



signed the partnership's applications for QS without pursuing the lease claim.<sup>6</sup>

RAM issued QS to the Hungry Raven Partnership on November 14, 1994, based on the partnership's ownership of two vessels: the F/V BUMBLE BAY and the F/V HUNGRY RAVEN.<sup>7</sup>

On October 4, 2006, approximately 12 years after RAM issued QS to the partnership, Mr. Ivanoff wrote a letter to RAM Program Administrator Philip J. Smith requesting that he be given initial allocation rights as an individual for halibut and sablefish QS.<sup>8</sup> Mr. Ivanoff wrote that he had followed the advice Mr. Smith had given him in 1993 to put all his halibut and sablefish shares into his business, the F/V Hungry Raven Partnership. As a result, Mr. Ivanoff wrote, he is now unable to own additional blocks of halibut and sablefish QS and does not have hired skipper rights for his personal QS.

RAM denied Mr. Ivanoff's claim on grounds that Mr. Smith does not recall advising Mr. Ivanoff to apply only for partnership QS; and that, in any event, the Hungry Raven Partnership was the proper party to apply for, and be issued, QS based on ownership of the F/V HUNGRY RAVEN.<sup>9</sup>

Mr. Ivanoff filed a timely appeal of the IAD. He claims on appeal that he would have applied for the initial issuance of individual QS based on the lease of the F/V BUMBLE BAY in 1986, 1987, and 1988, but for Mr. Smith's advice to apply for QS only in the name of the F/V Hungry Raven Partnership. Mr. Ivanoff can file an appeal because the IAD directly and adversely affects his interests, as required by 50 C.F.R. §679.43(b). Mr. Ivanoff requests an oral hearing, but an oral hearing is not authorized in this case because the appeal does not meet the requirements of 50 C.F.R. §679.43(g)(3)(ii), (iii), and (iv).<sup>10</sup> The record contains sufficient

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<sup>6</sup> See F/V Raven Partnership's Applications For QS (Aug. 24, 1994).

<sup>7</sup> Quota Share Data Summary for the F/V Hungry Raven Partnership (Nov. 14, 1994).

<sup>8</sup> Letter from Mr. Ivanoff to Phil Smith, RAM (Oct. 4, 2006).

<sup>9</sup> IAD at 3 (Oct. 10, 2006).

<sup>10</sup>(g) The appellate officer will review the applicant's appeal and request for hearing, and has discretion to proceed as follows: \* \* \*

(3) Order that a hearing be conducted. The appellate officer may so order only if the appeal demonstrates the following: (i) There is a genuine and substantial issue of adjudicative fact for resolution at a hearing. A hearing will not be ordered on issues of policy or law. (ii) The factual issue can be resolved by available and specifically identified reliable evidence. A hearing will not be ordered on the basis of mere allegations or denials or general descriptions of positions and contentions. (iii) The evidence described in the request for hearing, if established at hearing, would be adequate to justify resolution of the factual issue in the way sought by the applicant. A hearing will not be ordered if the evidence described is insufficient to justify the factual determination sought, even if accurate. (iv)

information to decide this appeal, and therefore the record is now closed. 50 C.F.R. §679.43(g)(2).

## ISSUES

1. Did Mr. Ivanoff make but later abandon a timely claim for initial issuance of individual QS based on a lease of the F/V BUMBLE BAY?
2. Can Mr. Ivanoff's claim for initial issuance of individual QS, based on the lease of the F/V BUMBLE BAY, be considered timely under the doctrine of government estoppel?
3. Does Mr. Ivanoff qualify as an "initial issuee" for individual halibut and sablefish QS?

