

NATIONAL MARINE FISHERIES SERVICE, ALASKA REGION
OFFICE OF ADMINISTRATIVE APPEALS

In re Application of) Appeal No. 96-0001
)
COY A. TAYLOR,) DECISION
Appellant)
_____) January 24, 2001

STATEMENT OF THE CASE

The Appellant Coy A. Taylor filed a timely appeal of an Initial Administrative Determination [IAD] issued by the Restricted Access Management [RAM] program¹ on December 21, 1995. The IAD denied Mr. Taylor's application for additional qualifying pounds of halibut quota share [QS] under the Individual Fishing Quota [IFQ] program. Mr. Taylor's interests are directly and adversely affected by the IAD.

Mr. Taylor claims additional halibut QS on the basis that he either co-owned or leased the F/V MORNING STAR from his business partner, Ms. Barbara Beery, in 1985, and that he co-owned the F/V WYOMING with her in 1987.² The F/V MORNING STAR made qualifying halibut landings on April 28 and 29 of 1985, and the F/V WYOMING made qualifying halibut landings on May 5, June 4, and October 1 of 1987. These time periods are the relevant periods for determining whether Mr. Taylor is entitled to relief in this appeal.

Because the record did not contain adequate information, we ordered Mr. Taylor to produce additional written evidence that he leased the F/V MORNING STAR from Ms. Beery, and to produce a detailed letter explaining the terms of the claimed lease.³ Mr. Taylor never explained the terms of the claimed lease, nor did he produce documents that, even if true, would have established the existence of a vessel lease.

In this instance, there is no indication that Mr. Taylor has any additional evidence to present at a hearing, let alone evidence that would justify the factual determination he seeks. Therefore, we did not order an oral hearing in this case and Mr. Taylor did not request one.

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

²Mr. Taylor never specifically stated the basis of his appeal when he filed his appeal. Consequently, I am presuming that his appeal deals with the claims made in his October 3, 1995, letter to RAM.

³See the Order to Produce Evidence, March 6, 1997.

In this Decision, I affirm the IAD, and conclude that Mr. Taylor is not eligible for additional qualifying pounds of halibut QS, based on the ownership or lease of the F/V MORNING STAR in 1985 or the ownership of the F/V WYOMING in 1987. Mr. Taylor was unable to find Ms. Beery.⁴ Her presence would have been extremely helpful in determining the existence of the claimed lease.

ISSUES

1. Is Mr. Taylor entitled to additional qualifying pounds of halibut QS based on ownership of the F/V MORNING STAR in 1985?
2. Is Mr. Taylor entitled to additional qualifying pounds of halibut QS based on the lease of the F/V MORNING STAR in 1985?
3. Is Mr. Taylor entitled to additional qualifying pounds of halibut QS based on ownership of the F/V WYOMING in 1987?

PRINCIPLES OF LAW

1. To qualify for QS under the regulations of the IFQ program, as implemented by RAM, a person must have owned or leased a commercial fishing vessel from which legal landings of halibut or sablefish were made during a QS year: 1988, 1989, or 1990.⁵
2. Evidence of vessel ownership is limited to the following documents, in order of priority: a U.S. Coast Guard abstract of title (for vessels required to be documented under the laws of the United States); a certificate of registration that is determinative of vessel ownership; and a bill of sale. A CFEC vessel registration record constitutes a certificate of registration that is determinative of vessel ownership.⁶
3. A written lease agreement or a notarized statement from the vessel owner is conclusive evidence of a vessel lease.⁷

⁴See Mr. Taylor's affidavit, March 26, 1997.

⁵50 C.F.R. § 679.40(a)(2).

⁶See Weber v. Kochuten, Appeal No. 95-0122, decided June 18, 1996, *effective*, July 18, 1996.

⁷See, 50 C.F.R. § 679.40(a)(3)(iii).

4. Evidence of an oral lease may be used to qualify a person for QS.⁸

DISCUSSION

I. Is Mr. Taylor entitled to additional qualifying pounds of halibut QS based on ownership of the F/V MORNING STAR in 1985?

RAM's Official Record shows that Ms. Beery solely owned the F/V MORNING STAR during the relevant period in 1985.⁹ There is no U.S. Coast abstract of title for the vessel because it is under five tons.¹⁰

Mr. Taylor submitted a State of Alaska Commercial Fisheries Entry Commission (CFEC) halibut data sheet for halibut landed between 1984 and 1990, but the data sheet is not evidence of vessel ownership because it shows only he landed the fish. Mr. Taylor also produced CFEC vessel licenses for the F/V MORNING STAR during years 1984-1991, but the CFEC vessel licenses show that Ms. Beery owned the F/V MORNING STAR during 1984 and 1985 and that Mr. Roland Flanigan owned the vessel between 1986 and 1991.

