

Editor's note: 84 I.D. 192; Secretary directed reconsideration by Oct. 5, 1977 memorandum -- See 30 IBLA 178A below; decision sustained on reconsideration -- See D.E. Pack (On Reconsideration), 38 IBLA 23 (Nov. 9, 1978); Appealed -- aff'd in part, rev'd only to retroactive effect, sub nom. Runnells v. Andrus, Civ. No. C-77-0268 (D. Utah Dec. 19, 1980), 484 F.Supp. 1234.

D. E. PACK

IBLA 77-76

Decided May 19, 1977

Appeal from decision of the Utah State Office, Bureau of Land Management, dismissing protest against pending oil and gas lease offer U-34366 of John S. Runnells.

Reversed.

1. Oil and Gas Leases: Applications: Generally

The signature of the offeror on a simultaneous oil and gas lease offer entry card may be affixed by means of a rubber stamp if it is the intention of the offeror that it be his or her signature.

2. Oil and Gas Leases: Applications: Generally! ! Oil and Gas Leases: Applications: Attorneys! in! Fact or Agents

Use of a rubber! stamped facsimile of an offeror's signature on a simultaneous oil and gas lease entry card invites inquiry into whether the card was stamped by the offeror or, instead, by his agent.

3. Oil and Gas Leases: Applications: Attorneys! in! Fact or Agents
!! Oil and Gas Leases: Applications: Drawings! ! Oil and Gas
Leases: First Qualified Applicant

Where an agent of an offeror for a simultaneous oil and gas lease signs the entry card by affixing a rubber! stamped facsimile of the offeror's signature, the requirements of 43 CFR 3102.6-1 apply and separate statements of interest by both offeror and the agent must be filed, or the offer will be rejected.

4. Oil and Gas Leases: Applications: Attorneys! in! Fact or
Agents! ! Oil and Gas Leases: Applications: Drawings! ! Words and
Phrases

"Agent." The word "agent," as used in 43 CFR 3102.6-1, requiring statements of authority and disclosure of interests in oil and gas leases by agents, includes all persons or companies having discretionary authority to act on the offeror's behalf concerning the offer or lease.

5. Oil and Gas Leases: Applications: Generally! ! Oil and Gas Leases:
Applications: Sole Party in Interest! ! Oil and Gas Leases: First
Qualified Applicant! ! Oil and Gas Leases: Options

Where a person files an oil and gas lease offer through a leasing service under an arrangement whereby the leasing service advances the first year's rental, selects the land, and controls the address at which the offeror may be reached, but no enforceable agreement is entered into whereby the offeror is obligated to transfer any interest in any lease to be issued to the leasing service, the service is not a party in interest in the offer merely because it may have a hope or expectancy of acquiring an interest, and the offeror is not precluded from stating that he is the sole party in interest in the offer.

APPEARANCES: D. E. Pack, Long Beach, California, pro se; James W. McDade, Esq., McDade and Lee, Washington, D.C., for appellee.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

In a drawing of simultaneous oil and gas lease offers conducted by the Utah State Office, Bureau of Land Management (BLM), the offer of John S. Runnells (the offeror) was drawn first for parcel UT 1408 as listed in the August 1976 notice of land subject to simultaneous filings of oil and gas leases. On October 5, 1976, D. E. Pack (appellant) filed a Notice of Protest of the results of this drawing and against issuing the lease to the offeror. In a decision dated November 11, 1976, the State Office dismissed appellant's protest because the allegations therein had been satisfactorily answered by the offeror. Appellant filed his appeal of this dismissal and the administrative case record was duly forwarded for review by this Board.

[1, 2] The problem in this case stems from the use on the offeror's drawing entry card of a rubber! stamped facsimile of his signature. The use of a rubber stamp does not invalidate a simultaneous entry card if it is the intention of the offeror that the facsimile be regarded as his or her signature. Mary I. Arata, 4 IBLA 201, 78 I.D. 397 (1971); Louis Alford, 4 IBLA 277 (1972); Robert C. Leary, 27 IBLA 296 (1976); Evelyn Chambers, 27 IBLA

317, 83 I.D. 533 (1976); William J. Sparks, 27 IBLA 330, 83 I.D. 538 (1976); Arthur S. Watkins, 28 IBLA 79 (1976). However, unlike use of a handwritten signature, use of a rubber! stamped signature on an entry card does not carry the presumption either that the signature was personally executed by the person named thereby, or that this person formulated the offer on his own. ^{1/} Leary, supra at 301; Chambers, supra at 323; Sparks, supra at 337; Watkins, supra at 81. Use of a rubber! stamped facsimile thus invites inquiry into whether a person other than the offeror executed the facsimile signature by affixing it on the entry card and, if so, whether that person served as the offeror's agent concerning the offer or lease.