## ANALYSIS

### **1. Did Mr. Ivanoff make but later abandon a timely claim for initial issuance of individual QS based on the lease of the F/V BUMBLE BAY?**

In a number of Decisions, this Office has ruled that an applicant's claim for QS is entitled to be considered on appeal, as long as the claim was timely made when the applicant applied for QS, and as long as the claim was timely appealed.<sup>11</sup> However, we have said that a timely claim can be considered abandoned or waived by an applicant for QS.<sup>12</sup>

When Mr. Ivanoff requested an application for QS in 1994 on behalf of the Hungry Raven Partnership,<sup>13</sup> he submitted a signed lease affidavit with his application. The affidavit asserted that he had leased the F/V BUMBLE BAY in 1986, 1987, and 1988, from a company named

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Resolution of the factual issue in the way sought by the applicant is adequate to justify the action requested. A hearing will not be ordered on factual issues that are not determinative with respect to the action requested.

<sup>11</sup> See, e.g., *Tiger, Inc.*, Appeal No. 95-0100 (Nov. 17, 1995); *Richard A. Newby*, Appeal No. 03-0025 (Apr. 26, 2004).

<sup>12</sup> See, e.g., *Matt Shadle*, Appeal No. 95-0144 at 2 (Jan. 26, 1999).

<sup>13</sup> Request for Application For Quota Share Form For Existing Corporations or Partnerships, June 16, 1994.

Bumble Bay, Ltd.<sup>14</sup> In submitting the lease affidavit, Mr. Ivanoff was, in effect, making an *individual* claim for initial issuance of QS based on the lease of the F/V BUMBLE BAY.<sup>15</sup>

However, I find that Mr. Ivanoff affirmatively abandoned or waived his individual claim for QS based on the lease of the F/V BUMBLE BAY when he and his business partner submitted two signed applications for QS to RAM on behalf of the F/V Hungry Raven Partnership.<sup>16</sup> There is no evidence in the record that Mr. Ivanoff made any other claim for individual QS when he applied for QS.<sup>17</sup> I conclude that Mr. Ivanoff made but later abandoned a timely claim for initial issuance of individual QS based on the lease of the F/V BUMBLE BAY.

## **2. Can Mr. Ivanoff's claim for individual QS based on the lease of the F/V BUMBLE BAY be considered timely under the doctrine of government estoppel?**

Mr. Ivanoff claims that he abandoned his claim for individual QS based on the lease of the F/V BUMBLE BAY only because Mr. Smith advised him to apply for QS only in the name of the Hungry Raven Partnership.

Mr. Ivanoff writes:

In the winter of 1993-1994, I met with Philip J Smith in Seattle where he was holding meetings to discuss the new IFQ program. At this meeting, I advised Philip J Smith of my entire Alaskan fishing history. My purpose in meeting Philip J Smith was to find out how I could best ensure my interest in the IFQ program. I was advised by Philip J Smith to apply for initial allocation of QS under the Hungry Raven Partnership. In 2000, I, under Steven M. Ivanoff, purchased 3A and 3B IFQ's and applied for hired skipper cards for the Hungry Raven Partnership IFQ's and for the IFQ's I had just purchased. I received a hired skipper card for the Hungry Raven Partnership and I was denied a hired skipper card for my personal IFQ's. It was at this time, I recognized my best interests as a qualified person for the initial allocation of Quota Share had not been met.

It is clear that in the winter of 1993-1994 in meeting with Philip J Smith, I was

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<sup>14</sup> Lease Affidavit Form for the F/V BUMBLE BAY (June 16, 1994).

<sup>15</sup> *Vasily P. Reutov*, Appeal No. 95-0139 at 4 (Feb. 27, 1997), in which a claim made on a bill of sale was considered part of the Application for QS.

<sup>16</sup> See the Hungry Raven Partnership's application for halibut and sablefish QS, signed by Mr. Ivanoff and his business partner, Charles King (August 1994).

