RACHEL S. GRYNBERG

IBLA 82-936 Decided February 24, 1983

Appeal from decision of Colorado State Office, Bureau of Land Management, rejecting simultaneous oil and gas lease application C-34935.

Reversed and remanded.

1. Oil and Gas Leases: Applications: Drawings

Where an applicant, who is also an adult beneficiary of a trust, files an application to lease a particular parcel in a simultaneous oil and gas lease drawing, and her mother, who is trustee for applicant's trust, also files an application for the same parcel as an individual, 43 CFR 3112.2-1(f) (prohibition against holding, owning, or controlling any interest in more than one application for a particular parcel) and 3112.6-1 (prohibition against multiple filings) have not been violated and a BLM decision rejecting the daughter's application must be reversed.

APPEARANCES: Philip G. Dufford, Esq., Denver, Colorado, for appellant.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

Rachel S. Grynberg appeals from a decision of the Colorado State Office, Bureau of Land Management (BLM), dated May 17, 1982, rejecting her simultaneous oil and gas lease application C-34935.

Appellant, who is an adult, is the beneficiary of a trust established by her father, Jack J. Grynberg. Celeste C. Grynberg, appellant's mother, serves as trustee for the Rachel Susan Grynberg Trust. Appellant received first priority for parcel CO-25 in a simultaneous oil and gas lease drawing held in November 1981. Celeste Grynberg also filed an application for the same parcel as an individual. BLM rejected appellant's application because it violated 43 CFR 3112.2-1 and 43 CFR 3112.6-1. BLM gave these reasons for its decision:

> Regulation 43 CFR 3112.2-1 provides that an applicant is permitted to file only one entry card for each numbered parcel on the posted simultaneous filing list. Submission of more than one entry card by or on behalf of an applicant for any parcel will result in disqualification of all the applications submitted by the applicant. It is the policy of the Department of the Interior that each applicant shall have an equal chance with every other applicant in the simultaneous drawing, and that multiple applications will be rejected when they are considered to have been collectively filed for the benefit of one person by giving him an unfair advantage in the drawing.
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> Because of the fiduciary obligation imposed upon Celeste C. Grynberg as trustee of the Rachel Susan Grynberg Trust, if suit were brought against Celeste C. Grynberg, trustee, by Rachel Susan Grynberg, beneficiary, the courts would hold that Mrs. Grynberg holds the lease for the use and benefit of the trust. See June Oil and Gas, Inc. v. Andrus, 506 F. Supp. 1204 (D.C. Colorado 1981).
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> Since Rachel S. Grynberg filed an application in her own behalf and since Mrs. Grynberg's application inures to the benefit of her daughter, an unfair situation has been created which enhances the mathematical advantage of Rachel Susan Grynberg over the other applicants for parcel CO-25. Such multiple filings are prohibited by 43 CFR 3112.6-1, and the above referenced application is therefore rejected in its entirety.

BLM cited two regulations in support of its decision rejecting the application. The first, 43 CFR 3112.2-1(f), 1/ provides in relevant part that: "No person or entity shall hold, own or control any interest in more than one application for a particular parcel."

The second, 43 CFR 3112.6-1, states in pertinent part:

> (c) Prohibited agreements, schemes, plans or arrangements. Any agreement, scheme, plan or arrangement entered into prior to selection, which gives any party or parties more than a single opportunity of successfully obtaining a lease or interest therein is prohibited and any application made in accordance with such agreement, scheme, plan or arrangement shall be rejected. Specifically:
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1/ Since Rachel is an adult, we need not consider the question of whether a minor child stands to accrue any benefit or advantage from profits derived from leases won by her parents. See Farrell L. Lines, Trustee, 40 IBLA 91 (1979).

> (4) Separate filings by a trustee or guardian in its own behalf and on behalf of one or more beneficiaries on the same parcel or, separate filings by a trustee or guardian on behalf of two or more beneficiaries on the same parcel or, separate filings by the grantor or person with the power of revocation of a revocable trust and the trust, are prohibited.

On appeal, appellant contends that Celeste Grynberg has not breached her fiduciary duty to the trust by filing as an individual because, under the terms of the trust, she has no duty to obtain the lease for the trust or refrain from obtaining the lease in her own behalf; that neither appellant nor her mother has violated 43 CFR 3112.2-1 or 43 CFR 3112.6-1 because each person has filed for the lease in her individual capacity and there has not been any agreement or scheme which gives any party more than a single opportunity of obtaining a lease; 43 CFR 3112.6-1(c)(4) has not been violated because Celeste Grynberg has not filed both in her own behalf and on behalf of the trust of which she is a trustee; that it seems contrary to past BLM practice to require an applicant to identify her daughter as an interested party when there has been no agreement between them, especially when the daughter has reached the age of majority.

