

NATIONAL MARINE FISHERIES SERVICE, ALASKA REGION
OFFICE OF ADMINISTRATIVE APPEALS

In re Application of) Appeal No. 03-0028
)
KEVIN SEABECK,) DECISION ON RECONSIDERATION
Appellant)
) February 1, 2008
_____)

This Office issued a Decision in this case on December 17, 2007, which affirmed RAM’s determination¹ that Mr. Seabeck did not qualify for a groundfish license under the License Limitation Program (LLP) based on a written contract relating to the fishing history of the F/V VIEWPOINT (ADF&G No. 19501).

The Decision concluded that Mr. Seabeck could not qualify for an LLP groundfish license based on a written contract for the sale of the F/V VIEWPOINT because the contract does not clearly and unambiguously show that Mr. Seabeck retained the LLP-qualifying fishing history of the vessel when he sold the vessel on March 24, 1991. That conclusion was based on the fact that the sales contract explicitly retained only fishing history relating to “groundfish I.T.Q.,” which does not exist.

The Decision’s effective date was January 16, 2008. Mr. Seabeck filed a timely Motion for Reconsideration of the Decision on December 27, 2007. On January 7, 2008, we stayed the effective date of the Decision pending a Decision on Reconsideration.

In the Motion for Reconsideration, Mr. Seabeck argues that he had the LLP-qualifying fishing history when he sold the F/V VIEWPOINT on March 24, 1991; that he clearly retained the LLP-qualifying fishing history under the language of the vessel’s sales contract; and that he should not be prevented from qualifying for an LLP groundfish license based solely on the use of the term “groundfish I.T.Q” in the sales contract.² On reconsideration, Mr. Seabeck requests a hearing. A hearing is not authorized in this instance because there are no material facts in dispute, only legal issues, which by regulation cannot be the sole basis for a hearing.³

ISSUE

Does Mr. Seabeck own the LLP-qualifying fishing history of the F/V VIEWPOINT, and is he, therefore, an eligible applicant for an LLP groundfish license based on that vessel?

¹ Initial Administrative Determination by RAM (Sept. 10, 2003).

² Mr. Seabeck’s motion for reconsideration (Dec. 24, 2007).

³ 50 C.F.R. §679.43(g)(3)(i).

ANALYSIS

RAM's fishing records show that the F/V VIEWPOINT has sufficient fishing history to qualify an applicant for an LLP groundfish license.⁴ The F/V VIEWPOINT has LLP-qualifying fishing history because it made the requisite number of documented harvests of groundfish during (1) the general qualifying period (GQP), which is January 1, 1988, through June 27, 1992;⁵ and (2) the endorsement qualifying period (EQP), which is January 1, 1992, through June 17, 1995.⁶

For Mr. Seabeck to qualify as an eligible applicant for an LLP groundfish license he must demonstrate either that he owned the F/V VIEWPOINT on June 17, 1995, or that he now owns the LLP-qualifying fishing history of the vessel based on "the express terms of a written contract that *clearly and unambiguously* provides that the qualifications for a license under the LLP have been transferred or retained."⁷ [Emphasis added]

The record contains a copy of a Bill of Sale in which Mr. Seabeck transferred ownership of the F/V VIEWPOINT to John Liddicoat on March 24, 1991. Apparently Mr. Liddicoat still owned the vessel on June 17, 1995, because he holds the LLP groundfish license for the vessel.⁸ In any event, there is no evidence in the record that Mr. Seabeck owned the vessel on June 17, 1995, nor does he claim that he did. Thus, I conclude that Mr. Seabeck cannot qualify for an LLP groundfish license based on his ownership of the vessel.

Can Mr. Seabeck qualify as an eligible applicant for an LLP groundfish license based on ownership of the LLP-qualifying fishing history of the vessel? The record contains a copy of an Earnest Money Agreement executed by Mr. Seabeck and Mr. Liddicoat on March 21, 1991. The agreement, at paragraph 4, provides that "All rights, awards concerning groundfish I.T.Q. shall be retained by seller." The question is whether this language is sufficiently clear and unambiguous to conclude that Mr. Seabeck retained all the fishing history needed to qualify for an LLP groundfish license.

The Decision stated that the Earnest Money Agreement does not describe or define the term

⁴ Initial Administrative Determination at 1 (Sept. 10, 2003).

⁵ 50 C.F.R. § 679.4(k)(4)(i).

⁶ 50 C.F.R. § 679.4(k)(4)(ii).

⁷ Definition of "eligible applicant" for a groundfish license at 50 C.F.R. §679.2.

⁸ http://www.fakr.noaa.gov/ram/07llp_gf.csv (visited January 23, 2008). The website document lists the original qualifying vessel, by name and ADFG number, for each LLP license. Mr. Liddicoat received LLP license LLG3519 based on the F/V VIEWPOINT.

“groundfish I.T.Q.”⁹ The Decision also stated that, although individual transferable quotas (or individual fishing quotas) were among the alternative groundfish management proposals considered by the North Pacific Fishery Management Council, a groundfish I.T.Q. program ultimately was not adopted and, therefore, does not exist.¹⁰ In light of that fact, the Decision found that the use of the term “groundfish I.T.Q.” did not clearly and unambiguously provide for retention of *LLP* rights.