[3] The purpose of this inquiry is to determine whether the offeror is qualified to receive an oil and gas lease, since the BLM may issue these leases only to the first qualified offeror. 30 U.S.C. § 226 (1970); 43 CFR Subpart 3102. If the offer (entry card) is signed by an agent of the offeror rather than by the offeror himself, 43 CFR 3102.6-1(a)(2) ^{2/} requires the filing of separate

^{1/} We do not imply that the BLM must make these presumptions in every case where a signature is handwritten. We observe to the contrary that it is within the discretion of the BLM to examine the circumstances surrounding a handwritten signature where appropriate in order to determine its validity. ^{2/} Section 3102.6-1(a)(2) states as follows:

"If the offer is signed by an attorney in fact or agent, it shall be accompanied by separate statements over the signatures of the attorney! in! fact or agent and the offeror stating whether or not there is any agreement or understanding between them or with any other person, either oral or written, by which the attorney in fact or agent or such other person has received or is to receive any

statements of interest by both the offeror and his agent. The offer is properly rejected as unqualified where these separate statements are not filed by both the offeror and his or her agent. Southern Union Production Company, 22 IBLA 379 (1975); Leary, supra; Chambers, supra; Sparks, supra; Watkins, supra. Thus, we must inquire as to whether someone other than the offeror stamped the entry card, and if so, whether this person was the offeror's agent.

Pursuant to an inquiry by the BLM, the offeror stated as follows concerning his entry card:

I am the sole party in interest in the above numbered offer to lease and lease, if issued.

The application for Lease #U34366 was prepared by Stewart Capital Corporation, 100 South Wacker

fn. 2 (continued)

interest in the lease when issued including royalty interest or interest in any operating agreement under the lease, giving full details of the agreement or understanding if it is a verbal one. The statement must be accompanied by a copy of any such written agreement or understanding. If such an agreement or understanding exists, the statement of the attorney! in! fact or agent should set forth the citizenship of the attorney! in! fact or agent or other person and whether his direct and indirect interests in oil and gas leases, applications, and offers including options for such leases or interests therein exceed 246,080 acres in any one State of which no more than 200,000 acres may be held under option, or exceeds the permissible acreage in Alaska as set forth in § 3101.1-5. The statement by the principal (offeror) may be filed within 15 days after the filing of the offer. This requirement does not apply in cases in which the attorney! in! fact or agent is a member of an unincorporated association (including a partnership), or is an officer of a corporation and has an interest in the offer or the lease to be issued solely by reason of the fact that he is a member of the association or a stockholder in the corporation."

Drive, Chicago, Illinois, 60606, and, with my permission, my signature was affixed with a rubber stamp. I employ Stewart Capital Corporation, a service organization, to perform this service for me.

This statement indicates that the offeror intended the rubber! stamped facsimile to be regarded as his signature, and so the Arata requirement is satisfied. However, it also indicates that the Stewart Capital Corporation (Stewart), rather than the offeror himself, affixed the facsimile signature on the entry card. We have held that 43 CFR 3102.6-1(a)(2) applies where an agent of the offeror signs the entry card by affixing a rubber! stamped facsimile of the offeror's signature. Leary, supra at 299; Sparks, supra at 339; Watkins, supra at 81. It is, therefore, necessary to examine the circumstances under which the signature was stamped on the entry card in order to determine whether Stewart was the offeror's agent because, if so, the offeror would have to meet the filing requirements of this regulation in order to receive the lease here.

[4] A person is an agent of an offeror if he has authority to act with discretion on the offeror's behalf rather than only to perform manual or mechanical tasks involving no discretion, such as signing an entry card as the offeror's amanuensis. Chambers, supra at 325-326. We have held more specifically that a person affixing a rubber! stamped signature of an offeror is his agent within the meaning of 43 CFR 3102.6-1(a)(2) if he formulated the offer on the offeror's behalf, that is, if the offeror did not know specifically

which lands his offer concerned. Leary, supra at 301. The record establishes to our satisfaction that Stewart, by affixing the stamped signature on the offer card and by other actions on behalf of the offeror, was acting as the offeror's agent. The record includes a letter from the offeror's attorney to the BLM enclosing the service agreement which Stewart executes with those who employ its services as the offeror did. This agreement states that Stewart is retained by the prospective offeror "to provide its advisory services in connection with, and to file, approximately [an agreed number of] filings pursuant to Stewart's Federal Oil Land Acquisition Program as described in the brochure heretofore delivered to [the would! be offeror] by Stewart." A copy of this brochure describing this program, which is incorporated into the terms of the agreement between the offeror and Stewart, is included in the record file of Nadine H. Sanford, IBLA 77-143, and we have taken official notice of it. This brochure provides in part as follows:

The Role of Stewart Capital

Stewart Capital Corporation is a service organization providing the expertise required for non! professionals to file on Federal oil and gas leases. As a result of these services, Stewart Capital's clients may be awarded oil and gas leases.

Stewart Capital Corporation retains a staff of professional landmen, each with a lifetime of experience in evaluating oil and gas leases. Each month they obtain complete lists of all available Federal leases for their area from the Bureau of Land Management and provide Stewart with a professional selection of those properties that they feel to be of

superior value. From this information and from more than 13 years of operating experience, Stewart has developed a computerized analysis for determining which leases are economically desirable for our clients and which, therefore, should be filed upon. Estimated lease value, number of anticipated applicants and acreage amount are some of the main factors entering into the computer calculation.

Stewart's services, under the program, provide for a client filing applications for a twelve month period. Each application must be accompanied by a check in the amount of \$ 10, which is the Government's cost of processing the application and is nonrefundable. Stewart prepares the various applications, noting parcel number, state, etc. and forwards them, with the checks, to the appropriate office of the Bureau of Land Management so that they will be received no later than 10:00 AM (local time) on the fourth Monday of each month.

If a Stewart client application is drawn as priority #1, a lease will be issued upon payment of the first year's rental of fifty cents per acre. Such payment, which will range from \$ 20 for the smallest parcel of 40 acres to \$ 1,280 for the largest parcel of 2,560 acres, must be received in the proper office of the Bureau of Land Management within 15 days from the date of notice. Failure to properly submit rental will result in automatic disqualification. Stewart obtains the list of winners in the various states and immediately mails, by registered letter, a cashiers check for the appropriate amount to the proper office. Stewart also wires the office stating that the check was mailed, giving the amount, the parcel to which it applies, the participant's name and the number of the registered letter. The client is then billed by Stewart for reimbursement.

As the application form requires one address only, Stewart recommends clients use Stewart's Chicago office until the lease is issued to the winning client. The advantage is that our office is manned at all times! ! whereas clients could be away on vacation or business! ! and thus Stewart would be able to act within the time permitted on any Government request in order to safeguard the issuance of the

lease. Any inquiries received from prospective purchasers are immediately passed to a landman, or whomsoever the client may designate.

Simply put, Stewart Capital combines a professional selection of leases with the mechanical processing of applications required to obtain such leases. Although Stewart maintains a record of leases awarded and advises its clients when future payments are due, it does not provide services in connection with the management of leases or the development, sale or other disposition of leases awarded to its clients. The professional services required in this area are otherwise available through independent landmen and others. [Emphasis supplied].

It is apparent that Stewart had the authority to, and did, on the offeror's behalf, select the land on which the offer was made, apply the signature stamp, file his entry card, and pay the first year's rental for the lease. Thus, Stewart formulated the offer on behalf of the offeror and used its authority to exercise discretion in other ways concerning the offer and lease, and was not acting in a purely mechanical capacity as an amanuensis. We conclude that Stewart was the offeror's agent within the meaning of 43 CFR 3102.6-1(a)(2).

We hold that since Stewart was the offeror's agent, the provisions of this section apply, and require the filing of separate statements of interest by both the offeror and Stewart. The record indicates that no such statement has been submitted by Stewart. It is accordingly unnecessary to make findings concerning the adequacy and timeliness of the offeror's statement quoted

above. Since the provisions of this section have not been met, the offeror is not qualified and his offer must be rejected.

[5] Appellant Pack also asserts that the offeror's offer is not qualified because the address listed on his drawing entry card was not his "true" address, but was in fact, as the record indicates, the address of a branch office of Stewart. Appellant further alleges and attempts to show that the offeror's offer was disqualified under 43 CFR 3100.5-5 and 3102.7, in that Stewart has an undisclosed interest in the lease and the offeror improperly stated that he was the sole party in interest. It appears that Stewart offers its "subscribers" (clientele) an "'A' Program" whereby the client who is successful in obtaining a lease through Stewart's services may, at his sole election, opt to convey a 35 percent interest in the lease to Stewart at a pre! established price. Thus, under the terms of this option, there is a possibility that Stewart may acquire lease rights from its successful clients, but Stewart has no claim of interest in the lease offer of its clients which is enforceable in law or in equity.

