

NATIONAL MARINE FISHERIES SERVICE, ALASKA REGION
OFFICE OF ADMINISTRATIVE APPEALS

In re Applications of)
)
C&M PARTNERSHIP,)
Appellant)
)
and)
)
JOHN L. RANWEILER,)
Respondent)
_____)
)

Appeal No. 95-0064

DECISION

March 21, 1996

STATEMENT OF THE CASE

On May 18, 1995, Appellant filed a timely appeal of an Initial Administrative Determination [IAD] issued by the Restricted Access Management Division [Division] on March 24, 1995. The IAD approved Respondent's Application for QS under the Individual Fishing Quota [IFQ] program for Pacific halibut and sablefish on the basis that he had leased the F/V JANI K between the months of March and October during the years of 1987 through 1990. The Division awarded to the Respondent the qualifying pounds of halibut and sablefish landed from the vessel during that period. The IAD ordered that no QS resulting from the award would be issued until Appellant's right of appeal had been exhausted. On June 16, 1995, an order was issued by this office joining Respondent as a party to Appellant's appeal. On August 11, 1995, Appellant, as part of its supplemental appeals brief, requested a hearing in this matter. Later, however, on September 5, 1995, Appellant withdrew its request for a hearing. No hearing was held because of sufficient information in the record to decide the appeal.

ISSUE

Whether Appellant leased its vessel, the F/V JANI K, to Respondent during the years of 1987, 1988, 1989, and 1990.

BACKGROUND

On February 7, 1994, Respondent filed a Request for Application [RFA] for QS, claiming that he leased the F/V JANI K from Appellant between the months of March and October during the years of 1987 through 1990. Respondent submitted with his RFA, a copy of a 1987 and a 1990 agreement with Appellant for the lease of the F/V JANI K. The agreements were dated and contained language specifying that Respondent had agreed to "lease the JANI K." Respondent also submitted with his RFA various tax records, which showed business income and rental or lease deductions in tax years

1987 through 1989,¹ and 1099 forms indicating payments of crew shares. On April 25, 1994, Respondent filed an affidavit with his Application for QS, affirming that he had leased the F/V JANI K in 1988 and 1989 under written agreements similar to those in 1987 and 1990.

On April 28, 1994, Appellant filed an RFA, claiming ownership of the F/V JANI K during the same period of time of Respondent's claimed lease of the vessel. It did not admit or deny on the face of its RFA whether it had leased the F/V JANI K. On August 9, 1995, Appellant submitted its Application for QS, challenging the Division's finding that it did not qualify for halibut or sablefish QS, by claiming ownership of and landings from the F/V JANI K during 1987-1990.

On September 19, 1994, the Division informed both parties that a conflict existed for the QS resulting from the landings made from the F/V JANI K during 1987-1990. Thereafter, on March 24, 1995, the Division issued an IAD, awarding Respondent credit for the landings made from the JANI K during the period in question.

On May 18, 1995, Appellant appealed the IAD, claiming, in essence, that Respondent was not a lessee, but a hired skipper; and that it, not Respondent, should receive credit for the landings since it had shouldered the primary financial burdens and risks of the fishing operations of the vessel. Appellant did not refute the existence of the lease agreements alleged by Respondent; and provided, upon request from this office, copies of the agreements. The 1987 copy was not signed by either party; the 1988 and 1990 copies were signed by both parties; and the 1989 copy was signed only by Respondent.

The terms of the agreements were substantially similar.² Each agreement's heading read: "Agreement Between Al Meyers, and Don Crane, Boat Owners, and Jack Ranweiler, Leasing Skipper." Each also identified the name of the leased vessel, the names of the parties, and the period of the lease,³ and

¹Respondent also submitted tax forms for 1990 that did not specify business income or a rental or lease deduction.

²Under all four agreements Appellant received 35% of the gross, was required to purchase the necessary fishing gear, could board the vessel as an unpaid observer or paid crewmember, and paid for abnormal repairs; Respondent was required to pay for normal wear and tear maintenance of the vessel; to pay for the return of the vessel at the end of the fishing season; to pay for personal injury insurance; to ready, maintain, and replace fishing gear; to pay for fuel; and to market the fish. Respondent was free to fish when and where he chose.

