature of someone other than the parties to the transfer. [Hearing, December 19, 2002, Tape 6A at 146-170.]

As I have already found, in this case the parties' own names appeared in the signature blocks for the transferor and transferee, and the signatures were notarized. Thus, I find that no *agent* was involved in these transfers and I conclude that RAM was not required to obtain documentation of agent authorization in this case.

Of course, a *broker* was involved in these transfers, as RAM recognized. Both the sales agreement and the cover letter to the application packets in RAM's file identify Northern Enterprises and Ms. Moore as the broker for the transfers. The sales agreement makes clear that both parties have employed Ms. Moore to be the broker for these transfers. [Offer to Purchase Individual Quota Shares, September 19, 2001, at 3, ¶ 8.] Ms. Moore's authority to facilitate the transfers as a broker was also implicit and apparent because she submitted to RAM Mr. Pancratz's original quota share certificates and the transfer application forms containing both parties' original notarized signatures. Furthermore, Ms. Moore was an experienced broker known to RAM and had successfully handled numerous QS transfers since the start of the IFQ program in the mid-1990s. [Affidavit of Philip J. Smith, December 17, 2002, at 3, ¶ 16; D. Moore Testimony, Hearing, December 18, 2002, Tape 3B at 593 - Tape 4A at 16.]

Although Mr. Pancratz claims he did not authorize Ms. Moore to effect or complete the transfers, he contradicts himself with his own testimony. Mr. Pancratz testified that he expected Ms. Moore to submit the transfer application forms to RAM and to make sure that Mr. Sharabarin's information was on the forms. [Hearing, December 18, 2002, Tape 1B at 283-289.] His claim is

also belied by his actions. It is clear from the testimony and other evidence in the record that between October 2001 and January 2002 Mr. Pancratz relied exclusively on Ms. Moore to shepherd the applications through RAM and to keep himself informed of progress with the transfers.

In light of all these facts, I find that RAM reasonably and correctly believed that Ms. Moore was authorized to act as a broker for the parties to the transfers. I find that Mr. Pancratz's assertions that she was not so authorized are not credible, and his argument that lack of authorization made RAM's approval of the transfers improper is without merit.

5. Should RAM's approval of Mr. Pancratz's transfer applications be reversed on the grounds that RAM did not have full disclosure of the financial implications of the transfer?

Mr. Pancratz asserts that the transfer applications which RAM approved did not "fully disclose all entities to whom fees were to be paid as a result of the transaction, as required by [RAM's] own instructions." [Appellant's Prehearing Brief at 22.] Mr. Pancratz asserts that he was harmed by RAM's failure to require the disclosure of his intended 1031 exchange and the involvement of Alaska Exchange Corporation (AEC), but he does not clearly explain how this lack of disclosure harmed him. Nonetheless, Mr. Pancratz argues that the lack of disclosure is grounds for reversing RAM's approval of the transfers.

Mr. Pancratz's claims regarding disclosure are based on Block H of the transfer application form and the accompanying instructions for completing Block H. [Exhibit 4 at 4-5.] These instructions are numbered to correspond to the questions in Block H and provide, in relevant part:

> 1. Are you paying a third party to assist with this transaction? If **No**, go to question #2, If **Yes**, put the total price paid to the broker or calculate how much was paid to the third party as a percentage of the total sale price. . . .
>
> 2. The total amount entered should include any and all monies collected on behalf of the seller for the shares involved, including any fees that will be paid out to other parties for the expenses of brokering or assisting in the sale of these shares.

I do not read these instructions as requesting or requiring disclosure of the 1031 exchange or the involvement of AEC. The instructions for question number 1 ask for the price paid to the broker. Ms. Moore's fees in these transfers are disclosed in Block H of the applications as 3 percent of the total price. AEC was not the broker in this sale. AEC was to act only as the 1031 intermediary for the subsequent exchange of the quota shares for like-kind property.

Paragraph 2 of the instructions asks for the total amount collected on behalf of the seller. The total amount collected by Ms. Moore on behalf of Mr. Pancratz, including the broker's fees, were disclosed in question number 2 of Block H of the transfer applications. The $1,000 fee that

Mr. Pancratz paid to AEC was not "collected on behalf of the seller." [Exhibit E at 19.]

