HARRY L. MATTHEWS

IBLA 77-195 Decided March 25, 1977

Appeal from a decision of Wyoming State Office, Bureau of Land Management, denying a protest as to the awarding of oil and gas lease parcel WY-13, Serial No. W 57974.

Affirmed.

1. Oil and Gas Leases: Applications: Drawings

The fact that the addresses of the lease offeree and a filing service are identical merely indicates the use of a filing service and does not in itself give the offeror or agent a greater probability of successfully obtaining a lease or interest therein in violation of 43 CFR 3112.5-2.

2. Oil and Gas Leases: Applications: Drawings

The burden is on the protestant to prove by competent evidence an accusation that a filing service is filing offers on behalf of more than one offeror and that there is an enforceable agreement the filing service will participate in the proceeds of the lease. A mere offer to buy leases from a successful drawee does not violate the regulation prohibiting anyone from having a greater probability of success in a drawing or constitute an agreement giving an agent or broker an interest in the proceeds of a lease.

APPEARANCES: Harry L. Matthews, pro se.

OPINION BY ADMINISTRATIVE JUDGE RITVO

Harry L. Matthews appeals from the February 11, 1977, decision of the Wyoming State Office, Bureau of Land Management (BLM).

The decision denied his protest regarding the awarding of an oil and gas lease parcel WY-13, Serial No. W 57974, to James S. Featherstone, Jr., via a simultaneous oil and gas lease drawing. 43 CFR Subpart 3112.

James S. Featherstone, Jr., used a filing service to enter his drawing entry card. This filing service, known as Max M. Wilson, Inc., uses as its mailing address Drawer 1978, Roswell, New Mexico 88201, which was the address Featherstone had on his drawing entry card.

Appellant asserts the awarding of the lease to Featherstone is in violation of 43 CFR 3112.5-2, which states in part:

> When any person, association, corporation, or other entity or business enterprise files an offer to lease for inclusion in a drawing, and an offer (or offers) to lease is filed for the same lands in the same drawing by any person or party acting for, on behalf of, or in collusion with the other person, association, corporation, entity or business enterprise, under any agreement, scheme, or plan which would give either, or both, a greater probability of successfully obtaining a lease, or interest therein, in any public drawing, held pursuant to § 3110.1-6(b), all offers filed by either party will be rejected. Similarly, where an agent or broker files an offer to lease for the same lands in behalf of more than one offeror under an agreement that, if a lease issues to any of such offerors, the agent or broker will participate in any proceeds derived from such lease, the agent or broker obtains thereby a greater probability of success in obtaining a share in the proceeds of the lease and all such offers filed by such agent or broker will be rejected. * * *

As proof of violation of the above regulation appellant submits a flyer on the stationery of Max M. Wilson, Inc. This flyer, dated October 1975, states a parcel number and the location of the parcel, the number of applications anticipated, and that Max M. Wilson, Inc., is offering to a successful applicant a varying sum of money for an assignment of the lease for some of the parcels, plus a 3 percent overriding royalty. However, appellant has not produced a similar sheet which describes the parcel in question here. nor has he made an assertion that the filing service has made a similar offer regarding the subject parcel.

Since appellant has not made clear in his statement of reasons whether his appeal is based on the identical addresses of the winner

of the lease, Featherstone, and Max M. Wilson, Inc., or upon the fact that Max M. Wilson, Inc., as a filing service is seeking a participation in the leases, we will discuss both points.

[1] The identity of the address of Featherstone, the person to whom the lease was awarded, and of the address of Max M. Wilson, Inc., merely indicates the use of a filing service by Featherstone. The use of a filing service by itself is not a violation of 43 CFR 3112.5-2, which is designed to prevent any one person or party from obtaining "a greater probability of successfully obtaining a lease or interest therein." It is intended to prevent instances such as where an applicant and his agent both submit entry cards for the same parcel, Imre Prepeliczay, 22 IBLA 13 (1975), or where one applicant submits two entry cards for the same parcel, Arthur H. Davison, 23 IBLA 15 (1975), and like situations.

[2] However, 43 CFR 3112.5-2 is also designed to prevent a broker from filing an offer to lease the lands on behalf of more than one offeror, with an agreement the broker will participate in the lease. Appellant appears to allege Max M. Wilson, Inc., is participating in the lease awarded to Featherstone, based on Wilson's offer to do so in regard to other leases that were awarded in October 1975. The mere making of an offer to purchase a lease from a successful applicant does not violate the regulation.

Absent a showing of an enforceable agreement whereby the offeror is obligated to transfer any interest in the lease to the filing service, the making of such an offer is not enough to prove an illegal practice was being engaged in with respect to this drawing. John V. Steffens, 74 I.D. 46 (1967); R. M. Barton, 7 IBLA 68 (1972). The burden is on the protestant to show justification for the disqualification of the successful drawee in a simultaneous filing. He also must present competent proof of such violation, not merely an accusation. Georgette B. Lee and James W. McDade, 3 IBLA 172 (1971).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the Wyoming State Office is affirmed.

Martin Ritvo

Administrative Judge

We concur:

Newton Frishberg
Chief Administrative Judge

Douglas E. Henriques
Administrative Judge