

**BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS  
ON REFERRAL BY THE COMMISSIONER OF REVENUE**

IN THE MATTER OF	)	
	)	
N. B. & H. V.	)	Case No. OAH 09-0323-PFD
	)	Agency Nos. 2007-051-4201
<u>2007 Permanent Fund Dividend</u>	)	2007-051-4204

**DECISION**

**I. Introduction**

N. B. and H. V. timely applied for 2007 permanent fund dividends. The Permanent Fund Dividend Division (“the division”) determined that the applicants were not eligible, and it denied the applications initially and at the informal appeal level. At the applicants’ request, a formal hearing was held on July 27, 2009. Mr. V. and Ms. B. appeared by telephone. PFD Specialist Kim Colby represented the PFD Division by telephone.

Because the applicants were maintaining their principal home in another state at the date of application, they are ineligible for 2007 permanent fund dividends.

**II. Facts**

Mr. V. and Ms. B. (“the applicants”) are a married couple. Ms. B. has lived in Alaska her entire life. For the last four years, the applicants have traveled to Uruguay in the winter months to visit Mr. V.’s family.

In August of 2005 the applicants bought a duplex in Anchorage. During 2006 they did extensive remodeling of the home. On November 10, 2006, the applicants moved out of the duplex and moved into a hotel for a short period of time before leaving for Uruguay on December 14, 2006. Ms. B. testified that the applicants maintain a lifestyle that allows them the freedom to travel extensively. When travel opportunities present themselves, the applicants will often take spontaneous trips with little advance planning; for example, just recently the applicants went on an extended trip to Europe on the spur of the moment. Ms. B. testified that the applicants keep few personal belongings, and they do not require much more space than a studio apartment, as they never know when they might be traveling again. Ms. B. explained that the applicants’ Anchorage duplex is an upscale property that rents for \$1,600 per unit, and has more space than the applicants need. They decided, therefore, to rent out the duplex and stay in a hotel for a short time before taking their annual trip to Uruguay. The applicants stored some personal belongings in a storage area in the duplex, but they have not lived there since November 10, 2006.

After visiting Uruguay, the applicants went to Miami, Florida, on March 4, 2007. Ms. B. testified that they intended to stay with relatives in Florida for about two weeks. The circumstances and the applicants' subsequent actions cast some doubt on the credibility of this statement. Ms. B. was considering attending school in Florida, and in fact had spent time in Florida in March of 2006 investigating schools.<sup>1</sup> The applicants filed their 2007 PFD applications on March 7, 2007, using online application forms. On the forms, the applicants stated that they were physically present in Alaska at the time. The applicants have relatives in Florida, and at the very least the idea of a prolonged stay in Florida was not new to the applicants when they filed their 2007 applications.

From April 10, 2007, until May 9, 2007, the applicants went on a road trip and spent the month driving around the Lower 48. At the hearing, Ms. B. testified that it was not until some time during this road trip, in April of 2007, that the applicants decided not to return to Alaska.

On May 12, 2007, Mr. V. returned to Anchorage alone, sold the applicants' car, gathered their belongings from the storage area, and returned to Florida. In September or October of 2007 the applicants bought a condominium in Miami. Currently, that unit is also rented out, and the applicants are living with Mr. V.'s aunt in Miami.

### **III. Discussion**

In order to qualify for a permanent fund dividend, the applicant must have been an Alaska resident not just during the qualifying year, but also at the date of application.<sup>2</sup> Applicants are not eligible for dividends if, at the date of application, they are maintaining their principal home in another state or country.<sup>3</sup> According to 15 AAC 23.173(i), "The burden of proof rests on an individual claiming an allowable absence to prove that the individual has maintained, at all times during the absence, the intent to return and remain indefinitely in Alaska." At a formal hearing, the person requesting the hearing has the burden of proving that the division's decision was in error.<sup>4</sup>

The applicants in this case live an unusually mobile lifestyle, and it is difficult to pinpoint where their principal home is at any given time. When they applied for dividends in March of 2007, the applicants were not maintaining their principal home in Alaska. Their duplex had been rented out and they did not intend to live in it again if they returned. While they did have a car in Alaska and a few items stored, this connection to the state does not appear so substantial as to constitute a principal home. The applicants were staying with relatives in Florida when they

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<sup>1</sup> Exhibit 5, page 9.

<sup>2</sup> AS 43.23.005(a)(2)-(3).

<sup>3</sup> 15 AAC 23.143(d)(1).

<sup>4</sup> 15 AAC 05.030(h).

applied for 2007 dividends. It might be unusual to regard a relative's home as an applicant's principal home, particularly when there is a certain temporary quality to the stay. In this case, anywhere the applicants stay seems to be temporary. At the date of application, the applicants were more established in Florida than in Alaska. Even if, as Ms. B. testified, the applicants did not make their final decision to remain in Florida until the month following their applications, at the date of the applications they were maintaining their principal home in Florida. Their current situation illustrates this point; although they purchased a condominium in Florida and admit that they have since moved to Florida, the applicants have rented out their condo and they are now residing with an aunt.

Because maintaining their principal home in another state at the date of application makes the applicants ineligible for 2007 dividends, it is unnecessary to determine whether the applicants' residency changed from Alaska to Florida in March of 2007 or in April, as they assert. It is also unnecessary to consider whether the applicants intentionally provided false information when they certified on their applications that they were physically in Alaska, when in fact they were applying online from Florida.

#### **IV. Conclusion**

At the time they filed their applications for 2007 dividends, the applicants were maintaining their principal home in another state. They are, therefore, ineligible for 2007 dividends. The Permanent Fund Dividend Division's decision to deny the applications of N. B. and H. V. for 2007 permanent fund dividends is AFFIRMED.

DATED this 20th day of August, 2009.

By: Signed  
DALE WHITNEY  
Administrative Law Judge

### Adoption

This Order is issued under the authority of AS 43.05.010 and AS 44.17.010. The undersigned, on behalf of the Commissioner of Revenue and in accordance with AS 44.64.060, adopts this Decision and Order as the final administrative determination in this matter.

Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with Alaska R. App. P. 602(a)(2) within 30 days after the date of this decision.

DATED this 22nd day of September, 2009.

By: Signed  
Signature  
Dale Whitney  
Name  
Administrative Law Judge  
Title

[This document has been modified to conform to technical standards for publication.]