

NATIONAL MARINE FISHERIES SERVICE, ALASKA REGION
OFFICE OF ADMINISTRATIVE APPEALS

In re Application of) Appeal No. 95-0072
)
FREDERICK J. WOELKERS III,) DECISION
Appellant)
_____) November 10, 1998

STATEMENT OF THE CASE

Appellant Frederick J. Woelkers timely appealed an Initial Administrative Determination [IAD] issued on March 20, 1995, by the Restricted Access Management Program¹ [RAM]. The IAD denied Mr. Woelkers' application for halibut Quota Share [QS] under the Individual Fishing Quota [IFQ] program because there was no evidence in the record that Mr. Woelkers owned or leased a vessel from which legal landings of halibut and sablefish were made during the QS qualifying period (1988, 1989, or 1990).

On appeal, Mr. Woelkers requested a hearing and, on July 2, 1996, this Office ordered a written hearing, but he did not respond within the 30 days allowed. On February 28, 1997, this Office sent Mr. Woelkers a letter stating that our initial review of his appeal indicated that there was no basis for granting him relief. The letter gave him 30 days to submit any further information. On April 3, 1997, Mr. Woelkers submitted additional documents. Because the record contains sufficient information on which to reach a final decision, and because there is no genuine and substantial issue of adjudicative fact for resolution, no oral hearing has been ordered. 50 C.F.R. § 679.43(g)(2)-(3).²

ISSUES

1. Did Mr. Woelkers own or lease a vessel from which qualifying halibut landings were made in the years 1988, 1989, or 1990?
2. Was Mr. Woelkers a member of a partnership that owned or leased a vessel from which qualifying halibut landings were made in the years 1988, 1989, or 1990?

¹The Restricted Access Management Division was renamed Restricted Access Management Program, effective September 28, 1997. [NOAA Circular 97-09, 19 Sep 97].

²Formerly 50 C.F.R. § 676.25(g)(2)-(3). All IFQ regulations were renumbered, effective July 1, 1996. *See*, 61 Fed. Reg. 31,270 (1996). The wording of the regulation in question was unchanged by the renumbering.

BACKGROUND

RAM records indicate that Mr. Woelkers owned three fishing vessels for various lengths of time during the qualifying and base years for halibut QS, 1984 - 1990. [Quota Share Data Summary, October 24, 1994, at 2] RAM records also show that no reported landings of halibut were made from these vessels during those years. [Exhibit 1] On his application for QS, Mr. Woelkers claimed different periods of ownership for some of these vessels, and claims to have landed 600 pounds of halibut from one of the vessels during the QS qualifying years, 1988 - 1990. He has not produced any evidence of these landings, however, and there is no such evidence in the record on appeal.

On his application for QS, Mr. Woelkers claimed to have owned another vessel, the F/V MOUNTAIN PRINCESS from January 1, 1994 through October 24, 1990. He noted on the application that he owned 100 percent of the vessel until 1986, and after that time the percentage of his ownership is "disputed." [Application, Part 2] A U.S. Coast Guard abstract of title for the F/V MOUNTAIN PRINCESS shows that the vessel was originally built for Mr. Woelkers in 1981, and that he was the sole owner of the vessel until December 18, 1985. On that date, he sold the vessel to Mr. Thomas H. Stanfield and Mr. Jerome G. Larsgaard. They are listed as each having a 50 percent interest in the vessel as tenants in common until November 7, 1990, when they sold the vessel to Terry and Bobbie Ivanoff.

On his application for QS, Mr. Woelkers claimed to have landed an unknown amount of halibut from the F/V MOUNTAIN PRINCESS every year from 1985 - 1990. The record contains three fish tickets that show halibut was landed from that vessel on Mr. Woelker's permit on June 1, 1985; May 6, 1986; and June 1, 1986.³ RAM records show these landings, plus another by Mr. Woelkers from the F/V MOUNTAIN PRINCESS on May 26, 1984. [Exhibit 3]

Mr. Woelkers claims QS on the basis of an ownership interest in the F/V MOUNTAIN PRINCESS during the QS qualifying period, via a dissolved partnership with Mr. Thomas H. Stanfield and Jerome Larsgaard that he claims ended on October 24, 1990. In support of this claim, Mr. Woelkers submitted a letter from Mr. Larsgaard, dated August 14, 1986; the affidavits of Jeannie Woelkers, Mike Woelkers, and Robert Linville, dated April 7, 1987; and the affidavit of Heidi Robichaud, dated April 8, 1987. Mr. Woelkers did not submit any written partnership agreement, nor did he provide other evidence of a partnership between the parties.

