

EUGENE PRATO

IBLA 71-81

Decided March 6, 1972

Appeal from decision by the Cheyenne, Wyoming land office, Bureau of Land Management, rejecting simultaneous oil and gas lease offer (W-26137).

Affirmed.

Oil and Gas Leases: Applications: Sole Party in Interest

Where an oil and gas lease offer, filed on a drawing entry card in a simultaneous filing procedure, contains the name of a party in interest other than the offeror, and the required statement of interest, copy of explanation of the agreement between the parties, and evidence of the qualifications of the additional party to hold such interest are not filed within the time allowed by the Department's regulations, the offer is properly rejected. The fact that the other party is the offeror's wife or that the statement is filed with the appeal cannot change the result.

APPEARANCES: Eugene Prato, pro se.

OPINION BY MRS. THOMPSON

Eugene Prato has appealed to the Board of Land Appeals from a decision of the Acting Assistant Manager of the Cheyenne, Wyoming, land office, dated October 20, 1970, rejecting his noncompetitive oil and gas lease offer W-26137 (simultaneous parcel 282--September 1970 drawing), for the reason the statement of interests required by 43 CFR 3102.7 was not filed.

On September 28, 1970, appellant filed his lease offer on a simultaneous oil and gas entry card. Appellant signed the front of the card, which stated that:

. . . applicant is the sole party in interest in this offer and the lease if issued, or if not the sole party in interest, that the names and addresses of all other interested parties are set forth on the reverse hereof.

On the reverse side of the card appellant named Marguerite Prato as a party in interest. A note appearing on the reverse side of the card prescribed that compliance must be made with the provisions of 43 CFR 3123.2, now 43 CFR 3102.7 (1972). The pertinent part of this regulation provides:

. . . If there are other parties interested in the offer a separate statement must be signed by them and by the offeror, setting forth the nature and extent of the interest of each in the offer, the nature of the agreement between them if oral, and a copy of such agreement if written. All interested parties must furnish evidence of their qualifications to hold such lease interest. Such separate statement and written agreement, if any, must be filed not later than 15 days after the filing of the lease offer. . . .

The land office rejected appellant's offer as the required statement of the other party's interest was not filed within the time required. On November 13, 1970, appellant filed his appeal to the Board. In his appeal appellant stated that the party in interest is his wife, and at the time he completed the drawing card, he was under the impression that it was necessary to list his wife as a party in interest, since his wife shares 50 percent of his assets. He indicated he has since been informed that he was not required to list his wife. 1/ He has submitted a statement with his appeal setting forth Mrs. Prato's interest in the offer. 2/

1/ This Department has ruled that husbands and wives may each hold, in his or her own right, the maximum acreage in oil and gas leases authorized for an individual or association in any one State, and that in the absence of any evidence that a husband and wife actually represent a common business interest and that the statement made by each in an offer that he is the sole party in interest is not true, the offers will be accepted. Duncan Miller, Samuel W. McIntosh, 71 I.D. 121 (1964), sustained in McIntosh v. Udall, Civil No. 1522-64, D.D.C., June 29, 1965.

If, however, the husband and wife are to share jointly in the offer and have a common business purpose, they both should file the statement as parties in interest. The fact this Department will not infer such a common purpose from their marital relationship alone does not preclude them from showing such joint interests.

2/ Mrs. Prato's statement reads as follows:

"In compliance with 43 CFR 3123.2 [now 3102.7], as party in interest, I, Marguerite Prato
 2 Anona Drive
 Upper Saddle River, N. J. 07458

hereby certify that I am a citizen of the United States, and over 21 years of age, and that my interest in oil and gas leases and options do not exceed the limitations provided by the Mineral Leasing Act of February 25, 1970, as amended, and that I hold 50% interest in Parcel No. 282, filed October 26, 1970."

The signatures of appellant and Mrs. Prato appeared below this statement.

Timothy G. Lowry, A-30487 (March 16, 1966), involved a situation quite similar to the one presented in appellant's case. In Lowry, the offeror, Timothy G. Lowry, stated in his offer that Virginia T. Lowry was a party in interest in the offer and lease if issued, but the required statement was not filed. Lowry contended on appeal that at the time of the filing Mrs. Lowry, his wife, was not a party in interest despite his statement that she was. He reasoned that since he had been the sole party in interest at the time of the filing, the regulation requiring information concerning other interested parties did not apply and therefore his offer should have been accepted as initially filed. In the decision, the Assistant Solicitor explained that the Department is confined to being advised by the statements made by the offeror and that it cannot pretend that an error never existed or correct it. Regarding the effect of Lowry's error, the Assistant Solicitor continued:

. . . That upon further information on his [appellant's] part, it eventuates that he was the sole party in interest and no statement is required cannot retroactively excuse the appellant. The point is that it is his error which is responsible for his predicament. The Government is willing to permit the appellant to correct his error but it cannot accept his contention that since he was always the sole party in interest, no statement was ever required and therefore his offer was initially valid as submitted. The Government must remain guided by an appellant's own statement until he corrects it. To do otherwise would be to foist a task of clairvoyance on the government that it is not prepared to accept. . . .

The present case is even stronger than Lowry because appellant has stated that his wife was to have a 50 percent interest in the lease. Thus the required statement should have been filed within the time required, and since it was not the offer became defective. Harvey v. Udall, 384 F. 2d. 883 (10th Cir. 1967).

The only remaining question which need be answered is appellant's contention that he corrected his error by submitting the required information on appeal. If the offer had not been filed under the present simultaneous filing system where only one card is drawn, the defect in the offer could have been cured as of the date of the compliance with the regulation as Lowry suggests.

The regulations now applicable to simultaneous filings provide that if the successful drawee is unqualified to receive the lease, the lands in the numbered leasing unit for which the entry card was submitted shall be included in another simultaneous filing drawing procedure. Therefore, in Loraine Lafiner, A-31002 (May 16, 1969), the offer was rejected. Lafiner noted the difference between Lowry and the present situation.

It is now well-settled that an offer filed under the present simultaneous filing procedure is properly rejected where the required statement noting respective interests is not filed within the required 15 days, and that a statement contained in the appeal filed after the expiration of the 15-day period cannot be accepted as constituting compliance with the regulations. Richard Hubbard, 78 I.D. 170 (1971); Leonard V. Chew, 2 IBLA 232 (1971).

In conclusion, we find that the Wyoming land office correctly rejected the drawing card lease offer of appellant for failure to comply with the cited regulations.

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.

Joan B. Thompson, Member

We concur:

Edward W. Stuebing, Member

Newton W. Frishberg, Chairman

