

NATIONAL MARINE FISHERIES SERVICE, ALASKA REGION
OFFICE OF ADMINISTRATIVE APPEALS

In re Application of) Appeal No. 95-0126
)
JOHN T. REISDORF,) DECISION
Appellant)
_____) September 29, 1998

STATEMENT OF THE CASE

Appellant John Reisdorf filed a timely appeal of an Initial Administrative Determination [IAD] that was issued on July 15, 1995, by the Restricted Access Management Program¹ [RAM]. The IAD affirmed RAM's revocation of half of Mr. Reisdorf's quota shares [QS] under the Individual Fishing Quota [IFQ] program for Pacific halibut and sablefish because of evidence showing that he held only a 50 percent ownership interest in the vessel from which the qualifying landings were made. Mr. Reisdorf's interests are directly and adversely affected by the IAD. Mr. Reisdorf requested a hearing on the issue of whether a partnership between him and Mr. Haglund existed during the QS qualifying years. 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 hearing was ordered. 50 C.F.R. § 679.43(g)(2) and (3).²

ISSUE

Shall RAM treat Mr. Reisdorf as the sole owner of the F/V BETTY A for IFQ purposes, based on the other co-owner's alleged abandonment of the vessel in 1979?

BACKGROUND

RAM credited Mr. Reisdorf with 100 percent of the qualifying pounds of halibut and sablefish landed from the F/V BETTY A, and awarded the resulting QS to him. The award was based on RAM's belief that Mr. Reisdorf was the sole owner of the vessel from November 25, 1983, through at least December 31, 1991, which covers the relevant years for IFQ consideration. RAM later obtained a U.S. Coast Guard abstract of title for the F/V BETTY A, dated January 24, 1995, which showed that

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) and (3). All IFQ regulations were renumbered, effective July 1, 1996. *See*, 61 Fed. Reg. 31,270 (1996).

the vessel has been co-owned³ by Mr. Reisdorf and Mr. Leonard Haglund since 1979. As a result, RAM revoked 50 percent of the QS that had been issued to Mr. Reisdorf. [Notice of Revocation, March 6, 1995]

In response to the revocation, Mr. Reisdorf claimed that Mr. Haglund left the vessel during the 1979 fishing season, thus ending their fishing partnership. Mr. Reisdorf acknowledges that Mr. Haglund's name remains on the title to the vessel, but asserts that he [Reisdorf] has been the sole operator of the vessel since 1979. He states that he has paid the fuel, crew, bait, moorage, taxes, maintenance, and upkeep of the vessel since 1979. Mr. Reisdorf states that Mr. Haglund asked the Small Business Administration [SBA] to remove his [Haglund's] name from the mortgage and title of the vessel before the note was paid off, but that the SBA refused to do so. [Reisdorf Notarized Memorandum, March 13, 1995] RAM then issued its IAD, which affirmed the revocation. [July 14, 1995]

On appeal, Mr. Reisdorf states that Mr. Haglund refused to sign a release of his interest in the QS from the F/V BETTY A. Mr. Reisdorf asserts that on April 4, 1995, Mr. Haglund "signed off the title of the F/V BETTY A, with an extensive hold harmless [clause] regarding the vessels [sic] operations, seaworthiness, encumbrances, maintenance, and repair." Mr. Reisdorf also states that, according to a loan officer at the SBA, Mr. Haglund paid \$700 to the SBA toward the vessel's mortgage in July 1995, "as a maneuver to validate his participation." [Appeal, at 1] Mr. Reisdorf states that he believed that the alleged April 4, 1995 release of title by Mr. Haglund resolved the dispute over Haglund's active participation; but Mr. Reisdorf acknowledges that the release was not filed with the U.S. Coast Guard. [Appeal, at 2]

Mr. Reisdorf has submitted numerous documents⁴ in support of his claim. None of these, however, are documents of sale or title concerning the vessel's ownership during the QS qualifying and base years.⁵ The alleged release of title and hold harmless agreement is not contained in Mr. Reisdorf's submissions.

Mr. Haglund also submitted an application for QS, based on his 50 percent ownership of the F/V BETTY A, but RAM rejected his application as untimely, and that determination was affirmed by this Office.⁶

³The abstract reads: "Leonard Haglund 1/2, John Reisdorf 1/2."

⁴See, Mr. Reisdorf's written letter of appeal for a detailed explanation of the documents.