I conclude that Ms. Barbara Beery solely owned the F/V MORNING STAR during the relevant period in 1985. Therefore, Mr. Taylor is not entitled to additional qualifying pounds of halibut QS, based on ownership of the vessel.

II. Is Mr. Taylor entitled to additional qualifying pounds of halibut QS based on the lease of the F/V MORNING STAR in 1985?

Mr. Taylor claims that a written lease existed for the F/V MORNING STAR, but that it was destroyed in a house fire.¹¹ Mr. Taylor did not produce a copy of the written lease, nor did he produce a notarized statement of a vessel lease from the vessel's owner, Ms. Barbara Beery. Consequently, Mr. Taylor does not have conclusive evidence that he leased the F/V MORNING STAR.

⁸50 C.F.R. § 679.40(a)(3)(iii).

⁹RAM's Official Record shows that Ms. Beery owned the F/V MORNING STAR between March 15, 1984, and December 31, 1985.

¹⁰The U.S. Coast Guard is not required to maintain an abstract of title for vessels under five tons. See 46 C.F.R § 67.9(a).

¹¹See Mr. Taylor's letter to RAM, October 3, 1995.

The IFQ regulations do not define what constitutes an oral vessel lease. In Smee v. Echo Belle, Inc.,¹² we addressed the factors that an Appeals Officer should consider in making a determination of whether a business relationship will be recognized as a lease when there is no written lease document. The factors, which are nonexclusive,¹³ are:

- (1) how the parties characterized their business arrangement at the relevant times;
- (2) whether and to what extent the claimed lessee had possession and command of the vessel and control of navigation of the vessel;
- (3) whether the claimed lessee directed the fishing operations of the vessel;
- (4) whether the claimed lessee had the right to hire, fire, and pay the crew;
- (5) whether the claimed lessee was responsible for the operating expenses of the vessel;
- (6) whether the claimed lessee treated the fishing operations in which the vessel was used as his/her own business for federal income tax and other purposes; and
- (7) whether the claimed lease had a set or guaranteed term.

I will now consider these factors and the evidence to determine whether Mr. Taylor leased the F/V MORNING STAR in 1985.

1. How the parties characterized their relationship at relevant times.

This factor relates to discussions or representations between the parties and with others during the relevant times to determine the arrangement between the parties. Relevant evidence is the oral testimony and documents of the parties; statements or documents of intermediaries or agents, who helped or assisted in the parties' negotiations or agreement; and statements or documents showing what the parties said to other people about the parties' discussions at relevant times, supported by credible circumstantial evidence.

Although ordered to do so, Mr. Taylor did not produce any document that describes his business relationship with Ms. Beery (regarding the F/V MORNING STAR). While the affidavits of Mr. Taylor

¹²Appeal No. 95-0076, August 1, 1996, *aff'd*, August 20, 1995.

¹³An Appeals Officer has discretion to consider additional factors that the Appeals Officer believes can help determine whether a lease existed between the parties. See Smee, at 7.

and Jack Page state that Mr. Taylor “leased” the vessel, they do not describe the terms of the parties’ arrangement. Nor is there a statement from Ms. Beery, the vessel’s owner. Mr. Taylor’s statement to RAM that he and his “partner” (Ms. Beery) “owned” two vessels between 1985 and 1987 (the F/V MORNING STAR and the F/V WYOMING) tends to show that the parties did not agree to the lease of the F/V MORNING STAR.

I find the weight of evidence shows that the parties did not characterize their business relationship as a lease at relevant times, with regard to the F/V MORNING STAR.

2. Whether and to what extent Mr. Taylor had possession and command of the vessel and control of navigation of the vessel.

The affidavits of Mr. Taylor, Roger Truce, and Jack Page collectively state that Mr. Taylor skippered and operated the F/V MORNING STAR in 1985. Mr. Page states that Mr. Truce crewed the vessel for Mr. Taylor. Mr. Page does not state what his relationship was with Mr. Taylor or the vessel.

The record on appeal does not indicate whether Ms. Beery was aboard the vessel during the period of the claimed lease. The record is also absent of documents, written at or near the relevant period, showing that Mr. Taylor skippered the vessel. RAM’s records, however, do show that Mr. Taylor made halibut landings on his fishing permit in 1985. Without Ms. Beery, it is unknown to what extent Mr. Taylor’s “right” to possess, control, and navigate the F/V MORNING STAR was subject to the control or approval of Ms. Beery.

