

GEORGETTE B. LEE ET AL.

IBLA 70-410

Decided September 30, 1971

Oil and Gas Leases: Applications: Generally

An oil and gas lease offeror may properly participate in a simultaneous oil and gas drawing under 43 CFR 3112 (1971) through a filing service if there is no scheme, plan or agreement between the parties wherein the service obtains an "interest" in the resultant lease as defined in 43 CFR 3100.0-5(b), and in the absence of any other demonstrable legal or regulatory impediment.

Oil and Gas Leases: Applications: Generally--Oil and Gas Leases: Rentals--Regulations: Generally

A protest of a successful drawee's offer in a simultaneous drawing, for the reason that the advance rental payment required under 43 CFR 3112.2-1(a) was submitted in the form of a corporate or other private commercial money order, is properly dismissed where it is determined that such a money order is an acceptable remittance within the meaning of the term "money order" as used in the regulation.

Oil and Gas Leases: Applications--Regulations: Interpretation

Where an applicant is to be deprived of a statutory right because of his failure to comply with the requirements of a regulation, that regulation should be so clearly set forth that there is no reasonable basis for noncompliance.

IBLA 70-410 :

Eastern States 6359, 6360

GEORGETTE B. LEE  
JAMES W. MCDADE  
SAMUEL MCINTOSH

: Protest of oil and gas  
: lease offer dismissed  
  
: Affirmed

### DECISION

Georgette B. Lee, James W. McDade and Samuel W. McIntosh have appealed to the Director, Bureau of Land Management, from a decision of the Eastern States land office dismissing their protest against the issuance of leases to two of the successful drawees in the land office's simultaneous oil and gas drawing of October of 1969. 1/

The record shows that Lewis Levin was the successful drawee for parcel 14, List 69-8, and Dean Goodlow Sprout was the successful drawee for parcel 15, List 69-8. 2/ Before leases issued to these offerors appellants protested the drawing, asking that it be set aside. They alleged that the drawees had violated the Department's regulations (1) by using a filing service, Western States Geological Survey, which they imply had some interest in the prospective leases, and (2) by using non-guaranteed remittances in the form of corporate checks labeled "money orders" for their first year's rental payments. The land office found that the offerors' actions did not violate the requirements of the regulations in 43 CFR 3123.9(c)(2) (1969), now 43 CFR 3112.2-1(a) (1971), and dismissed the protest in its entirety.

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1/ The Secretary of the Interior, in the exercise of his supervisory authority, transferred jurisdiction over all appeals pending before the Director, Bureau of Land Management, to the Board of Land Appeals, effective July 1, 1970 Cir. 2273, 35 F.R. 10009, 10012.

2/ Parcel No. 14 is described as W 1/2 Sec. 3; NW 1/4, NW 1/4 NE 1/4 Sec. 4; N 1/2 NW 1/4, SW 1/4 NW 1/4 Sec. 10; E 1/2 NW 1/4 NE 1/4 Sec. 29 of T. 5 N., R. 9 E., Choc. Meridian, Mississippi. Parcel No. 15 is described as S 1/2 Sec. 18 T. 4 N., R. 10 E., Choc. Meridian, Mississippi.

The leases have not yet issued to Levin and Sprout pending the final administrative determination in this appeal.

Appellants' statement of reasons contains essentially the same arguments raised before the land office. They again request that the Bureau's drawing of October 1, 1969, be set aside and that a new drawing be held for the parcels awarded to Levin and Sprout.

Appellants devote a major portion of their brief to an attack on the relationship of the successful drawees to their filing service, Western States Geological Survey of La Suer, Minnesota. They charge that their arrangement violates the sole party in interest requirement of the regulations in 43 CFR 3100.0-5. In a broader context they challenge the use of a filing service, per se, as a violation of the Department's regulations and describe the land office's dealings with such services as "encouraging and abetting an unauthorized practice of law."

Appellants' position as to the use of a filing service is tenuous. There is nothing in the Department's regulations that specifically prevents an offeror from using a filing service. Contrary to appellants' implication, the fact that a filing service is involved in filing an oil and gas lease offer does not raise a presumption that some form of collusion exists between the offeror and the service. An offeror may properly participate in a simultaneous oil and gas drawing through a service if there is no scheme, plan or agreement between the parties wherein the service obtains an "interest" in the resultant lease as defined in 43 CFR 3100.0-5(b), and in the absence of any other demonstrable legal or regulatory impediment. 3/ John V. Steffens et al., 74 I.D. 46 (1967), and cases cited therein.