These issues were extensively discussed in John V. Steffens, 74 I.D. 46 (1967). 3/ In that case, a leasing service selected lands,

3/ Cited with approval in Georgette B. Lee, 3 IBLA 272 (1971); R. M. Barton, 4 IBLA 229 (1972), 5 IBLA 1 (1972), 7 IBLA 68 (1972), 9 IBLA 70 (1973); and Harry L. Matthews, 29 IBLA 240 (1977).

filed offers, and advanced funds on behalf of its clientele for leases which the service was willing to purchase from any successful client. However, the service had no enforceable right to purchase these leases. In Steffens, it was held that the leasing service did not hold an "interest" in the offers which it filed on behalf of its client on account of the mere hope or expectancy that it might subsequently acquire an interest in the lease on assignment from its client, and that the client/offeror was therefore not precluded from stating that he was the sole party in interest in the offer. Id. at 53. Moreover, Steffens considered and rejected the assertion that the use of the leasing service's address by its clients was improper. Thus, appellant's arguments on these issues are without merit. A willingness to purchase if the lessor desires to sell does not constitute an "interest" in the leasehold.

Our conclusion that appellant's protest must be sustained as to his allegation that the signature stamp was applied by the offeror's agent "without attestation by the agent as to his authority to sign said card," does not require invalidation of the drawing. The record indicates that Scott A. Harris, P.O. Box 2143, Roswell, New Mexico 88201, was the offeror whose entry card was drawn immediately after Runnells'. We accordingly direct the BLM to issue the lease in question to him, provided of course that all else is regular.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is reversed.

Edward W. Stuebing
Administrative Judge

We concur:

Newton Frishberg
Chief Administrative Judge

Joan B. Thompson
Administrative Judge
(Concurring separately)

ADMINISTRATIVE JUDGE THOMPSON CONCURRING IN THE RESULT:

I am in agreement with the reversal of the Bureau's decision. My comments are briefly directed solely to the issues raised concerning the practices of the leasing service. My views concerning some of the practices of leasing services are set forth in a concurring opinion in R. M. Barton, 4 IBLA 229, 234 (1972). There have been no administrative practices changed since that time which would cure some of the seemingly unfair advantages which leasing services may have to acquire oil and gas leases in the simultaneous drawing system. I adhere to my recommendation that measures be taken aimed at preventing some of the abuses and unfair practices of these oil and gas services, and appropriate investigation be made to assure there is no violation of the regulations and the statutes.

Joan B. Thompson
Administrative Judge

October 5, 1977

Memorandum

To: Chief Administrative Law Judge
Board of Land Appeals

From: The Secretary

Subject: Petition and Brief of J. G. Fritzinger, Jr.
IBLA 77-76 and 77-297 and Stewart Capital
Corporation, IBLA 77-76 et al.,

On July 19, 1977, J. G. Fritzinger requested the Secretary of the Interior to take original jurisdiction in the pending administrative action in IBLA 77-297, and to review D.E. Pack, 30 IBLA 166 (1977). In a related petition, Stewart Capital Corporation, on June 19, 1977, asked the Secretary to assume jurisdiction over several cases pending before the Board of Land Appeals and to review the Pack decision. Appendix A contains a list of the cases involved.

Each of the cases involves oil and gas lease offers filed in the Department's simultaneous drawing program.

I have reviewed the briefs and supporting material submitted by Fritzinger and Stewart Capital. Although I am declining to exercise my jurisdiction over the cases, the matters which have been raised in the petitions are of serious concern to the Department. Accordingly, I am directing you to reconsider your decision in D.E. Pack, 30 IBLA 166 (1977), and provide an opportunity for all affected parties in this matter to be heard. I am also directing the office of the Solicitor to file an appearance on behalf of the Bureau of Land Management as part of the Board's reconsideration of that decision. The Solicitor's Office shall file a brief in support of the Bureau's position within 60 days of the date of this memorandum.

Accordingly, the petitions of Stewart Capital Corporation and J. G. Fritzinger are remanded to the Interior Board of Land Appeals for appropriate action.

Cecil D. Andrus

30 IBLA 178A