The evidence is insufficient to find that Mr. Taylor possessed, commanded, and navigated the F/V MORNING STAR. Therefore, based on preponderance of the evidence, I find that Mr. Taylor did not possess, command, and navigate the vessel.

3. Whether Mr. Taylor directed the fishing operations of the vessel.

CFEC’s records show that Mr. Taylor made qualifying halibut landings from the F/V MORNING STAR. Mr. Truce’s affidavit states that Mr. Taylor was "solely responsible" for the sale of all fish caught from the vessel in 1985. Mr. Taylor’s affidavit does not specifically state that he directed the vessel’s fishing operations, including the marketing of the fish. Nor does the record indicate Ms. Beery’s role, if any, with regard to the fishing operations of the vessel. Mr. Taylor refers to Ms. Beery as a “partner” and a co-owner of the vessel, and without Ms. Beery, it is unknown to what extent the two may have shared the fishing responsibilities of the vessel or to what extent Mr. Taylor’s “right” to direct the fishing activities was subject to Ms. Beery’s control or approval. While the landing of fish on a state fisheries permit is indicative of Mr. Taylor’s presence aboard the vessel, it does not show whether he directed the vessel’s fishing operations.

As in factor 2, the evidence is insufficient to find that Mr. Taylor directed the fishing operations of the F/V MORNING STAR. Therefore, based on preponderance of the evidence, I find that Mr. Taylor did not direct the fishing operations of the vessel.

4. Whether Mr. Taylor had the right to hire, fire, and pay the crew.

Mr. Truce's affidavit states that Mr. Taylor paid him to crew the F/V MORNING STAR in 1985. Mr. Page's affidavit states that Mr. Truce crewed for Mr. Taylor. Neither Mr. Truce, nor Mr. Taylor, state in their affidavits that Mr. Taylor hired Mr. Truce. Mr. Taylor did not submit an IRS 1099 form to show whether he paid the crew of the vessel. As in factors 2 and 3, we do not know whether Mr. Taylor's "right" to hire, fire, and pay the crew, was subject to the control or approval of Ms. Beery.

Again, I find that the evidence is insufficient to find that Mr. Taylor had the right to hire, fire, and pay the crew of the F/V MORNING STAR in 1985. Therefore, based on preponderance of the evidence, I find that Mr. Taylor did not have the right to hire, fire, and pay the crew of the vessel.

5. Whether Mr. Taylor was responsible for the operating expenses of the vessel.

Mr. Truce's affidavit states that Mr. Taylor paid for all vessel expenses (bait, fuel, groceries, ice, and gear) of the F/V MORNING STAR in 1985. Mr. Taylor's affidavit also states that he paid all of the operating expenses of the vessel. The ledger sheet showing that Mr. Taylor purchased a gill net for the F/V MORNING STAR on October 16, 1984, is not relevant because only "fixed gear" fishing¹⁴ may be used to obtain halibut QS under the IFQ program. The other ledger sheet that shows credits and unidentifiable charges related to the F/V MORNING STAR does not indicate whether Mr. Taylor was at risk for any of the charges. The 1986 earnings report for black cod and grey cod at Hoonah Cold Storage is also not relevant because the earnings report does not specify the vessel, because it is for the wrong year, because it is for black cod, not halibut.

Mr. Taylor did not produce settlement sheets, checks, receipts, bank statements, or cannery statements that show he paid or was at risk for the operating expenses of the F/V MORNING STAR. Mr. Taylor's only proof that he paid the vessel's expenses is his own affidavit, and the affidavit of one of his crew, Mr. Truce. But even if he did pay the vessel's expenses, mere payment of vessel expenses is not by itself indicative of a vessel lease. Mr. Taylor has not shown that he ever assumed financial responsibility or was at risk for any of the vessel's expenses.

Therefore, I find that Mr. Taylor was not responsible for the operating expenses of the F/V MORNING STAR in 1985.

¹⁴See 50 C.F.R. § 679.2, which defines "fixed gear" as all fishing gear comprised of lines with hooks attached, including one or more stationary, buoyed, and anchored lines with hooks attached.

6. Whether Mr. Taylor treated the fishing operations of the vessel as his own business for federal income tax and other purposes.

Mr. Taylor did not produce a federal tax return to show how he treated the fishing operations of the F/V MORNING STAR for tax purposes. Nor did he produce any other evidence (such as checks for lease fees paid to Ms. Beery or business records) that show he operated the F/V MORNING STAR as his own business in 1985.

In light of this, I find that Mr. Taylor did not treat the fishing operations of the F/V MORNING STAR as his own business for federal income tax and other purposes.