³The 1987 agreement was from March 1, 1987, until the end of the summer-fall halibut and sablefish openings; the 1988 agreement was from February 29, 1988, through October 31, 1988; the 1989 agreement was from March 15, 1989, through October 31, 1989; and the 1990 agreement was from March 20, 1990 through October 31, 1990.

specifically referred to Respondent's lease of the F/V JANI K.⁴

DISCUSSION

Under the IFQ program, as implemented by the Division, an applicant for the initial issuance of QS may receive credit only for legal landings of Pacific halibut or sablefish made from a vessel owned or leased by the applicant at the time of the landings.⁵ Under the same program, a person who owns a vessel may not receive QS for landings made from that vessel for the period that the vessel was leased to another person.⁶ A written vessel lease is conclusive evidence of the existence of a vessel lease between the parties.⁷ To be conclusive evidence, a written lease must identify the leased vessel, the name of the lease holder, and the period of time during which the lease was in effect.⁸ Other evidence, which may not be conclusive, but may tend to support a vessel lease, may also be used.⁹

Where, as in this case, an applicant [Respondent] has submitted four written documents, in which each is said to be a vessel lease, the appropriate inquiry on appeal is whether each document on its face actually constitutes a vessel lease for purposes of the IFQ program. To the extent that one is, it ends the debate [for that one], and no other evidence need be considered.

The IFQ regulations do not define "vessel lease," nor do they prescribe the minimum requirements for, or essential elements of, a vessel lease. Recognizing that commercial fishermen and vessel owners enter into a considerable variety of business arrangements relating to fishing operations, this office has chosen not to establish a single, narrow definition of a vessel lease. Rather, we have identified a number of factors that should be considered in deciding whether a vessel lease existed. In two published decisions involving claimed oral leases,¹⁰ we reviewed the regulatory history of the vessel lease provisions and concluded that the North Pacific Fishery Management Council intended to allocate Quota Shares to

⁴All the agreements read: "Leasing skipper agrees to lease the JANI K ..."

⁵See 50 C.F.R. 676.20(a)(1).

⁶Id.

⁷See 50 C.F.R. 676.20(a)(1)(iii).

⁸Id.

⁹Id.

¹⁰See O'Rourke v. Riddle, Appeal No. 95-0018, May 18, 1995, affirmed May 23, 1995; Seater v. Seater & Seater, Appeal No. 94-0010 [consolidated with Appeal No. 95-0006], June 6, 1995, affirmed June 9, 1995.

those who "acted like entrepreneurs in controlling and directing the fishing operations that produced the legal landings in question."¹¹ The dictionary definition of entrepreneur is one who "organizes, manages, and assumes the risks of a business or enterprise."¹² We pointed to five factors that should be considered, but stated that this was not intended to be an exclusive or exhaustive list, and that each factor would be considered and weighed in relation to the particular circumstances in each case. The factors are:

- (1) whether and to what extent the claimed lessee had possession and command of the vessel and control of navigation of the vessel;
- (2) whether the claimed lessee directed fishing operations of the vessel;
- (3) whether the claimed lessee had the right to hire, fire, and pay the crew;
- (4) whether the claimed lessee was responsible for the operating expenses of the vessel;
and
- (5) whether the claimed lessee treated the fishing operations in which the vessel was used as his or her own business for federal income tax and other purposes.

In Kristovich v. Dell,¹³ we added a sixth factor:

- (6) whether the claimed lease had a set or guaranteed term.

Only if the document is found not to constitute a vessel lease will the Appeals Officer consider the actual conduct of the parties in deciding whether, nonetheless, a lease existed. However, evidence that the agreement was invalid due to fraud, duress, coercion, or incapacity, is always relevant and should be considered. And, if the Appeals Officer finds that a written document does not constitute a vessel lease, but does constitute a valid agreement between the parties, the document may still be considered as relevant evidence of the relationship between the parties, along with other evidence of the parties' actual conduct and intent. If the Appeals Officer determines that a valid vessel lease existed, the next question is when was the lease in effect. In examining that question, the Appeals Officer will presume that the lease was in effect for the term stated in the lease, unless contrary evidence is presented.

¹¹O'Rourke at 13.

¹²*See* Webster's New Collegiate Dictionary.

¹³Kristovich v. Dell, Appeal No. 95-0010, March 20, 1996, at 10.