Mr. Larsgaard writes in his letter (August 14, 1986) that a partnership agreement was drawn up and agreed upon in the summer of 1985, and that Mr. Woelkers was given a two-year option to buy up to 50% of the F/V MOUNTAIN PRINCESS. Mr. Larsgaard states that the option had to be exercised by December 18, 1987. The affidavits of Jeannie Woelkers (April 7, 1987), Mike Woelkers (April 7,

³The year shown on the third fish ticket is not clear, but RAM records show that the landing occurred on June 1, 1986. [Exhibit 2]

1987), Robert Linville (April 7, 1987), and Heidi Robichaud (April 8, 1987), state, in essence, that Mr. Woelkers maintained the F/V MOUNTAIN PRINCESS, and that he had the right to purchase an interest in the vessel for a period of two years following his sale of the vessel to Mr. Larsgaard and Mr. Stanfield.

DISCUSSION

1. Did Mr. Woelkers own or lease a vessel from which qualifying halibut landings were made in the years 1988, 1989, or 1990?

To qualify for QS under the regulations of the IFQ program, a person must have owned or leased a vessel, from which legal landings of halibut or sablefish were made in a QS qualifying year (1988, 1989, or 1990). 50 C.F.R. § 679.40(a)(2)(i). A former partner of a dissolved partnership, who would otherwise qualify as a person, may apply for QS in proportion to his or her interest in the dissolved partnership. 50 C.F.R. 679.40(a)(2)(iii). Evidence of vessel ownership is limited to the following documents, in order of priority: a United States Coast Guard abstract of title; a certificate of registration that is determinative as to vessel ownership; and a bill of sale. 50 C.F.R. § 679.40(a)(3)(ii).

Although RAM records show that Mr. Woelkers owned fishing vessels at various times during the QS qualifying years, there is no evidence in the record that any halibut landings were made from these vessels and reported on fish tickets when Mr. Woelkers owned the vessels. Mr. Woelkers does not claim to have held a lease of any of those vessels. Thus, we find that none of these vessels can form the basis for Mr. Woelkers to qualify for QS.⁴

The only other vessel for which Mr. Woelkers claims IFQ landings credit is the F/V MOUNTAIN PRINCESS (ADFG #36031). Under IFQ regulations, the best evidence of vessel ownership, if it exists, is a U.S. Coast Guard abstract of title. Absent any evidence that an abstract is erroneous or fraudulent, NMFS is required to accept that document as proof of ownership.⁵ The U.S. Coast Guard abstract of title shows that Mr. Woelkers's ownership of the F/V MOUNTAIN PRINCESS ended on December 18, 1985. The abstract lists Mr. Larsgaard and Mr. Stanfield as the sole owners of the vessel for all but the final seven weeks of the QS qualifying period. For the remainder of the qualifying period the vessel is shown as being owned by Terry and Bobbie Ivanoff.

Mr. Woelkers has presented no evidence showing that he owned or leased the F/V MOUNTAIN PRINCESS at any time during the QS qualifying period. Therefore, we find that he did not own or lease the F/V MOUNTAIN PRINCESS at any time during the QS qualifying period.

⁴The vessels in question are identified as: ADFG # 42836, #55982 (Poacher's Dream), and #53240.

⁵Weber v. Kochuten, Appeal No. 95-0122, June 18, 1996, at 3.

2. Was Mr. Woelkers a member of a partnership that owned or leased a vessel from which qualifying halibut landings were made in the years 1988, 1989, or 1990?

The only evidence of a partnership that Mr. Woelkers has presented is evidence relating to an asserted partnership he had with Mr. Larsgaard and Mr. Stanfield. If a partnership between these three persons existed, and if such partnership owned or leased the F/V MOUNTAIN PRINCESS, then Mr. Woelkers might claim an interest in the landings at issue based on his being a former partner of a dissolved partnership. “A former partner of a dissolved partnership or a former shareholder of a dissolved corporation who would otherwise qualify as a person may apply for QS in proportion to his interest in the dissolved partnership or corporation.” 50 C.F.R. § 679.40(a)(2)(B)(iii).