In this case the Bureau has indicated in its decision that it has on prior occasions specifically examined the form agreements used by the Western States Geological Survey. It has found

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3/ An interest is defined in the regulation as follows:

"An 'interest' in the lease includes, but is not limited to, record title interests, overriding royalty interests, working interests, operating rights or options, or any agreements governing such 'interest.' Any claim or any prospective or future claim to an advantage or benefit from a lease, and any participation or any defined or undefined share in any increments, issues, or profits which may be derived from or which accrue in any manner from the lease based upon or pursuant to any agreement or understanding existing at the time when the offer is filed, is deemed to constitute an 'interest' in such lease."

that the agreement grants the Survey authority to select the parcels, advance the first year's rental and file the cards for its clients in the monthly simultaneous filings. However, more importantly, the agreement expressly provides that "there is no agreement between the parties whereby the service is to receive any interest in any lease that issues." Such controlling language is well within the intent of the sole party in interest requirement of 43 CFR 3100.0-5(b). <sup>4/</sup>

Appellants allege a course of action by Western States Geological Survey with the offers in question which is in direct opposition to the express provisions of their form agreements. They have not presented any credible evidence to refute the Bureau's finding nor have they provided proof of any other agreement between Western States Geological Survey and Levin and Sprout wherein the Survey would obtain a definite interest in any lease issuing from the October 1969 drawing. They merely allege, without substantiation, that Western States Geological Survey requires their applicants to agree to assign their entire interest in any lease which may issue to that service in the event the applicants do not promptly reimburse the filing service for advance rentals tendered. They also allude to other incidents of alleged alteration of drawing entry cards and other practices of filing services which do not involve the offers here in question. Appellants have not shown how these allegations affect the October 1969 drawing, and, therefore, they are not relevant to our consideration of the facts of this appeal. See Georgette B. Lee, et al., 3 IBLA 171 (1971).

Appellants also protest the drawees' use of corporate money orders for their advance rentals, contending that these do not meet the requirements of the regulations in 43 CFR 3112.2-1(a). The regulation specifically provides in pertinent part:

The entry card must be accompanied by separate remittances covering the filing fee of \$10.00 and the first year's advance rental. The advance rental must be paid by cash, money order, certified check, bank

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<sup>4/</sup> "A sole party in interest in a lease or offer to lease is a party who is and will be vested with all legal and equitable rights under the lease. No one is, or shall be deemed to be, a sole party in interest with respect to a lease in which any other party has any of the interests described in this section. The requirement of disclosure in an offer to lease of an offeror's or other parties having an interest in simultaneously filed offers to lease shall have an equal opportunity for success in the drawings to determine priorities. . . ."

draft or bank cashier's check. The filing fee may be paid by a similar remittance or by uncertified check. (emphasis supplied)

This regulation was changed to its present form in 1960 in an effort to provide guaranteed remittances for the advance rental payments so as to enhance the orderly and expeditious administration of the Mineral Leasing Act. 30 U.S.C. §§ 181 *et seq.* (1964). See James W. McDade, 2 IBLA 373 (1971). Appellants' argument that certain of the commercial forms of money orders make payment subject to the satisfaction of specified conditions is equally applicable to bank drafts, which can also be drawn so as to condition their payment. The intent of the regulation was to limit remittances of advance rentals to those forms which would guarantee payment unconditionally. However, intent is not always coincidental with result in legal draftsmanship. We cannot apply the restrictive interpretation suggested by appellants to the words "money order" as currently incorporated in this section of the regulations. It has been the Department's position in the past in interpreting its regulatory requirements to resolve latent ambiguities in favor of public land applicants. Where an applicant is to be deprived of a statutory right because of his failure to comply with the requirements of a regulation, that regulation should be so clearly set forth that there is no reasonable basis for noncompliance. A. M. Shaffer et al., Betty B. Shaffer, 73 I.D. 293 (1966); William S. Kilroy et al., 70 I.D. 520 (1963); Donald C. Ingersoll, 63 I.D. 397 (1956).

The regulation in question does not clearly require any specific form of money order as an acceptable remittance for advance rental payments. We must recognize the fact that there are several forms of money orders generally used by the public and accepted in common financial transactions. "Money order" is defined in the most recent edition of Webster's Seventh New Collegiate Dictionary (1970) as "an order issued by a post office, bank or telegraph office for payment of a specified sum of money at another office." In addition we note that the public is in the habit of accepting and negotiating money orders from drug stores, large department stores and other money order companies in the course of day-to-day, routine, commercial transactions.

Appellants have cited various definitions from recognized sources which define the term "money order" only with reference to postal money orders. <sup>5/</sup> These references merely emphasize the lack

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<sup>5/</sup> Appellants submit definitions from Webster's New International Dictionary - Unabridged (3rd ed. 1961), Black's Law Dictionary (4th ed. 1951), Bouvier's Law Dictionary, (8th ed. 1914).

of specificity of the term as used in the regulation. They completely overlook a wide segment of bank and telegraphic money orders which are accepted without question in banking and financial transactions. Further, the regulation does not clearly specify, qualify or limit itself to postal money orders. Appellants invite attention to the fact that another regulation of the Department, 43 CFR 2711.3 (formerly § 2243.1-3(c)), requires "post office money orders" as one of the acceptable forms of remittance to accompany a bid to purchase public land. The inclusion of the words "post office" in that regulation and their omission from the regulation in question raises an inference that the omission was intended. Expressio unius est exclusio alterius. J. Sutherland, Statutory Construction § 4915 (3rd ed. 1943). Moreover, aside from postal money orders, we find no legal definition of the nature or character of money orders. Accordingly, until the regulation is changed to limit the required remittance for advance rentals only to postal money orders or other specified forms of acceptable money orders, this Board must interpret the use of the term "money order" in its broadest sense to include all forms of money orders generally acknowledged and accepted by the public in commercial and financial transactions.

