

NATIONAL MARINE FISHERIES SERVICE, ALASKA REGION  
OFFICE OF ADMINISTRATIVE APPEALS

In re Application of	)	Appeal No. 00-0008
	)	
RODNEY P. WHITEHEAD	)	
F/V LARISA M	)	DECISION ON RECONSIDERATION
ADF&G # 28268,	)	
Appellant	)	March 20, 2001
_____	)	

On January 20, 2001, the Restricted Access Management (RAM) program filed a timely request for reconsideration of the Decision in this case. The standard for reconsideration is whether we overlooked or misunderstood material facts or law in the Decision.

Upon receipt of the request for reconsideration, we stayed the effective date of the Decision, reopened the record on appeal, gave Mr. Whitehead an opportunity to respond to the request for reconsideration, and asked the State of Alaska Commercial Fisheries Entry Commission (CFEC) and RAM to produce documents to determine whether RAM had CFEC's most recent mailing addresses for eligible License Limitation Program (LLP) applicants when it mailed LLP application forms to eligible LLP applicants.

On March 4, 2001, Mr. Whitehead filed a timely opposition to RAM's request for reconsideration. In response to our request, the CFEC produced documents that show it gave RAM, on February 18, 1999, its most recent mailing addresses for eligible LLP applicants, as of February 15, 1999. The mailing address provided to RAM for Mr. Whitehead was 4311 N. Riverside Drive, Juneau, Ak 99801. RAM acknowledges on reconsideration that it had that address for Mr. Whitehead in its records at the time it sent an LLP application form to him.

The documents show that RAM had two different mailing addresses for Mr. Whitehead at the time it mailed an LLP application form to him, and that the CFEC address was the most recent address that RAM had for him.

When we wrote the Decision we did not know that RAM had CFEC addresses in its records for Mr. Whitehead and eligible LLP applicants. Therefore, the Decision's number 2, 3, and 4 findings are amended to read that (1) RAM had two different mailing addresses for Mr. Whitehead at the time it mailed an LLP application form to him in September 1999: one from Vessel Moratorium Program (VMP) data; another from CFEC data; (2) RAM did not use the CFEC mailing address that it knew it had for Mr. Whitehead; and (3) the CFEC mailing address was the most recent address that RAM had for Mr. Whitehead.

During reconsideration, RAM explained in greater detail how it determined the last known address of eligible LLP applicants. In light of that description, we find that RAM determined the last known address of an eligible LLP applicant based on the "relative probability" that addresses from FFP data and VMP data were "most likely to be" more "reliable" than addresses

from CFEC data, so that if RAM had an address for an eligible applicant from FFP data or VMP data, it did not use CFEC data.

## ISSUES

RAM claims on reconsideration that (1) it was not required to send an LLP application form to Mr. Whitehead's CFEC address; (2) Mr. Whitehead would have not received an LLP application form and mailed it before the LLP application deadline, if RAM had mailed the application form to his CFEC address; and (3) the Decision requires RAM to search out "endless" sources of "available" information to determine the last known address of an eligible LLP applicant.

## DISCUSSION

### **1. Was RAM required to send an LLP application form to Mr. Whitehead's CFEC address?**

It is evident from the evidence on reconsideration that RAM had a VMP address and a CFEC address for Mr. Whitehead in its records or files when it mailed LLP application forms to eligible LLP applicants.

RAM claims that it was not required to mail an LLP application form to Mr. Whitehead's CFEC address because VMP addresses are "most likely to be" more "reliable" than CFEC addresses for eligible LLP applicants; and because it was "impractical" to make an individual determination.

The LLP regulations clearly require RAM to send an LLP application form to the last known address of *an* eligible LLP applicant. The regulations do not tell RAM how to determine the last known address of an applicant. The method to determine the last known address of an eligible applicant is subject to the reasonable discretion of RAM. But the exercise of that discretion, even if successful *in most cases*, does not relieve RAM of its obligation to send an LLP application to the last known address of each individual eligible applicant. The "last known address" requires, at the least, that RAM take cognizance of the most recent address it has in its possession, not just the addresses in the official LLP record or those "before it" (i.e., in plain sight). Once an address is in RAM's possession, it is required to use that address if the address is the most recent address known to it for an eligible LLP applicant.