Mr. Smith testified that RAM does not require disclosure of a 1031 exchange because it is not relevant to whether he approves a QS transfer or not. "If the application was otherwise in order, and had we not known that the 1031 information had not been included, I don't think it would have made any difference to whether we would have processed the transfer or not." [Hearing, December 19, 2002, Tape 6B at 62-83.]

By a preponderance of the evidence I find that all of the fees and monies paid for the QS transfers that were requested to be disclosed with the transfer applications were in fact disclosed. In particular, I find that the proposed 1031 exchange in this case was not required to be disclosed to RAM. I, therefore, conclude that a lack of "full disclosure of the financial implications of the transfer" is not grounds to reverse RAM's approval of the transfers on appeal.

FINDINGS OF FACT

1. The appeal filing period in this case should be measured from March 27, 2002, the date on which NMFS formally denied Mr. Pancratz's written demand.

2. The deadline for Mr. Pancratz to file his appeal was Tuesday, May 28, 2002.

3. RAM mailed notice to Mr. Sharabarin as instructed and at the time the transfers were approved.

4. The Approval Cover Sheets for the transfers in this case do not prove that RAM failed to mail notice to Mr. Pancratz.

5. The Approval Cover Sheets show that RAM staff carefully followed special instructions from the broker, and therefore it is likely that they were careful in other respects in handling these transfer applications.

6. RAM mailed notice of the transfer approvals to Mr. Pancratz at his permanent address on October 16, 2001.

7. Mr. Sharabarin's signatures in Block K of the application forms are both his original notarized signatures, as are Mr. Pancratz's signatures in Block J.

8. The notary seal attesting to the original signature of Mr. Pancratz on both application forms is legible, as is the notary seal attesting to Mr. Sharabarin's signature.

9. The language of Block B of the transfer application form does not implicitly or explicitly require, or even request, original signatures on the sales agreement that is submitted to RAM with the transfer application.

10. RAM does not require notarized signatures on the sales agreement submitted with a QS transfer application, despite the reference to notarized signatures in Block B of the transfer application form.

11. No *agent* was involved in the quota share transfers in this case.

12. RAM reasonably and correctly believed that Ms. Moore was authorized to act as a broker for the parties to the transfers.

13. All of the fees and monies paid for the QS transfers that were requested to be disclosed with the transfer applications were in fact disclosed.

14. The proposed 1031 exchange in this case was not required to be disclosed to RAM.

CONCLUSIONS OF LAW

1. RAM's determinations that approve or deny applications for the transfer of QS constitute IADs.

2. The filing of this appeal on April 19, 2002, was timely and in accordance with 50 C.F.R. §679.43(d).

3. RAM complied with its duty to mail notice as required by 50 C.F.R. §679.41(b)(1).

4. Because RAM complied with proper notice requirements, RAM's approval of Mr. Pancratz's transfer applications should not be reversed for failure of proper notice.

5. Because the signatures of both parties on the transfer applications are original notarized signatures, RAM's approval of Mr. Pancratz's transfer applications should not be reversed for a lack of original signatures or legible notary seals.

6. RAM has the discretion to disregard the absence of notarized signatures on the sales agreement when processing transfer applications.

7. The lack of original notarized signatures on the sales agreement does not invalidate RAM's approval of the transfer applications and cannot serve as the basis for reversing RAM's approval on appeal.

8. In situations where an agent signs the application for one or both parties, RAM's approval would be improper unless if first obtained proof of agent authorization.

9. RAM was not required to obtain documentation of agent authorization in this case.

10. The instructions for completing Block H of the transfer application form do not request or

require disclosure of the 1031 exchange or the involvement of AEC in this case.

11. Because the appropriate financial disclosures were made on the application forms, RAM's approval of Mr. Pancratz's transfer applications should not be reversed for a lack of "full disclosure of the financial implications of the transfer."

DISPOSITION

NMFS's refusal to void the approval of the QS transfer applications and return the QS to Mr. Pancratz or to reimburse him for the value of the QS, which constitutes the IAD in this case, is AFFIRMED. This Decision takes effect June 20, 2003, unless by that date the Regional Administrator orders review of the Decision.

The Appellant or RAM may submit a Motion for Reconsideration, but it must be received by this Office not later than 4:30 p.m., Alaska Time, on the tenth day after this Decision, June 2, 2003. A Motion for Reconsideration must be in writing, must specify one or more material matters of fact or law that were overlooked or misunderstood by the Appeals Officer, and must be accompanied by a written statement in support of the motion.

_____

Edward H. Hein
Chief Appeals Officer