In his Motion for Reconsideration, Mr. Seabeck states that “These programs, IFQ or LLP, either didn’t exist [or] were only being proposed or called by different names at the time I sold the Viewpoint.” He also states that “Since [the] LLP program and name didn’t exist when I sold the boat, it’s more than reasonable and in fact can be the only conclusion, that what turns out to be an award, LLP, was clearly retained by me.” Finally, Mr. Seabeck writes that the “factual mistake in your findings is an overly narrow and constricted interpretation based on the fact I didn’t call the rights by a name that didn’t exist at the time.”

The problem is not merely that the contract refers to the groundfish rights as *I.T.Q.* instead of *LLP*. The word *retained* suggests that Mr. Seabeck intended to keep only the fishing history he had already earned by the date of the vessel sale. The Motion for Reconsideration suggests that Mr. Seabeck believes he had earned all the necessary LLP-qualifying fishing history before selling the vessel.¹¹ That belief is not accurate.

At the time of sale, March 24, 1991, the F/V VIEWPOINT did not have complete LLP-qualifying fishing history because the endorsement qualifying period of the LLP did not begin until January 1, 1992, nine months after the vessel was sold. This means that the language in the sales contract must clearly and unambiguously show that Mr. Seabeck not only retained the GQP fishing history of the F/V VIEWPOINT, but also obtained Mr. Liddicoat’s future EQP fishing history of the vessel.

Does the contract language show that Mr. Seabeck and Mr. Liddicoat agreed that Mr. Seabeck would get credit for any post-sale LLP-qualifying groundfish fishing history that Mr. Liddicoat might earn on the vessel? The contract does not explicitly say that. Since any post-sale fishing history would normally be credited to the buyer, the contract must clearly show that Mr. Liddicoat agreed to transfer or relinquish any of his own future fishing history that might be necessary for Mr. Seabeck to qualify for a groundfish license. The contract language should evidence an understanding that Mr. Liddicoat was agreeing, in effect, to harvest groundfish for

⁹ Decision at 3.

¹⁰ *Id.*

¹¹ “Kevin Seabeck had fished longline that subsequently qualified for LLP, the Viewpoint fished the qualifying years and areas and had the *deliveries for years up to 3/24/91*. . . . It’s reasonable and in fact obvious my and the buyer’s intent and the contract’s meanings show that the LLP rights *from my history on that boat* are mine.” [Emphasis supplied] Motion for Reconsideration (Dec. 24, 2007).

Mr. Seabeck's benefit. Nothing of this sort is even suggested by the contract language that the parties used. Giving the contract such an interpretation would be reading too much into the term "groundfish I.T.Q." For these reasons, we find that the language in the sales contract for the F/V VIEWPOINT does not clearly and unambiguously show that Mr. Seabeck retained the vessel's complete LLP-qualifying fishing history when he sold the vessel on March 24, 1991. Therefore, we conclude that Mr. Seabeck is not an "eligible applicant" for an LLP groundfish license.

Mr. Seabeck apparently feels an injustice has been done because he is not getting the benefit of the groundfish harvests he made with the F/V VIEWPOINT, and because Mr. Liddicoat was given the benefit of those harvests and the LLP groundfish license for that vessel. The License Limitation Program was designed to produce only one license for each vessel that had qualifying fishing history.¹² We do not have the authority to create a second LLP groundfish license for Mr. Seabeck from the fishing history of the F/V VIEWPOINT. Nor do we have the authority to take away Mr. Liddicoat's license and give it to Mr. Seabeck based on a contract that does not clearly and unambiguously provide that Mr. Seabeck owns the complete fishing history needed to qualify for an LLP groundfish license.

The North Pacific Fishery Management Council and the Secretary of Commerce expressed a policy preference for awarding a single LLP groundfish license to the vessel owner as of June 17, 1995, even where, as here, a previous owner may have retained some of the LLP-qualifying fishing history. As administrative judges we cannot pass judgment on the validity or the wisdom of such policy choices that are embodied in regulations properly adopted under federal notice-and-comment rulemaking procedures.¹³

FINDINGS OF FACT

1. Mr. Seabeck sold the F/V VIEWPOINT before the endorsement qualifying period of the LLP, which began on January 1, 1992.
2. The sales contract for the F/V VIEWPOINT does not clearly and unambiguously show that Mr. Seabeck retained the vessel's complete LLP-qualifying fishing history when he sold the vessel on March 24, 1991.

CONCLUSIONS OF LAW

1. The F/V VIEWPOINT did not have complete groundfish LLP-qualifying fishing history when Mr. Seabeck sold the vessel to Mr. Liddicoat on March 24, 1991.

¹² "[O]nly one license will be issued based on the fishing history of any qualified vessel. For instance, a vessel's fishing history cannot be divided so that multiple licenses would be issued." Final Rule, 62 Fed. Reg. 52,642, 52,646 (Oct. 1, 1998).

¹³ *Application of George M. Ramos*, Appeal No. 94-0008 (Regional Administrator's Decision on Review) at 4 (Apr. 21, 1995).

2. Mr. Seabeck does not own the complete LLP-qualifying fishing history of the F/V VIEWPOINT and, therefore, Mr. Seabeck is not an eligible applicant for an LLP groundfish license based on that vessel.

DISPOSITION

The IAD that is the subject of this appeal is AFFIRMED. This Decision on Reconsideration incorporates the Decision by reference. Both the Decision and the Decision on Reconsideration take effect on March 3, 2008, unless by that date the Regional Administrator takes further action pursuant to 50 C.F.R. §679.43(o).

Randall J. Moen
Administrative Judge

Edward H. Hein
Chief Administrative Judge