In Etcher v. Malcom,⁶ we discussed the law that guides a determination of whether a partnership was formed, for the purposes of the IFQ program. We held that, where the alleged partnership is based in Alaska, the definition of “partnership,” as defined by Alaska law controls. “A partnership is an association of two or more persons to carry on as co-owners a business for profit.” Alaska Stat. § 32,05.010(a), quoted in Etcher, supra, at 3.

Mr. Woelkers has presented no evidence that, at any time during the QS qualifying years, he co-owned a business with Mr. Larsgaard and Mr. Stanfield. Rather, his evidence establishes that he sold his vessel to Mr. Larsgaard and Mr. Stanfield in 1985 under an agreement that he could buy back a 50 percent interest within two years. He acted as the skipper of the vessel, but there is no evidence in the record that he fished with the vessel after 1986. It appears that his interest in the “partnership” during the QS qualifying years was, at most, an option to buy in, rather than an existing share of a partnership.

Mr. Larsgaard’s letter and the affidavit of Mr. Linville, both of which use the terms “partner” and “partnership,” do not establish that the relationship between Mr. Woelkers, Mr. Larsgaard and Mr. Stanfield was, in fact, a “partnership” as defined by statute. “Lay people use the word ‘partner’ very loosely, often not intending the precise legal relationship of partnership.” Etcher, supra, at 3 (quoting Alan R. Bromberg & Larry E. Ribstein, PARTNERSHIP § 2:05(a), at 2:34 (1988 ed.)).

Mr. Larsgaard’s letter states that there was a written partnership agreement. However, that agreement is not in the record, and there is no other document that Mr. Woelkers was a partner in the partnership during the relevant times. The internal inconsistencies in Mr. Larsgaard’s letter, read in context with other evidence in the record, suggest that the “partnership agreement” would allow Mr. Woelkers to become a partner in the future, not that he already was a partner.

⁶Appeal No. 95-0092, April 12, 1996.

Mr. Woelkers simply has not shown that he was a “co-owner” with Mr. Larsgaard and Mr. Stanfield. To the contrary, the evidence he has submitted indicates that he could become a co-owner only if he exercised his option to buy back an interest in the vessel. The record indicates that he never exercised that option during the relevant time period. Thus, we find that Mr. Woelkers was not a partner with Mr. Larsgaard and Mr. Stanfield during the QS qualifying years.

Even if, for the sake of argument, Mr. Woelkers had been in a partnership with Mr. Larsgaard and Mr. Stanfield, he has presented no evidence that the partnership owned or leased the F/V MOUNTAIN PRINCESS. As we have already found, the vessel was owned during the QS qualifying years by Mr. Larsgaard and Mr. Stanfield as tenants in common from December 18, 1985 until November 7, 1990, and by Terry and Bobby Ivanoff for the remaining seven weeks of the QS qualifying period. In other words, the vessel was never owned by a partnership consisting of Mr. Larsgaard, Mr. Stanfield, and Mr. Woelkers, or any combination thereof. Thus, we conclude that Mr. Woelkers was not a member of a partnership that owned or leased a vessel from which qualifying halibut landings were made in the years 1988, 1989, or 1990.

FINDINGS OF FACT

1. The vessel identified as ADFG # 42836, #55982 (Poacher’s Dream), and #53240 cannot form the basis for Mr. Woelkers to qualify for QS.
2. The F/V MOUNTAIN PRINCESS was owned by Mr. Larsgaard and Mr. Stanfield, as tenants in common, between December 18, 1985, and November 7, 1990.

CONCLUSIONS OF LAW

1. Mr. Woelkers did not own or lease a vessel, either individually or as a former partner of a dissolved partnership, from which qualifying halibut landings were made during the QS qualifying period.
2. Mr. Woelkers is not a qualified person for QS under the IFQ program.

DISPOSITION

The IAD, dated March 20, 1995, which denied Frederick Woelkers’ application for halibut QS, is hereby AFFIRMED. This decision takes effect on December 10, 1998, unless by that date the Regional Administrator orders review of the decision.

Any party, including RAM, may submit a Motion for Reconsideration, but it must be received at this office not later than 4:30 p.m. Alaska Time, on November 20, 1998, the tenth day after the date of this Decision. 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 or points and authorities in support of the motion.

Rebekah R. Ross
Appeals Officer

Edward H. Hein
Chief Appeals Officer