

THOMAS P. LANG

IBLA 74-75

Decided November 27, 1973

Appeal from the decision of Montana State Office, Bureau of Land Management, declining to accept a notice of appeal from the rejection of oil and gas lease offer M-24864 (Acq.).

Dismissed.

Attorneys--Practice Before the Department: Persons Qualified
to Practice

Qualifications to practice before the Department of the Interior are prescribed by regulations. One who does not appear to fall within any of the categories of persons authorized to practice does not become so qualified merely because he is designated "attorney in fact" for the appellant, and an appeal brought by one not eligible to practice is subject to dismissal.

APPEARANCES: B. S. Johnston, Attorney in Fact, for appellant.

OPINION BY MR. STUEBING

In the drawing of simultaneously filed oil and gas lease offers conducted by the Montana State Office in March 1973 the offer of Thomas P. Lang was first drawn for Parcel No. 54, thereby earning priority of consideration. Certain special stipulations were required to be signed by the offeror prior to issuance of the lease. These stipulations were sent to Lang at his address of record, P.O. Box 11718, Salt Lake City, Utah, together with a decision allowing him 30 days to sign the stipulations and return them to the Montana State Office. On May 23, 1973, the decision and the stipulations were returned with a notice on the envelope showing it was "Unclaimed."

On July 2nd and 3rd the Bureau received letters from one B. S. Johnston of U.S. Leasing Service, indicating that he was attorney in fact for Thomas Lang and inquiring why the lease had not been issued. Replying by letter dated July 3, 1973, Johnston was apprised of what had transpired and told that Lang's noncompliance through his failure to claim his mail at his address of record and take the necessary action had caused the rejection of his offer. He was further advised that the tract was being listed as available for the submission of offers in the July drawing.

On July 13 Johnston filed a notice of appeal on behalf of Lang, again indicating that he was Lang's "attorney in fact." By its decision dated July 16, 1973, the Montana State Office refused to accept the appeal on the ground that Johnston had made no showing that he was legally empowered to act for Lang, alluding to Johnston's failure to comply with 43 CFR 3102.6-1(a)(2).

Subsequently Lang submitted a letter stating that Johnston was not acting as attorney in fact in filing for the lease, but was merely acting for him in the appeal.

The Montana State Office erred in applying the provisions of 43 CFR 3102.6 to a situation involving the filing of an appeal by one person on behalf of another, although the holding that Johnston had not demonstrated his eligibility to do so was correct.

Representation of parties before Appeals Boards of the Office of Hearings and Appeals is governed by 43 CFR Part 1, which regulates practice before the Department of the Interior. 43 CFR 4.3(a).

Johnston has made no showing that he is qualified to appear before this Department on behalf of Lang. He has not shown himself to be an attorney at law who is admitted to practice before the courts, nor has he shown that he is eligible under any of the special circumstances listed in 43 CFR 1.3. An attorney in fact who does not appear to fall within any of the categories of persons authorized to practice before the Department is not authorized to practice merely because he has a power of attorney. Hattie M. Faults, A-27509 (November 7, 1957). Moreover, Johnston may not assert that he has an interest in the offer to lease, or in the lease if issued, as Lang declared that he was the sole party in interest.

Where an appeal is taken by an attorney in fact, the appeal is subject to dismissal unless it is shown that the attorney in fact is authorized to practice before the Department. John W. Monzell, A-28817 (August 31, 1961); Lily L. Pearson, A-27505 (November 15, 1957); see Virginia Gail Atchison, 13 IBLA 18 (1973); Margaret Chicharello, 9 IBLA 124 (1973); Julius F. Pleasant, 5 IBLA 171 (1972); E. H. Hamlet, A-29516 (August 19, 1963); Kay Ann Turner, 68 I.D. 85 (1961); Ben P. Gleichner, 67 I.D. 321 (1960). A nearly identical case, also involving an appearance by Johnston, was recently decided by this Board. Henry H. Ledger, 13 IBLA 356 (1973).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the appeal is hereby dismissed.

Edward W. Stuebing, Member

We concur:

Frederick Fishman, Member

Joseph W. Goss, Member

