

Editor's note: Appealed -- aff'd, sub nom. Burglin v. Hathaway, Civ. No. A75-113 (D. Alaska Dec. 29, 1976), aff'd, No. 77-1655 (9th Cir. Aug. 18, 1978)

HARUYUKI YAMANE ET AL.

IBLA 75-179 et al.

Decided April 7, 1975

Appeals from decisions of the Alaska State Office, Bureau of Land Management, rejecting oil and gas lease applications.

Affirmed.

1. Practice Before the Department: Persons Qualified to Practice -- Rules of Practice: Appeals: Generally

An appeal filed for an appellant by an attorney-in-fact who is not himself qualified to practice before the Department under 43 CFR 1.3 is subject to summary dismissal.

2. Alaska: Land Grants and Selections: Generally -- Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases: First Qualified Applicant -- Oil and Gas Leases: Lands Subject to

Oil and gas lease applications, action on which was suspended under Public Land Order 4582, 34 F.R. 1025 (1969), are properly rejected when the lands are subsequently patented to the State of Alaska under selection applications even though the latter postdate the oil and gas lease applications; the first qualified oil and gas lease applicant has no right or interest in the land applied for which is protected by the savings clauses of the Alaska Statehood Act and the Alaska Native Claims Settlement Act.

APPEARANCES: Cliff Burglin, for appellants and pro se.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

Haruyuki Yamane et al. ^{1/} have appealed from separate decisions, rendered by the Alaska State Office, Bureau of Land Management (BLM), rejecting appellants' oil and gas lease offers, filed under the noncompetitive leasing provisions of the Mineral Leasing Act of 1920, as amended, 30 U.S.C. § 226(c) (1970), for lands within T. 2 N., Rs. 20-23 E., and T. 1 N., Rs. 21-23 E., Umiat Meridian, Alaska. The offers were filed at various times in 1967 and 1968. Action on the offers was delayed on account of conflicting Native protest F-035257 in early 1968, and then suspended under section 2 of Public Land Order (P.L.O.) No. 4582, 34 F.R. 1025 (1969), which withdrew all public lands in Alaska from disposition under the public land laws pending legislation to settle Alaska Native claims.

Pursuant to Departmental policy, the offers were to remain suspended until the lands were either patented or once again made available for mineral leasing. See Vance W. Phillips, 14 IBLA 79 (1973), modified, Vance W. Phillips, 19 IBLA 211 (1975). In September 1974, the BLM issued decisions rejecting the applications because the lands applied for were patented to the State of Alaska under selection applications F-10329, F-10330, F-10331, and F-10332, filed pursuant to section 6 of the Alaska Statehood Act, 72 Stat. 339, 48 U.S.C. notes prec. § 21 (1970).

Cliff Burglin, for himself and as attorney-in-fact for the other offerors, filed appeals from these decisions claiming, inter alia, that the Alaska Native Claims Settlement Act, 43 U.S.C. § 1601 et seq. (Supp III, 1973), stated that "prior rights" would be "respected and honored," and that the Department of the Interior has arbitrarily and capriciously handled oil and gas leasing in Alaska by instituting the land freeze and patenting the lands to the State of Alaska.

[1] The appeals filed by Cliff Burglin as attorney-in-fact are not accompanied by any showing that Mr. Burglin is qualified to practice before the Department of the Interior under the regulatory criteria in 43 CFR 1.3. An attorney-in-fact is not authorized to practice before the Department by his power of attorney alone; he must show himself qualified in his own right under 43 CFR 1.3. Thomas P. Lang, 14 IBLA 20 (1973); Hattie M. Fults, A-27509 (November 7, 1957). See also 43 CFR 4.1 and 4.3.

^{1/} See Appendix for list of appellants and lease applications consolidated for treatment in this decision.

Accordingly, the appeals filed by Mr. Burglin as attorney-in-fact, in which no appeal was filed by anyone qualified to practice before the Department, are hereby dismissed. 2/

However, in filing the appeals in two of the cases, Mr. Burglin acted on his own behalf -- as holder of a 20 percent undivided interest in each of the four offers in IBLA 75-166, M. E. Anderson et al., and as holder of a 20 percent undivided interest in application F-995 in IBLA 75-168, J. R. Beck et al. In IBLA 75-179, Haruyuki Yamane assigned 20 percent of his interest in application F-696 to Cliff Burglin. Although Mr. Burglin is not the record offeror, as the assignee of an interest in the application he was "adversely affected" by the decision rejecting the offer, and has standing to appeal the decision on his own behalf. 43 CFR 4.410. Cf. Godfrey Nordmark, 65 I.D. 299 (1958). We proceed to consider the merits of these three appeals in which Mr. Burglin was qualified to appear under 43 CFR 1.3(b)(3).

[2] Mr. Burglin argues that the applications were erroneously rejected because the Alaska Native Claims Settlement Act (ANCSA), 48 U.S.C. § 1601 et seq. (Supp. III, 1973), states that "any prior rights will be respected and honored." 3/ However, issuance of patent to the State for these lands did not violate any right held by appellants as the first qualified oil and gas lease applicants.