Appellant McDade laid the premise for this appeal in another case, recently decided by this Board, in which he tendered a personal check with the words "Money Order" typewritten thereon as advance rental for an oil and gas lease offer. The Board held that the typewritten phrase did not convert the check to a money order and that his offer was properly excluded from the drawing. James W. McDade, supra. That decision did not state with particularity in what respects a personal check dubbed a "money order" differed from a money order of the sort contemplated by the regulations. It also declined to rule on whether corporate or other commercial "money orders" fall within the ambit of the regulation, reserving that question for answer here, and imposing upon this panel the need to draw the distinction, if any, between the two forms of remittance.

We are hampered in this endeavor by the fact that neither the appellants nor the Bureau has provided us with facsimilies of the instruments in question. The originals were negotiated by the land office when Levin and Sprout were declared the successful offerors, and although micro-film records of remittances are maintained in the land office for 90 days, the film of the subject money orders was not printed or preserved. This alone affords sufficient basis for dismissal of the protest as to this issue. Appellants bear the burden of proving their allegations. Porter Estate Co., A-30817 (January 5, 1968).

However, further investigation has established that Western States Geological Survey uses money orders issued by Trans-West Money Orders, bearing the signature of I. S. Osborn, payable at the Valley National Bank, La Suer, Minnesota. We will assume, arguendo, that such was the case in the instances protested.

Upon inquiry to the Secretary of State for the State of Minnesota, we have been informed that Ivan Osborn, an individual doing business as Trans-West Money Orders, has complied with the requirements of the Minnesota statute governing the sale of money orders, Minn. Stat. Ann., Sec. 48.151 (1959), of which we take official notice pursuant to 43 CFR 4.24(b). <sup>6/</sup> The State's records show that Osborn has on file as of March 25, 1969, a \$5,000 bond, dated December 27, 1968, underwritten by St. Paul Fire and Marine Insurance Company as surety, bearing their number 400 CE 4092.

Therefore, the facts attendant to Trans-West's issuance of money orders pursuant to the requirements of state law are clearly distinguishable from McDade's efforts to qualify his personal check as a money order in the earlier case.

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<sup>6/</sup> The Minnesota statute provides in section 48.151, "ADDITIONAL POWERS: Any bank, savings bank, or trust company organized under the laws of this state, or any national banking association doing business in this state, shall have the power to advertise for sale and sell for a fee money order, traveler's checks, cashier's checks, drafts, registered checks, and certified checks and no other person, firm, or corporation, either directly or through agents, shall advertise for sale or shall sell for a fee any evidence of indebtedness on which there appears the words, 'money order,' 'traveler's check,' 'cashier's check,' 'draft,' 'registered check,' 'certified check,' or other words or symbols whether of the same or different character which tend to lead the purchaser to believe that such evidence of indebtedness is other than a personal check, unless such evidence of indebtedness is issued by a person, firm or corporation which is a savings and loan association, telegraph company, or has on file in the office of the secretary of state a surety bond in the principal sum of \$5,000 issued by a bonding or insurance company authorized to do business in this state, which surety bond shall run to the state of Minnesota and shall be for the benefit of any creditor for any liability insured on account of the sale or issuance by it or its agent of any such evidence of indebtedness, or has deposited with the secretary of state securities or cash of the value of \$5,000; provided, however, that the aggregate liability of the surety to all such creditors shall, in no event, exceed the sum of such bond or deposit. Any person, firm or corporation who shall violate any provision of this section shall be guilty of misdemeanor."

In the final analysis we do not think that appellants have sufficiently shown that the offers of the successful drawees Levin and Sprout must be disqualified from the October 1969 drawing. The burden is upon a protestant to show, as justification for the disqualification of the offers of the successful drawees in a simultaneous filing drawing procedure, that the offers are in fact defective. A suggestion of the possibility of a violation of a regulation is not sufficient; a protestant must present competent proof of such violation. Absent an adequate showing of disqualification a protest alleging disqualification is properly rejected. See Duncan Miller, A-29735 (September 17, 1963), and cases cited therein.

Accordingly, appellants' protest was properly dismissed by the Eastern States land office. Pursuant to this decision the land office may proceed to issue the leases to the successful drawees, Lewis Levin and Dean Goodlow Sprout.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior (211 DM 13.5; 35 F.R. 12081), the decision appealed from is affirmed.

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Edward W. Stuebing, Member

We concur:

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Francis E. Mayhue, Member

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Newton Frishberg, Chairman

