

Appeal from a decision of the New Mexico State Office, Bureau of Land Management (BLM), rejecting appellant's simultaneously filed noncompetitive oil and gas lease offer NM-A 28200.

Affirmed.

1. Oil and Gas Leases: Applications: Generally--Oil and Gas Leases: Future and Fractional Interest Leases

Where the regulation, 43 CFR 3130.4-4 (1975), in effect at the time of filing, required that an oil and gas lease offer for land in which the United States owns a fractional mineral interest must be accompanied by a statement showing the extent of the offeror's ownership of the operating rights to the fractional mineral interest not owned by the United States, a simultaneously-filed lease offer which is not accompanied by the required statement must be rejected, and the defect may not be "cured" by submission of the statement at a later time.

2. Evidence: Presumptions--Evidence: Sufficiency

Where a regulation requires that an oil and gas lease offer be accompanied by a separate statement, and appellant's offer is rejected for noncompliance therewith, appellant's showing that he has made it a past business practice to comply with the regulation in other instances must be

regarded as evidence tending to support his assertion that he submitted the statement in this instance. However, such evidence, while cognizable, is insufficient to prove such an assertion without corroboration. A presumption of regularity supports the official acts of public officers and, absent clear evidence to contrary, it will be presumed that they have properly discharged their official duties.

APPEARANCE: David F. Owen, pro se.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

David F. Owen appeals from a decision of the New Mexico State Office, BLM, dated October 22, 1976, rejecting his simultaneously filed noncompetitive oil and gas lease offer NM-A 28200 filed as a drawing entry card for Parcel 716 for the April 19, 1976, list of lands suitable for oil and gas filings. The basis for the decision was that the United States owns only a fractional mineral interest in the oil and gas in the parcel and the offeror failed to provide a statement required by 43 CFR 3130.4-4 (1975) showing his ownership of operating rights to the fractional mineral interest not owned by the United States.

The record shows that appellant's simultaneous oil and gas entry card was drawn second for Parcel 716. The governing regulation, 43 CFR 3130.4-4 (1975), in effect at the time of the drawing, required that an offer for a fractional present interest noncompetitive lease must be executed on a form approved by the Director and it must be accompanied by a statement showing the extent of the offeror's ownership of the operating rights to the fractional mineral interest not owned by the United States in each tract covered by the the offer to lease. 1/

Appellant asserts that he did send in the required statement on a 3 x 5 inch sheet of paper "* * *" for Parcel No. 714 and Parcel No. 716 both on the same sheet of paper for Texas." He says he also submitted a statement on a second 3 x 5 inch sheet in connection with a drawing entry card filed for Parcel No. 710 in

1/ Pursuant to Circular 2406, published at 41 F.R. 43149 (September 30, 1976), the regulation since has been amended to delete the requirement of a showing of the offeror's ownership in the operating rights.

Oklahoma, which was listed for the same drawing. He offers the following conjectural explanation for the absence of the statement relating to Parcel No. 716:

* * * I feel that the 3" X 5" sheet of paper with my statement for Parcel No. 714 and Parcel No. 716 may have been recorded with the card Parcel No. 714 or may have been blown off of the desk or table when they were being worked possible [sic] when the clerk got up to leave their [sic] desk or maybe took time to do something else. My reason for saying this is because the statement I sent in for Parcel No. 710 was recorded and lease for Parcel No. 710 was issued to me effective date September 1, 1976.

The offer of one Shirley Ann Wells of Hitchcock, Texas, was drawn first for this parcel, but was not accompanied by the statement regarding the outstanding non-federal interest. Accordingly, her offer was rejected for this reason by decision of the New Mexico State Office on August 9, 1976. Wells did not appeal, whereupon the New Mexico State Office then adjudicated appellant's offer, found it deficient for the same reason, and rejected it by the decision dated October 22, 1976. The third-drawn offer was that of one Emily K. Connell, of New Orleans, Louisiana.

Upon the filing of this appeal by Owen, the State Office transmitted the case record to this Board by memorandum, the final two paragraphs of which read:

Apparently our simultaneous section did not run across the statement. The applicant has always submitted a statement on a small piece of paper loose among his entry cards as stated on his appeal.