In the instant case, Appellant has made no allegations of fraud, incapacity or coercion as to its execution, nor is there any such evidence in the record. Therefore, we need only look to the provisions of the document itself to determine whether it constitutes conclusive evidence of a vessel lease.

We have four detailed documents, each of which are entitled, "Agreement Between Al Meyers, and Don Crane, Boat Owners, and Jack Ranweiler, Leasing Skipper." The title and the terminology used in each document indicate the intent of the parties to create a vessel lease. In each document, Respondent is referred to as the leasing skipper who has agreed to the lease of the F/V JANI K. The other provisions of the documents, as well, are consistent with a vessel lease. The Respondent was required to pay for the vessel's maintenance, fuel, personal injury insurance, and delivery of the vessel, to maintain and replace lost fishing gear, to return the vessel after a fixed time, and to determine when and where to catch and market the fish. Nowhere does it mention that Appellant is to have command and control of the navigation of the vessel, pay for the vessel's operating expenses, direct the fishing operation, or to hire, fire, and pay the crew.

The documents contain provisions that bar drugs and alcohol on the vessel, limit engine speed, allow Appellant to board the vessel at will. While these provisions restrict the Respondent's unfettered use of the vessel, on the whole they do not negate the existence of a vessel lease. The right to board the vessel did not give Appellant authority to command the vessel or control its navigation or fishing operations. The provisions barring excessive engine speed, or use of drugs and alcohol, were additional terms in the lease and do little to affect Respondent's control over the vessel and fishing operations. The vessel fee, at 35 percent of the gross, is as equally indicative of a leasehold as it is of a hired skipper arrangement, and did nothing to relieve Respondent of the financial burdens of fuel, maintenance and repair costs, and insurance. Respondent was at risk, had the venture not borne out. On the face of it, he was on his own, to win or lose. Respondent, fit the classic definition of "entrepreneur."

Consequently, I am persuaded that each document is a valid written lease within the meaning of the IFQ regulations. Because each document identifies the leased vessel [F/V JANI K], the name of the lease holder [Respondent], and the period of the lease [see footnote 3], the evidence in each lease is conclusive, thereby obviating the need to consider additional evidence.¹⁴ The fact that not all of the documents were signed by Appellant [the 1987 and 1989 agreements] is not enough to negate their validity, particularly, in light of the fact that Appellant never raised that issue, it maintained possession of the documents, and it was, in fact, the party who provided the documents on appeal.

I also find that the vessel leases were in effect during the periods stated in the leases, given that the

¹⁴50 C.F.R. § 676.20(a)(1)(iii) provides, in relevant part, "Conclusive evidence of a vessel lease must identify the leased vessel and indicate the name of the lease holder and the period of time during which the lease was in effect."

record does not reflect, and the Appellant does not contend, otherwise.

FINDINGS OF FACT

1. The parties executed valid written leases for the F/V JANI K in 1987, 1988, 1989 and 1990.
2. The agreements were in effect between the months of March and October from 1987 through 1990.

CONCLUSIONS OF LAW

1. The written agreements constitute vessel leases for purposes of the Pacific halibut and sablefish IFQ program.
2. The written agreements are conclusive evidence of the existence of vessel leases between the parties.
3. The Respondent qualifies as the person to whom qualifying pounds resulting from legal landings of halibut and sablefish made from the F/V JANI K during the period March through October in the years 1987-1990 should be allocated, based on his lease of the vessel from the Appellant during those periods.

DISPOSITION

The Division's Initial Administrative Determination, dated March 24, 1995, involving a conflict between the Respondent and the Appellant over the allocation of qualifying pounds of halibut and sablefish landed from the F/V JANI K is AFFIRMED. This decision takes effect on April 22, 1996, unless by that date the Regional Director orders a review of the decision.

Ronald W. Miller
Appeals Officer

I concur in the factual findings of this decision and I have reviewed this decision to ensure compliance with applicable laws, regulations, and agency policies, and consistency with other appeals decisions of this office.

Because the prevailing party in this appeal, John Ranweiler, still has an opportunity to receive QS and the corresponding IFQ for the 1996 fishing season, I recommend that the Regional Director expedite

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review of this decision, and if there is no substantial disagreement with it, promptly affirm the decision and thereby give it an immediate effective date.

Randall J. Moen
Appeals Officer