[1] The issue on appeal is whether 43 CFR 3112.2-1(f) and 3112.6-1(c)(4) have been violated where an applicant who is also an adult beneficiary of a trust files an application to lease a particular parcel in a simultaneous oil and gas lease drawing, and her mother, who is trustee for the trust, also files an application for the same parcel as an individual.

We agree with appellant that these regulations have not been violated in this situation. Rachel Grynberg and Celeste Grynberg have each filed an application for parcel CO-25 in their individual capacities. The fact that their relationship is mother and daughter does not preclude them from filing applications for the same parcel. The Department has held that a husband and wife may individually file for the same parcel of land in a simultaneous drawing without violating the sole party in interest requirement or the multiple filing prohibition. Duncan Miller, 71 I.D. 121 (1964). The Board reiterated this holding in June Oil and Gas, Inc., 41 IBLA 394, 403, 86 I.D. 374, 379 (1979), which was affirmed on other grounds in June Oil and Gas, Inc. v. Andrus, 506 F. Supp. 1204 (D. Colo. 1981). Given the facts of this case, we find no reason why appellant and her mother could not each file an application for the same parcel.

Citing June Oil and Gas, Inc. v. Andrus, supra, BLM reasoned that the trust imposed a fiduciary relationship upon Celeste Grynberg and that she would hold the lease for the use and benefit of the trust. Therefore, BLM found that since Rachel Grynberg filed an application in her own behalf and because Celeste Grynberg's application inured to the benefit of Rachel Grynberg, Rachel Grynberg's chances of being a successful applicant were greater than the chances of other applicants for parcel CO-25. June Oil and

Gas, Inc. v. Andrus, supra, also affirmed the Board's decision in Celeste C. Grynberg, 44 IBLA 197 (1979). In the Grynberg case, a cotrustee filed individually for the same parcel on which she filed as cotrustee for the trust. The Board rejected both offers under the regulation which prohibits multiple filings.

The Board based its decision in Grynberg on the fact that the duty of loyalty demanded of a trustee requires avoidance of any situation or transaction in which personal and fiduciary interests conflict; that the Restatement (Second) of Trusts § 170 (1959) states that a trustee violates his duty to the beneficiary if he enters into substantial competition with the interests of the beneficiary; and that the Tenth Circuit Court of Appeals has specifically held that a trustee may not compete with his beneficiary in the acquisition of property, citing Wootten v. Wootten, 151 F.2d 147, 150 (10th Cir. 1945). The Board concluded that since the trustee would be deemed to hold his personal offer in trust for the beneficiary, filing by a cotrustee individually and also on behalf of the trust created a prohibited multiple filing, requiring the rejection of the offers. The facts in the present case are distinguishable from the facts in the Grynberg case. In the present case, Celeste Grynberg filed as an individual, but she did not file on behalf of the trust. Therefore, Celeste Grynberg's application was not in competition with an application of the trust, as was the situation in Grynberg.

Appellant argues that by the terms of the trust agreement, Celeste Grynberg is not prohibited from acquiring a lease in her own right and that such acquisition would not defeat the plans and purposes of the trust agreement. In Lawrence C. Harris, 63 IBLA 132, 89 I.D. 185 (1982), the Board held that where individual officers and/or directors of a corporation file simultaneous applications for the same parcels in the same drawings, but the corporation has not filed any applications, and where there was corporate authorization for such individual filings, there has been no breach of a fiduciary duty or violation of the regulations. Likewise, we find that Celeste Grynberg has not breached her fiduciary duty by filing her application, and that the separate filings by Celeste Grynberg and Rachel Grynberg do not violate the regulations. 2/

We recognize that the Department has a duty to protect other offerors from being put to an unfair advantage and providing each with an equal opportunity of obtaining a lease. There is no evidence showing that Rachel would have an interest in her mother's lease when her mother files as an individual. Therefore, there is no violation of 43 CFR 3112.2-1(f). Since Celeste Grynberg has filed as an individual as she is authorized to do under the terms of the trust, and has not filed on behalf of the trust, there is no violation of

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2/ Again, the situation would be different if Celeste Grynberg had filed an application on her own behalf and on behalf of the trust, even if the trust instrument authorized the trustee to invest in oil, gas, or other mineral interests on behalf of the trust and on her own behalf. June Oil and Gas, Inc. v. Andrus, supra at 1209.

43 CFR 3112.6-1(c)(4). There is no evidence that a multiple filing exists in violation of 43 CFR 3112.6-1 which would give Rachel Grynberg a greater mathematical chance to benefit from the results of the drawing.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is reversed and the case remanded to BLM for further action consistent herewith.

Anne Poindexter Lewis
Administrative Judge

We concur:

James L. Burski
Administrative Judge

Bruce R. Harris
Administrative Judge