The regulation requiring this statement is no longer in effect and we could perhaps have given the appellant consideration, but the No. 3 drawee has a good and complete offer to lease. Therefore, we feel we must continue with the adjudication of appellant's offer to complete rejection.

As noted above, "the No. 3 drawee" is Emily K. Connell.

[1] In submitting his appeal Owens has made the required statement. However, we have consistently adhered to the rule that a simultaneously filed oil and gas lease offer which is not completely in compliance with all mandatory requirements when drawn must be rejected, and may not be "cured" by subsequent submissions. In Jelenko Stefanovic, 26 IBLA 229 (1976), we said:

We have repeatedly emphasized that this regulatory requirement is mandatory. Where the United States owns only a fractional mineral interest in the land, the offeror must accompany the offer with a statement showing the extent of the offeror's ownership of the operating rights in the fractional mineral interest not owned by the United States. Where there is no such accompanying statement the offer must be rejected. Michael Shearn, 24 IBLA 259 (1976); Margaret Hughey Hugus, 22 IBLA 146 (1975); James H. Scott, 18 IBLA 55 (1974); Michigan Wisconsin Pipe Line Co., 17 IBLA 282 (1974); Arthur E. Meinhart, 11 IBLA 138, 80 I.D. 395 (1973). The regulation is clear and free from ambiguity and cannot be disregarded. Michigan Wisconsin Pipe Line Co., *supra*. It is applicable to both simultaneous and over-the-counter filings. Arthur E. Meinhart, *supra*.

On appeal Stefanovic asserts that he does not have any interest in the 50 percent not owned by the United States. However, a simultaneously filed offer and drawing entry card must be rejected and may not be cured by the late submission of further information. June Brooks, 25 IBLA 326 (1976).

Under the simultaneous filing procedure it would be utterly pointless to allow the applicant whose defective offer is first drawn additional time to cure the defect, because he could not possibly gain priority over the next drawn offer which was regular on its face. The present procedure requires that three offers be drawn for each parcel. If the first drawn offer is unacceptable for any reason, the second drawn offer gains priority as of the date and time the offers were simultaneously filed. If the second offer is then found to be unacceptable, the third offer gains first priority. If none of the three offers are acceptable as filed, the parcel must be listed for a subsequent simultaneous filing. 43 CFR 3112.5-1. Ballard E. Spencer Trust, Inc., 18 IBLA 25, 28 (1974); *aff'd.*, B.E.S.T., Inc. v. Morton, 544 F.2d 1067 (10th Cir. 1976).

Thus, the sole question to be resolved in this case is whether there is sufficient evidence to establish with reasonable certainty that appellant actually did submit the requisite statement in association with his offer for Parcel No. 716.

[2] The Bureau of Land Management has been unable to locate the statement which Owen alleges he filed with this card, and it has not conceded any blame for its absence. Appellant merely

alleges that he submitted it and that it must have been lost by the Bureau. This, and the showing of appellant's past "business practice" in this regard, is deemed by the dissent to be a sufficient basis for reversal of the Bureau's rejection of the offer. We do not agree.

In this case all we know for certain is that appellant has made it a practice to file the statement when required to do so, in the manner described. We do not know that he always does so or the number or percentage of the times he has failed to do so, if ever. 2/ Even if it were possible for him to prove a perfect record of past compliance, this would not prove that he had not failed to comply this time through simple inadvertence, oversight or neglect.

There is a legal presumption of regularity which supports the official acts of public officers and, in the absence of clear evidence to the contrary, courts presume that they have properly discharged their official duties. United States v. Chemical Foundation, 272 U.S. 1, 15-16 (1926).

Moreover, pursuant to 43 CFR 4,24(b), we take official notice of the following account of the procedures of the New Mexico State Office, as recounted in the recently decided appeal of Duncan Miller, 29 IBLA 43, 44 (1977), by the Chief, Division of Management Services:

When an entry card is accompanied with an attachment we stamp the entry card with a rubber stamp that reads "See Attachment." On the attachment we indicate the individual's name, social security number, or taxpayer's number and the parcel number indicated on the entry card. Attachments are dated. We use the closing date of the filing period as the official date. We do not maintain a log or other record of the attachments.