⁵Under 50 C.F.R. § 679.40(a)(4)(i) and (ii), formerly 50 C.F.R. § 676.20(b), the QS base years for halibut are 1984-1990, and the QS base years for sablefish are 1985-1990. The qualifying years for both species are 1988-1990.

⁶Leonard R. Haglund, Appeal No. 95-0039, August 6, 1996.

DISCUSSION

To qualify for an initial issuance of QS under the IFQ program, an applicant must first establish that he or she is a "qualified person" by virtue of having owned or leased a vessel that made legal landings of halibut or sablefish with fixed gear during a QS qualifying year.⁷ As the program has been implemented by the Division, a qualified person may receive credit only for landings that were made from a vessel owned or leased by the applicant at the time of the landings. Evidence of vessel ownership is limited to three types of documents, in order of priority: a U.S. Coast Guard abstract of title, a certificate of registration that is determinative of vessel ownership, and a bill of sale.⁸ The best evidence of vessel ownership, if it exists, is a Coast Guard abstract of title. Absent any evidence that an abstract of title is erroneous or fraudulent, NMFS is required to accept that document as proof of ownership.⁹

The abstract of title for the F/V BETTY A shows clearly that Mr. Reisdorf holds only a 50 percent ownership interest in the vessel. Mr. Reisdorf does not claim that the abstract of title is erroneous or fraudulent. Thus, this Office must accept the ownership percentages stated in the abstract. Further, the evidence that Mr. Haglund paid \$700 toward the vessel mortgage in 1995 is consistent with his still having an ownership interest in the vessel. Mr. Reisdorf claims that Mr. Haglund relinquished his interest in the vessel in writing on April 4, 1995, but Mr. Reisdorf has failed to produce a copy of that document. Nor has Mr. Reisdorf produced any other evidence that Mr. Haglund's interest in the vessel was transferred to him.

Even if true, the transfer of vessel ownership in 1995, by itself, would not affect the initial issuance of QS. Under the IFQ program, QS is initially issued the person(s) who owned or leased the vessel at the time of the landings in question, not to the person(s) who currently own the vessel. Mr. Reisdorf's argument that he has been the sole operator of the F/V BETTY A since 1979 does not negate the evidence that he has never owned more than a 50 percent interest in the vessel. Even if Mr. Haglund has not been involved in, or paid any of the costs of, the operation of the vessel since 1979, Mr. Haglund's name is still on the title, the abstract of title, and the promissory note for the vessel mortgage. For purposes of the IFQ program, evidence that a co-owner has abandoned a vessel, or has assumed full responsibility for the operation of a vessel, is not sufficient to prove that the vessel ownership has changed, in the face of a U.S. Coast Guard abstract of title that shows that both co-owners still hold an interest in the vessel. Therefore, for IFQ purposes at least, Mr. Reisdorf is not the sole owner of the F/V BETTY A.

⁷50 C.F.R. § 679.40(a)(2) and (a)(3)(i), formerly, § 676.20(a)(1). An applicant who is a successor-in-interest to a qualified person may also receive an initial issuance of QS.

⁸50 C.F.R. § 679.40(a)(3)(ii), formerly, § 676.20(a)(1)(ii).

⁹Weber v. Kochuten, Appeal No. 95-0122, June 18, 1996.

Because Mr. Reisdorf held only a 50 percent interest in the vessel during the QS qualifying and base years, he was not entitled to credit for 100 percent of the qualifying pounds landed from the vessel during that period. Consequently, RAM did not err in revoking 50 percent of the QS that had been issued to Mr. Reisdorf.

FINDING OF FACT

Mr. Reisdorf never owned more than a 50 percent interest in the F/V BETTY A during the QS qualifying and base years.

CONCLUSIONS OF LAW

1. For purposes of the IFQ program, evidence that a co-owner has abandoned a vessel, or has assumed full responsibility for the operation of a vessel, is not sufficient to prove that the vessel ownership has changed, in the face of a U.S. Coast Guard abstract of title that shows that both co-owners still hold an interest in the vessel.
2. A transfer of vessel ownership in 1995, by itself, would not affect the initial issuance of QS.
3. RAM did not err in revoking 50 percent of the QS that had been issued to Mr. Reisdorf.

DISPOSITION

The IAD that revoked 50 percent of Mr. Reisdorf's QS is AFFIRMED. This Decision takes effect on October 29, 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 October 9, 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.

Randall J. Moen
Appeals Officer

Edward H. Hein
Chief Appeals Officer