

NATIONAL MARINE FISHERIES SERVICE, ALASKA REGION
OFFICE OF ADMINISTRATIVE APPEALS

In re Application of)	Appeal No. 95-0039
)	
LEONARD R. HAGLUND)	DECISION
Appellant)	
_____)	August 6, 1996

STATEMENT OF THE CASE

Appellant Leonard R. Haglund filed a timely appeal of an Initial Administrative Determination [IAD] issued by the Restricted Access Management Division [Division] on March 6, 1995. The IAD denied Mr. Haglund's request¹ for Quota Share [QS] under the Individual Fishing Quota [IFQ] program because Mr. Haglund did not submit an application for QS by the July 15, 1994 application filing deadline. On appeal, Mr. Haglund argues that the RFA submitted by John T. Reisdorf, co-owner of the vessel, should be accepted as fulfilling the application requirements of the regulations.

Mr. Haglund has adequately shown that his interest is directly and adversely affected by the IAD. Because the record contains sufficient information on which to reach a final decision and there is no genuine and substantial issue of adjudicative fact for resolution, no hearing was ordered. 50 C.F.R. § 679.43(g)(2)-(3).²

ISSUE

Whether NMFS should accept an application from the Appellant as timely filed.

BACKGROUND

Between December 27, 1994 and January 31, 1995, the Division received letters and documents from appellant Leonard R. Haglund establishing that he was the 50% owner of M/V BETTY A, and that his father-in-law, John T. Reisdorf was the other owner. He stated that the vessel was purchased in 1979, but that he ceased working relationships on the vessel with Mr. Reisdorf. The Division mailed an RFA

¹Mr. Haglund has never submitted a "Request for Application" [RFA] to the Division. An RFA is the equivalent of an application for the meeting of the application filing deadline under the IFQ program. See, Keith A. Buehner, Appeal No. 94-0001, September 26, 1994, *aff'd* March 2, 1995.

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.

form and instructions to Mr. Haglund on or around February 28, 1995, but Mr. Haglund did not return the RFA.

The Division's files show that John T. Reisdorf timely applied for QS, alleging that he was the 100% owner of the M/V BETTY A. Mr. Reisdorf's RFA and application forms made no mention of a partnership or any interest held by Mr. Haglund. On July 14, 1995, the Division revoked one half of the QS awarded to Mr. Reisdorf, as the documents submitted by Mr. Haglund showed that Mr. Reisdorf was only a 50% owner of the vessel. Mr. Reisdorf has filed a separate appeal of that action.

In December, 1991, the North Pacific Fishery Management Council decided to adopt the IFQ program for halibut and sablefish.³ On December 3, 1992, proposed regulations for the IFQ program were published in the Federal Register. 57 Fed. Reg. 47,234 (1992). On November 9, 1993, final IFQ rules were published in the Federal Register. 58 Fed. Reg. 59,375 (1993). On January 6, 1994, the first official notice of the application period and deadline for filing applications under the IFQ program was published in the Federal Register. 59 Fed. Reg. 701 (1994). This notice was the "first legally sufficient notice of the application filing deadline. . . ."⁴ In addition to publication in the Federal Register, the Division carried out an extensive campaign to publicize the IFQ Program. This effort included news releases, public service announcements, paid advertisements, media interviews, public information workshops, and presentations at public meetings.

In addition to publication in the Federal Register and its extensive publicity campaign, the Division also sent individualized notice of the program and RFA forms to many persons it believed might be eligible to apply for and receive QS. Those were persons listed in the Division's database as owners of vessels that made legal landings during the relevant years. Of that group, persons whose current addresses were in the Division's database would be likely to receive individualized notice of the program and the RFA form. While the Division attempted to give individualized notice to the likely eligible persons, its computer records prior to receipt of applications did not reflect those who were eligible based on leases of vessels or successors in interest to owners and lessees. Thus, large numbers of persons who submitted applications demonstrating their eligibility to receive QS never received individualized notices of the program.

DISCUSSION

The regulations implementing the IFQ program provide that an application received after July 15, 1994,

³*Newsletter* (North Pacific Fishery Management Council) No. 6-91, December 19, 1991.

⁴John T. Coyne, Appeal No. 94-0012, May 24, 1996 (Decision on Reconsideration).

"will not be considered."⁶ The only RFA received by the Division in connection with the M/V BETTY A is the RFA received from Mr. Reisdorf on April 4, 1994. That RFA was submitted on behalf of Mr. Reisdorf as an individual.

Mr. Haglund's appeal asks that the Division award QS to an alleged partnership consisting of himself and Mr. Reisdorf. However, no RFA was submitted on behalf of an existing partnership entity.⁶ Such an entity would file "Form B" of the RFA, entitled "Request for Application for Quota Share Form for Existing Corporations or Partnerships."

Moreover, Mr. Haglund has not alleged facts or presented evidence that would support a finding of an existing partnership relationship. He has shown only that he and Mr. Reisdorf each own 50% of the M/VBETTY A. Mr. Haglund has not alleged or shown that he and Mr. Reisdorf, at the time of Mr. Reisdorf's application, were in association carrying on as co-owners a business for profit. Thus, Mr. Reisdorf's application can not fairly be viewed as an application for an existing partnership entity.

In the alternative, Mr. Haglund claims that he should not be required to meet the July 15, 1994 deadline because he did not receive notice of the application procedure. Mr. Haglund does not contend that the Division received an RFA or that he mailed or telefaxed the RFA by July 15, 1994. Accordingly, the only way the Agency could accept the RFA is if the filing period is equitably tolled.⁷ Mr. Haglund has not, however, alleged that he suffered any disability or circumstance beyond his control that effectively prevented him from timely applying for the IFQ program. Mr. Haglund asks for relief because he did not receive individualized notice of the application and an RFA in the mail. However, equitable tolling of the filing deadline is inapplicable when the appellant can show only that he did not receive individualized notice of the program and an RFA form.⁸

FINDINGS OF FACT

1. Leonard R. Haglund failed to send a request for application to the Division by the July 15, 1994 deadline.
2. Leonard R. Haglund did not suffer any disability or other extraordinary circumstance that

⁵59 Fed. Reg. 701, at 702 (1994).

⁶Applicants for QS "must exist at the time of their application for QS." 50 C.F.R. § 679.40(a)(2) (formerly 50 C.F.R. § 676.20(a)(1)). Thus, if a partnership no longer exists, its successors-in-interest will apply as individuals. *Id.*

⁷John T. Coyne, Appeal No. 94-0012, May 24, 1996 (Decision on Reconsideration).

⁸Steven J. Eike, Appeal No. 95-0085, August 1, 1996.

prevented him from filing a timely application.

3. The request for application submitted by John T. Reisdorf was not an RFA for an existing partnership consisting of John T. Reisdorf and Leonard R. Haglund.

CONCLUSIONS OF LAW

1. The doctrine of equitable tolling does not apply to the IFQ application period in this case.
2. Leonard R. Haglund has not submitted a timely request for application.

DISPOSITION

The Division's IAD denying the Appellant's request for QS is AFFIRMED. This decision takes effect September 5, 1996, unless by that date the Regional Director orders review of the decision. Any party, including the Division, may submit a Motion for Reconsideration, but it must be received at this office not later than 10 days after the date of this decision, August 16, 1996.

Rebekah R. Ross
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.

Randall J. Moen
Appeals Officer