When we are finished processing all the simultaneous entry cards, these attachments are delivered to the Adjudication Section in an envelope with the month written on the face of the envelope. If the attachments are qualifications of corporations

2/ Because only successful applicants in simultaneous filings are reviewed for compliance it is impossible for us or the New Mexico State Office to know that appellant "always" filed the statements when required, unless it could be shown that he was always successful.

associations, etc., they are then processed and filed in an alphabetical order for further reference. If they concern individual interests in the entry, they are destroyed if the applicant is an unsuccessful entryman.

If an attachment relates to more than one drawing entry card, we note the individual's name, social security number, etc., and all the parcel numbers involved on the attachment.

The foregoing demonstrates that the New Mexico State Office, BLM, has a regular, established procedure, amounting to a "business practice," by which such statements are accounted for, identified, safeguarded, and associated with the proper offers. In the instant case, Owen's drawing entry card for Parcel 714 was not stamped "See Attachment" by BLM, indicating that the statement did not accompany the drawing entry card on arrival at the New Mexico State Office. Moreover, Owen's drawing entry card for Parcel 716, which the missing statement was supposed to include, also lacks the notation "See Attachment." This tends to support the conclusion that the statement was not received.

In any event, the showing of the business practice of the State Office tends to offset the implications of the appellant's business practice.

In short, there is no "clear evidence" tending to show that the appellant was blameless and the statement was mishandled by BLM personnel in the regular conduct of their official duties. This does not mean, as the dissenting opinion infers, that we attribute the State Office with infallibility. We are well aware that government offices, through human agency, make mistakes. We are equally aware, through the thousands of appeals handled by this office, that people who deal with the Government also make mistakes. But in cases such as this, the presumption of regularity favors the government officer.

Finally, we are mindful of the precedent which would be set were we to accept appellant's evidence of past business practice of compliance with the regulation as proof of his compliance in this instance, particularly in the absence of any corroborating evidence. If this indeed were sufficient evidence of such compliance, then this would have significant implications for other cases involving failure to comply with mandatory requirements. For example, where an oil and gas lease rental is not received, the lessee would need only assert that he had delivered it, and point to his "business practice" of always paying the rental

properly theretofore. A great many of the claimants and applicants who bring appeals before the Board have an extensive history of similar dealing with the Department and could easily establish that in prior cases their business practice had been to comply with the requirement they are now charged with failing to meet in one specific instance. If no persuasive corroboration is required, they would need only to show their past practice to gain reversal of the decision appealed from, with the attendant adverse consequences to those who might otherwise benefit, such as the person having the next priority.

If a document does not arrive in a Government office, how is the government to "prove" the negative fact of such non-arrival by a preponderance of what the dissent describes as "direct" and "affirmative" evidence? Such a burden could rarely, if ever, be supported.

Therefore, 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 affirmed.

Edward W. Stuebing
Administrative Judge

I concur:

Douglas E. Henriques
Administrative Judge

ADMINISTRATIVE JUDGE RITVO DISSENTING

David F. Owen appeals from a decision of the New Mexico State Office, BLM, dated October 22, 1976, rejecting his simultaneously filed noncompetitive oil and gas lease offer NM-A 28200 filed as a drawing entry card for Parcel 716 for the April 19, 1976, list of lands suitable for oil and gas filings. The basis for the decision was that the United States owns only a fractional mineral interest in the oil and gas in the parcel and the offeror failed to provide a statement required by 43 CFR 3130.4-4 (1975) showing his ownership of operating rights to the fractional mineral interest not owned by the United States.

