

NATIONAL MARINE FISHERIES SERVICE, ALASKA REGION
OFFICE OF ADMINISTRATIVE APPEALS

In re Application of)
)
MARK L. DOUMIT,)
Appellant)
_____)
Appeal No. 95-0087
DECISION
November 6, 1998

STATEMENT OF THE CASE

Appellant Mark L. Doumit filed a timely appeal of an Initial Administrative Determination [IAD] issued on April 12, 1995 by the Restricted Access Management Program¹ [RAM]. The IAD denied his claim for additional halibut quota share [QS] under the Individual Fishing Quota [IFQ] program. Mr. Doumit claimed credit for halibut landings made in 1984 and 1985 by the previous owner of his vessel. RAM rejected Mr. Doumit's claim that he became a "successor-in-interest" to the prior owner when he purchased the vessel, and determined that, in any event, the prior owner was not a "qualified person" and, therefore, had no interest in QS to which Mr. Doumit could have succeeded.

Mr. Doumit's interest is directly and adversely affected by the IAD, as required for filing an appeal under 50 C.F.R. § 679.43(b). Because the facts are not in dispute, no hearing was ordered.²

ISSUE

1. Is Mr. Doumit a "successor-in-interest" to the previous owner of the F/V MASTERCHARGE?
2. Is Mr. Doumit entitled to credit for landings made from the F/V MASTERCHARGE in 1984 and 1985 by the prior owner?

BACKGROUND

RAM credited Mr. Doumit with 8,430 qualifying pounds of halibut landings made from the F/V MASTERCHARGE during the period 1986-1990, when he owned the vessel. Mr. Doumit claims credit for an additional 12,510 pounds of halibut landings made from the vessel in 1984 and 1985. At the time of those landings, the vessel was owned by Mr. Pete Pedersen, and Mr. Doumit had no

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

² See, 50 C.F.R. § 679.43(g)(3), formerly 50 CFR 676.25(g)(3). All IFQ regulations were renumbered, effective July 1, 1996. See, 61 Fed. Reg. 31.270 (1996). The wording of the regulations in question was unchanged by the renumbering.

connection with the vessel. Mr. Pedersen died sometime in 1985, and his widow, Betty Pedersen, sold the vessel to Mr. Doumit on December 30, 1985. In an affidavit submitted in this appeal, Mrs. Pedersen states:

Following my husband's death, I sold my husband's entire interest in his fishing outfit, boat permits, and gear and all other fishing rights he had in the halibut and salmon fisheries in Cook Inlet, Alaska, to Mark L. Doumit.

DISCUSSION

1. Is Mr. Doumit a "successor-in-interest" to the previous owner of the F/V MASTERCHARGE?

Under the IFQ program regulations, an applicant must be a "qualified person" to be eligible for an initial issuance of QS.³ A "qualified person" is defined as a person that owned or leased a vessel that made legal landings of halibut or sablefish, harvested with fixed gear, from any IFQ regulatory area in any QS qualifying year (1988, 1989, or 1990).⁴

Pete Pedersen, the previous owner of the F/V MASTERCHARGE, was not a "qualified person" for QS because he died in 1985 and, consequently, could not own or lease a vessel during a QS qualifying year. Although his widow apparently was his successor-in-interest, there is no evidence in the record that she was a "qualified person" for QS. Thus, RAM correctly determined that neither Pete Pedersen, nor his estate, nor his widow had any interest in QS to which anyone could succeed.

Even if Mr. Pedersen or his widow had an interest in QS, Mr. Doumit could not be Mr. Pedersen's successor-in-interest. Under the IFQ regulations, a successor-in-interest is a successor to a qualified person, not merely a successor to an interest in a qualified person's vessel.⁵ The successor-in-interest to an individual "qualified person" can only be the person's estate or heirs.⁶ In this case, Mr. Doumit succeeded only to Mr. Pedersen's interest in the vessel; he is not Mr. Pedersen's heir. Therefore, Mr. Doumit is not a successor-in-interest to Mr. Pedersen.

³See, 50 C.F.R. § 679.40(a)(2); formerly, 50 C.F.R. § 676.20(a)(1).

⁴See, 50 C.F.R. § 679.40(a)(2)(i) and (3)(i); formerly, 50 C.F.R. § 676.20(a)(1).

⁵Cadden v. Levenhagen and Pugh, Appeal No. 95-0013, January 17, 1996, at 6, *aff'd* January 18, 1996; Alwert Fisheries, Inc. v. Oregon Seafood Producers, Appeal No. 95-0073, March 21, 1996, at 4, *aff'd* March 27, 1996.

⁶S.Y.B. Fisheries, Appeal No. 95-0141, August 24, 1998, Decision on Reconsideration, at 5.

2. Is Mr. Doumit entitled to credit for landings made from the F/V MASTERCHARGE in 1984 and 1985 by the prior owner?

Mr. Doumit cannot obtain IFQ credit for the F/V MASTERCHARGE's 1984 and 1985 landings. The IFQ regulations do not provide for assignments of initial QS eligibility, and RAM has consistently refused to recognize and enforce private agreements that purport to assign eligibility for the initial issuance of QS.⁷ An applicant who merely purchases a vessel cannot receive an initial issuance of QS based on landings made from the vessel by former owners during a period when the applicant did not own or lease the vessel, even if the seller and purchaser agreed that the sale included the vessel's fishing history. The issuance of QS is governed by the IFQ regulations, not by the terms of a private agreement.⁸ Therefore, Mr. Doumit's purchase of the F/V MASTERCHARGE did not entitle him to credit for the 1984 and 1985 landings from the vessel.

FINDING OF FACT

Mr. Pedersen did not own or lease a vessel during a QS qualifying year, from which legal landings of halibut or sablefish were made.

CONCLUSIONS OF LAW

1. Mr. Pedersen was not a "qualified person" for QS, and neither he, nor his estate, nor his widow had any interest in QS to which anyone could succeed.
2. Mr. Doumit is not a "successor-in-interest" to Mr. Pedersen.
3. An applicant who merely purchases a vessel cannot receive an initial issuance of QS based on landings made from the vessel by former owners during a period when the applicant did not own or lease the vessel, even if the seller and purchaser agreed that the sale included the vessel's fishing history.
4. Mr. Doumit is not entitled to credit for landings made from the F/V MASTERCHARGE in 1984 and 1985.

⁷Prowler Partnership v. Samuelson, Decision on Reconsideration (Part I), Appeal No. 95-0084, March 12, 1996, at 4, *aff'd*, March 14, 1996.

⁸*Id.*

DISPOSITION

The IAD, which denied Mr. Doumit's claim to additional qualifying pounds of QS for halibut landed from the F/V MASTERCHARGE in 1984 and 1985, is AFFIRMED. This Decision takes effect December 7, 1998, unless by that date the Regional Administrator orders the 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 16, 1998, the tenth day after the date of this Decision. A Motion for Reconsideration must be in writing, must allege one or more specific 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.

Edward H. Hein
Chief Appeals Officer