In Schraier v. Hickel, 419 F.2d 663 (9th Cir. 1969), the Court held that an oil and gas lease applicant's interest is

2/ These are: IBLA 75-162, Dennis F. Krize; IBLA 75-163, Mark Ringstad; IBLA 75-164, Kenneth Ringstad; IBLA 75-165, Lloyd Burgess; IBLA 75-167, John J. Sexton et al.; IBLA 75-169, Alexander Miller; IBLA 75-170, Wally Burnett, Sr. et al.; IBLA 75-171, Earnest G. Carter; and IBLA 75-172, Mary K. Carie.

3/ Section 11 of ANCSA, 43 U.S.C. § 1610(a)(1) (Supp. III, 1973), and the prior public land orders issued in anticipation of ANCSA, provide that lands withdrawn for the Native claims settlement are withdrawn "subject to valid existing rights." Section 6(b) of the Alaska Statehood Act, 72 Stat. 339, 48 U.S.C. notes prec. § 21 (1970), similarly provides, "That nothing [in the selection right granted the State] shall affect any valid existing claim, location, or entry * * *." These lands were patented to the State, so appellants seek to be brought under the Statehood Act's savings clause, not the ANCSA clause recited by appellant Burglin. We note that the ANCSA withdrawals, with their savings clauses, did not enlarge or alter appellants' rights as first qualified oil and gas lease applicants.

only an "expectation;" and his only enforceable right is to assure that if a lease issues, it will issue to the first qualified applicant under the regulations. Udall v. Tallman, 380 U.S. 1, 4 (1965). Schraier held that a previously -filed oil and gas lease application did not constitute an "existing valid right" that precluded subsequent selection by and patent to the State of Alaska. Schraier v. Hickel, supra at 667-68, citing Duesing v. Udall, 350 F.2d 748 (D.C. Cir. 1965), cert. denied, 383 U.S. 912 (1966). Appellants had no rights that precluded the grant to the State, and the offers were properly rejected because the land is no longer within the jurisdiction of the Department of the Interior and thus is not subject to leasing. R. E. Puckett, 14 IBLA 128 (1973).

When a grant has been made to a State, it owns both the surface and mineral deposits, absent a reservation thereof, and the lands in such a grant are not available for leasing under the Mineral Leasing Act of February 25, 1920, as amended, 30 U.S.C. §§ 181-263 (1970). Nicholas D. Olivier, A-28919 (June 22, 1962); John E. Miles, A-27577 (June 12, 1958).

Appellants argue that the Department of the Interior has "arbitrarily and capriciously" handled federal lands in Alaska. First, appellants attack the State of Alaska's mineral leasing policies as anticompetitive and restrictive of exploration and development. Whatever their merits, these considerations are, as the lands appellants applied for now are, outside the jurisdiction of the Department of the Interior. Nor does this allegation show any error in the Department's rejection of the offers at issue.

Second, appellants attack the "lengthy and discriminatory land freeze policy" that has been applied in Alaska. This Board has recognized and applied the policy of suspending oil and gas lease offers pending at the time of the protective land freeze initiated by P.L.O. 4582, 34 F.R. 1025 (1969), until the availability of the lands for oil and gas leasing is finally determined. George E. Utermohle, Jr., 3 IBLA 94 (1971). Again, whatever the merits of the land freeze policy, appellants have not shown that it violated any right they held as first qualified oil and gas lease applicants.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions in IBLA 75-179, IBLA 75-166, and IBLA 75-168 are affirmed, and the appeals from the decisions in the cases listed in footnote 2 are dismissed.

Frederick Fishman
Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

Joseph W. Goss
Administrative Judge

APPENDIX

| <u>IBLA No.</u> | <u>Offeror(s)/ Appellant(s)</u> | <u>Lease Application(s)</u> |
|-----------------|-------------------------------------|---------------------------------|
| 75-162 | Dennis F. Krize | F-676 |
| 75-163 | Mark Ringstad | F-678, F-679 |
| 75-164 | Kenneth Ringstad | F-683 |
| 75-165 | Lloyd Burgess | F-668, F-669 |
| 75-166 | M. E. Anderson | |
| | William Ackiss | F-978, F-979, |
| | C. Burglin | F-980, F-981 |
| 75-167 | John J. Sexton | |
| | W. D. Sexton | F-643 |
| 75-168 | J. R. Beck | |
| | June L. S. Beck | |
| | C. Burglin | F-995 |
| 75-169 | Alexander Miller | F-646, F-647, |
| | | F-689, F-690, |
| | | F-691 |
| 75-170 | Wally Burnett, Sr. | |
| | Wallace Burnett | |
| | Donald Burnett | F-681, F-682 |
| 75-171 | Earnest G. Carter | F-667 |
| 75-172 | Mary K. Carie | F-685 |
| 75-179 | Haruyuki Yamane | F-696 |