<sup>17</sup> The IFQ application period ran from January 17, 1994, through July 15, 1994. See 59 Fed. Reg. 701-702 (Jan. 6, 1994).

not given the most comprehensive information on the regulation 50 CFR 679.40. Due to this situation, I am unable to hire a skipper to fish my personal halibut IFQ's and I am unable to own additional blocks of halibut and sablefish. My sons, Ian Ivanoff and Peter Ivanoff, are unable to become a hired skipper for my personal IFQ's. I am unable to allow my sons the opportunity to fish my personal IFQ's on their own under my watchful eye to teach them safe and productive fishing practices.<sup>18</sup>

Mr. Ivanoff's argument is essentially a claim of government estoppel. This Office has discussed the doctrine of government estoppel in several decisions.<sup>19</sup> Under the doctrine of government estoppel, a party who reasonably and detrimentally relies on misinformation or wrong advice provided by a government agent and, as a result, fails to meet or comply with government requirements, may, under certain circumstances, preclude ("estop") the government from asserting the party's noncompliance. Among the circumstances that must be present for the doctrine of government estoppel to apply is that the government agent must have engaged in *affirmative misconduct* which will cause a serious injustice, and that estoppel will not cause undue harm to the public interest.<sup>20</sup>

The first problem with Mr. Ivanoff's claim is that it would be difficult to determine whether Mr. Smith actually advised him to apply for QS only in the name of a partnership. Mr. Ivanoff's claim is based solely on an unsubstantiated allegation. Mr. Smith does not recall meeting with Mr. Ivanoff or advising him how to apply for QS.<sup>21</sup>

Even if Mr. Ivanoff's claim is true, it does not satisfy the requirements of the doctrine of government estoppel. Mr. Ivanoff does not allege affirmative misconduct by Mr. Smith or his own reasonable reliance on Mr. Smith's advice. Mr. Smith's alleged failure to give Mr. Ivanoff "the most comprehensive information" about the IFQ regulations would be, at most, a form of negligence, and negligence alone is not affirmative misconduct.<sup>22</sup> To justify estoppel against the

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<sup>18</sup> Mr. Ivanoff's appeal at 3 (Dec. 7, 2006).

<sup>19</sup> See e.g., *Patrick Selfridge*, Appeal No. 95-0003 (Sep. 3, 1998); *Sherry L. Tuttle & Lori Whitmill*, Appeal No. 96-0010 (Dec. 3, 1999); *Tynes Enterprises, et al*, Appeal No. 00-0014 (July 11, 2002); *Samish Maritime, Inc.*, Appeal No. 96-0008 (Dec. 2, 1999); *Magne Nes*, Appeal No. 02-004 (March 5, 2004); *Jamie Marie, Inc.*, Appeal No. 04-0002 (Apr. 13, 2006).

<sup>20</sup> See generally, Jean F. Rydstrom, Annotation, *Modern Status of Applicability of Doctrine of Estoppel Against Federal Government and Its Agencies*, 27 A.L.R. Fed. 702 (1976). For a thorough discussion of the elements of a government estoppel claim, see *Jamie Marie, Inc.*, Appeal No. 04-0002 (Apr. 13, 2006).

<sup>21</sup> IAD at 3 (Oct. 10, 2006).

<sup>22</sup> See, e.g., *Watkins v. United States Army*, 875 F.2d 699, (9<sup>th</sup> Cir. 1989), cert. denied 498 U.S. 957 (1990); and *Lavin v. Marsh*, 644 F.2d 1378 (9<sup>th</sup> Cir. 1981).

government, Mr. Smith would have had to engage in “ongoing active misrepresentations,” a “pervasive pattern of false promises,” or some type of “egregious conduct.”<sup>23</sup> A government agent’s mere failure to inform or assist does not justify application of government estoppel.<sup>24</sup>

Regardless of his conversations with Mr. Smith, Mr. Ivanoff is charged with knowledge of the IFQ regulations. He should have determined that, if he did not apply for QS as individual initial issuee, he would not be able to have his sons (or anyone else) fish his QS for him.<sup>25</sup> The IFQ regulations, and the booklet provided by RAM,<sup>26</sup> were clear about that. In any event, Mr. Ivanoff can still own as much QS as an initial issuee or as a QS recipient by transfer; his current status as a QS recipient by transfer does not prevent him from obtaining an additional block of QS.<sup>27</sup>

Because Mr. Ivanoff is charged with knowledge of the IFQ regulations, he cannot successfully argue that he reasonably relied upon Mr. Smith’s advice. Mr. Ivanoff was ultimately responsible for deciding how to apply for QS. Mr. Ivanoff made a business decision to apply only as a partnership and he cannot shift to RAM the responsibility for his failure to anticipate the consequence of his decision.