Even if it is true in most cases that VMP addresses are more reliable than CFEC addresses, that assumption does not relieve RAM of its obligation under the LLP regulations to send an LLP application to the "last known" address of every individual eligible LLP applicant. The LLP regulations clearly require RAM to send an LLP application to the last known address of *an* eligible applicant. RAM has authority to reasonably determine how to accomplish that requirement. But if the procedure that works for most eligible applicants does not produce the most recent address that RAM has for an applicant, the applicant is entitled to have that mistake corrected.

In Mr. Whitehead's case, RAM had a CFEC address for Mr. Whitehead that was more recent than the one it used for him. Therefore, RAM was required to send an LLP application form to the CFEC address, but did not do so.

**2. Would Mr. Whitehead have received an LLP application form and mailed it before the LLP application deadline, if RAM had mailed the application form to his CFEC address?**

Mr. Whitehead writes on appeal that he had his mail forwarded from his CFEC address to his current address in January 1999. The evidence on reconsideration shows that RAM had Mr. Whitehead's CFEC (Riverside Drive) address at the time it mailed LLP application forms to eligible applicants in September 1999, and that it was the most recent address that RAM had for Mr. Whitehead. Mr. Whitehead writes on appeal that he filed an LLP application on the day after he first learned of the LLP application deadline from his former crewman.

The weight of evidence is that Mr. Whitehead would have received an LLP application, and would have acted diligently to mail it before the deadline, if RAM had mailed the LLP application to his CFEC address. The forwarding address would have been valid at the time of the mailing in September 1999, and it is reasonable that Mr. Whitehead would have acted promptly given the importance of the LLP application. Therefore, I find it more likely than not that Mr. Whitehead would have received an LLP application form and mailed it before the LLP application deadline, if RAM had mailed the application form to his CFEC address.

Because RAM did not use the last known address that it had for Mr. Whitehead, I conclude as a matter of law that Mr. Whitehead's LLP application was timely filed.

**3. Does the Decision require RAM to search out "endless" sources of "available" information to determine the last known address of an eligible LLP applicant?**

In the Decision, we concluded that "[W]hen two or more mailing addresses are available to RAM, RAM has a duty to ascertain which of the two mailing addresses is the 'best available, most current address' of an eligible applicant for an LLP license."

We agree that the requirement could be read to impose an unreasonable burden on RAM. As a result, we wish to clarify that when two or more mailing addresses are *known* to RAM, it has a duty to ascertain which of the addresses is the most recent for an eligible LLP applicant. What is reasonably "known" to RAM is a question of fact that we can determine on appeal, if necessary.

FINDINGS OF FACT

1. RAM determined the last known address of an eligible LLP applicant based on the "relative probability" that addresses from FFP data and VMP data were "most likely to be" more "reliable" than addresses from CFEC data, so that if RAM had an address for an eligible applicant from FFP data or VMP data, it did not use CFEC data.

2. RAM had two different mailing addresses for Mr. Whitehead at the time it mailed an LLP application form to him in September 1999: one from VMP data; another from CFEC data.
3. RAM did not use the CFEC mailing address that it knew it had for Mr. Whitehead.
4. The CFEC mailing address for Mr. Whitehead was the most recent address that RAM had for him.
5. Mr. Whitehead's forwarding address would have been valid at the time that RAM mailed an LLP application form to him in September 1999.
6. Mr. Whitehead mailed an LLP application the day after he first learned of the LLP application deadline.

#### CONCLUSIONS OF LAW

1. The term "last known address" is the most recent address known to RAM.
2. Once an address is in RAM's possession, it is required to use that address, if the address is the most recent address that it has for the applicant.
3. RAM's procedure for determining the last known address of eligible LLP applicants does not relieve RAM of its obligation to send an LLP application form to the last known address of an eligible LLP applicant.
4. RAM was required to send an LLP application form to Mr. Whitehead's CFEC address at the time that RAM sent Mr. Whitehead an LLP application form.
5. The weight of evidence shows that Mr. Whitehead would have received an LLP application, and mailed it before the deadline, if RAM had mailed the LLP application to his CFEC address.
6. When two or more mailing addresses are known to RAM, it has a duty to ascertain which is the most recent for an eligible LLP applicant.
7. Mr. Whitehead's LLP application was timely filed as a matter of law.

#### DISPOSITION AND ORDER

The disposition and order of the Decision in this case is AFFIRMED. RAM is directed to process Mr. Whitehead's LLP application in accordance with the Decision. This Decision on Reconsideration takes effect April 18, 2001, unless by that date the Regional Administrator orders review of the Decision on Reconsideration.

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Randall J. Moen  
Appeals Officer