7. Whether the claimed lease had a set or guaranteed term.

As previously stated, RAM's records show that Mr. Taylor made halibut landings from the F/V MORNING STAR during the relevant period in 1985. There are no other documents in the record, nor are there statements from Mr. Taylor or Ms. Beery, that show Mr. Taylor had the vessel for a set or guaranteed term. Therefore, I find that the claimed lease did not have a set or guaranteed term.

Conclusion

Mr. Taylor's claim suffers from a lack of documentary evidence, and from Ms. Beery's absence in this case. Mr. Taylor produced evidence that he was involved with the F/V MORNING STAR's activities in 1984 and 1985, but the weight of the evidence does not show that (1) he and Ms. Beery agreed to the lease of the F/V MORNING STAR; (2) he was in charge of the vessel; (3) he paid Ms. Beery a lease fee for the vessel; (4) he treated all of the fishing operations of the F/V MORNING STAR as his own business; (5) he personally assumed financial risk for vessel's operating expenses; and (6) he had the vessel for a set or guaranteed period of time.

Even if Mr. Taylor's evidence had shown that he was in charge of the vessel's activities and crew, and that he paid for the vessel's trip expenses, that would have shown only that he was a hired skipper, not a lessee. I conclude that Mr. Taylor did not lease the F/V MORNING STAR from Ms. Beery, and that he is not entitled to additional qualifying pounds of halibut QS, based on the lease of the vessel.

III. Is Mr. Taylor entitled to additional qualifying pounds of halibut QS based on ownership of the F/V WYOMING in 1987?

RAM's Official Record shows that Ms. Beery was the registered owner of the F/V WYOMING during the relevant period in 1987. The U.S. Coast Guard abstract of title for the F/V WYOMING shows that Ms. Beery co-owned the vessel with Mr. Paul Rudolph on April 13, 1987, and that she owned 100 percent of the vessel between May 13, 1987, and July 30, 1988.

Mr. Taylor's documents show that he operated, maintained, and made vessel loan payments during the period of his claimed ownership of the F/V WYOMING, and that his father, McCoy Taylor, co-signed a loan for the vessel's purchase. Mr. Taylor never produced a bill of sale as evidence of his ownership of the vessel.

Mr. Taylor's assertion that he put the vessel in Ms. Beery's name for tax purposes, and the documents produced by Mr. Taylor, are not the best evidence of vessel ownership in this case for purposes of issuance of QS. The abstract of title shows that Ms. Beery solely owned the F/V WYOMING during the relevant period. Therefore, I conclude that Mr. Taylor did not own the F/V WYOMING in 1987, and that he is not entitled to additional qualifying pounds of halibut QS, based on ownership of the vessel.

FINDINGS OF FACT

1. RAM's Official Record shows that Ms. Beery solely owned the F/V MORNING STAR during April 28 and 29, 1985, and that Mr. Roland Flanigan owned the vessel between 1986 and 1991.
2. Mr. Taylor and Ms. Beery did not characterize their business arrangement as a vessel lease at relevant times, with regard to the F/V MORNING STAR.
3. Mr. Taylor did not possess, command, and navigate the F/V MORNING STAR.
4. Mr. Taylor did not direct the fishing operations of the F/V MORNING STAR.
5. Mr. Taylor was not responsible for the hiring, firing, and payment of the crew of the F/V MORNING STAR.
6. Mr. Taylor was not at financial risk with regard to the operating expenses of the F/V MORNING STAR.
7. Mr. Taylor did not operate the F/V MORNING STAR as his own business for federal income tax and other purposes.
8. Mr. Taylor's use of the F/V MORNING STAR did not have a set or guaranteed term.
9. The U.S. Coast Guard abstract of title and RAM's Official Record for the F/V WYOMING show that Ms. Beery solely owned the F/V WYOMING during the relevant period in 1987.

CONCLUSIONS OF LAW

1. Mr. Taylor did not own the F/V MORNING STAR in 1985.
2. Mr. Taylor is not entitled to additional qualifying pounds of halibut QS, based on ownership of the F/V MORNING STAR.
3. Mr. Taylor did not lease the F/V MORNING STAR in 1985.
4. Mr. Taylor is not entitled to additional qualifying pounds of halibut QS, based on a lease of the F/V MORNING STAR in 1985.
5. Mr. Taylor did not own the F/V WYOMING in 1987, for purposes of issuance of QS.
6. Mr. Taylor is not entitled to additional qualifying pounds of halibut QS, based on ownership of the F/V WYOMING.

DISPOSITION

The IAD that is the subject of this appeal is **AFFIRMED**. This Decision takes effect February 23, 2001, 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 the tenth day after the date of this Decision, February 5, 2001. 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 this motion.

Randall J. Moen
Appeals Officer