I conclude that Mr. Ivanoff’s claim for the initial issuance of individual QS based on the lease of the F/V BUMBLE BAY cannot be considered timely under the doctrine of government estoppel. Consequently, I conclude that Mr. Ivanoff does not qualify as an “initial issuee” for individual halibut and sablefish QS.

#### FINDINGS OF FACT

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<sup>23</sup> *Watkins v. United States Army*, 875 F.2d 699 at 708, (9<sup>th</sup> Cir. 1989), *cert. denied* 498 U.S. 957 (1990).

<sup>24</sup> *See, e.g., Watkins v. United States Army*, 875 F.2d 699, (9<sup>th</sup> Cir. 1989), *cert. denied* 498 U.S. 957 (1990); and *Lavin v. Marsh*, 644 F.2d 1378 (9<sup>th</sup> Cir. 1981).

<sup>25</sup> The IFQ regulations at 50 C.F.R. § 679.42(i) prevent Mr. Ivanoff in this case from hiring his sons or another skipper or master to fish his personal catcher vessel QS for him. Only *initial* QS recipients can do that. [50 C.F.R. § 679.42(i)(1)] While Mr. Ivanoff can acquire catcher vessel QS by transfer (as an IFQ crew member with at least 150 days experience harvesting fish), he must be on board the vessel when his IFQ is being fished.

<sup>26</sup> *See* “The IFQ Program, Insights and Updates,” by the National Marine Fisheries Service, at 10 and 11 (February 1994).

<sup>27</sup> Mr. Ivanoff’s status as a QS transfer recipient could not have prevented him from purchasing an additional block of QS. The IFQ regulations at 50 C.F.R. § 679.42(g), which limit the amount of QS blocks that a person can hold, apply equally to initial QS recipients and QS recipients by transfer. Both initial QS recipients and QS transfer recipients are limited to two blocks of QS for sablefish and three blocks of QS for halibut in each IFQ regulatory area. [*See* 50 C.F.R. § 679.42(g)(1)]

1. Mr. Ivanoff affirmatively abandoned or waived his individual claim for QS based on the lease of the F/V BUMBLE BAY.
2. Mr. Ivanoff did not make any other claim for individual QS when he applied for QS.
3. The allegations made by Mr. Ivanoff do not amount to affirmative misconduct by Mr. Smith or even a reasonable reliance on Mr. Smith's advice.

#### CONCLUSIONS OF LAW

1. Mr. Ivanoff made but later abandoned a timely claim for initial issuance of individual QS based on the lease of the F/V BUMBLE BAY.
2. Mr. Ivanoff's claim for the initial issuance of individual QS based on the lease of the F/V BUMBLE BAY cannot be considered timely under the doctrine of government estoppel.
3. Mr. Ivanoff does not qualify as an "initial issuee" for individual halibut and sablefish QS.

#### DISPOSITION

The IAD that is the subject of this appeal is **AFFIRMED**. This Decision takes effect on November 26, 2007, unless by that date the Regional Administrator takes further action pursuant to 50 C.F.R. §679.43(o).

The Appellant or RAM may submit a Motion for Reconsideration, but it must be received by this Office not later than 4:30 p.m., Alaska time, on the tenth day after this Decision, November 5, 2007. 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 Administrative Judge, and must be accompanied by a written statement in support of the motion.

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Randall J. Moen  
Administrative Judge