The record shows that appellant's simultaneous oil and gas entry card was drawn second for Parcel 716. The governing regulation 43 CFR 3130.4-4 (1975), in effect at the time of the drawing, required that an offer for a fractional present interest noncompetitive lease must be executed on a form approved by the Director and it must be accompanied by a statement showing the extent of the offeror's ownership of the operating rights to the fractional mineral interest not owned by the United States in each tract covered by the offer to lease. 1/

Appellant contends that he met the requirements of the regulation as it read when he filed and when the drawing was held. He states:

In the April 19, 1976 Notice of Lands Available for Oil and Gas Filings, I bid on 24 Parcels in New Mexico, 15 Parcels in Oklahoma, and 3 Parcels in Texas on those Parcels where the United States owns less than 100 percent Interest, I submitted a statement saying I did not own any Oil or Gas Interest in or around said Parcels, on sheets of paper 3" X 5" inches wide.[2/] I made out one 3" X 5" sheet for Parcel No. 710 Oklahoma. Also, I made out a

1/ Pursuant to Circular 2406, published at 41 F.R. 43149 (September 30, 1976), the regulation was amended to delete the requirement of a showing of the offeror's ownership in the operating rights.

2/ It should be noted that although appellant's statement is not couched in the exact language of the regulation specifically declaring his ownership as to operating rights, it has repeatedly been accepted by the Bureau in past drawings as a satisfactory statement in compliance with the regulation. Further, such language has been ruled by this Board to be acceptable compliance with the regulation. See Arthur E. Meinhardt, 11 IBLA 139 (1973).

statement on 3" X 5" sheet of paper for Parcel No. 714 and Parcel No. 716 both on same sheet of paper for State of Texas.

I feel that the 3" X 5" sheet of paper with my statement for Parcel No. 714 and Parcel No. 716 may have been recorded with the card Parcel No. 714 or may have been blown off of the desk or table when they were being worked possible [sic] when the clerk got up to leave their desk or maybe took time to do something else. My reason for saying this is because the statement I sent in for Parcel No. 710 was recorded and lease for Parcel No. 710 was issued to me effective date September 1, 1976.

Appellant's practice of filing a separate statement has been confirmed by the Acting State Director, New Mexico State Office, BLM, in the memorandum transmitting the appeal to the Board, dated November 9, 1976. He states: "Apparently our simultaneous section did not run across the statement. The applicant has always submitted a statement on a small piece of paper loose among his entry cards as stated on his appeal."

I agree with the majority insofar as it finds that appellant cannot cure his failure to file the required statement, if fail he did, after the time for filing had passed.

My concern is whether he has established that he submitted the statement along with his other entry cards. He says he did. The State Office, however, did not record the fact that the statement was submitted as it would have done if the statement had been submitted and the State Office had found it.

The majority refuses to accept appellant's statement, his assertion that he always submitted statements as he said he did here, and the State Office's agreement with appellant that "The applicant always submitted a statement on a small piece of paper loose among his entry cards." The majority concludes that this is not "clear evidence" that appellant was blameless and that the statement was mishandled by BLM personnel in the regular conduct of their official duties. It also relies upon the practice of the State Office as tending to offset the implications of appellant's business practice. Finally it points out that if the facts in this case are deemed sufficient to support appellant's claim that he filed the required statement, many others could rely on similar situations to establish that they had filed a missing document. The majority would require persuasive corroboration before it would accept a claim that a missing document had in fact been submitted.

To return to appellant's evidence, I note that his statement that he submitted the missing document is direct, positive evidence, which if believed by the trier of fact, is sufficient to establish the fact in question. 4 Jones, Evidence, § 29.4 (6th Ed., 1972). His assertion is not a mere allegation, as the majority categorizes it. It is a statement made under penalty of perjury, 18 U.S.C. § 1001, and is not to be disposed of so lightly. It is, of course, subject to doubts attendant upon all statements made by interested parties, but that qualification is not enough to destroy its value as evidence. Id. § 29.10 and .11. Of course, the best evidence would be the statement itself. Appellant says he submitted one statement concerning parcels No. 714 and No. 716, since both of them were in Texas. Thus, while it could have been recorded with either parcel, an examination of the microfilm records made of the entry cards shows that no notice of an attachment was stamped on No. 714. Since the attachments submitted by unsuccessful applicants for No. 714 were destroyed, no search can be made for the statement itself. Thus the best evidence of whether there was an "attachment" could have been destroyed by the State Office.

Owen's assertion that he did enclose the statement is supported by his contention that he always filed his statement as he did in this case. In this, he is completely supported by the State Office, which agrees that Owen "always submitted a statement on a small piece of paper."

What more should we demand as corroboration? No further corroboration of his practice is needed, for the State Office furnishes all that is necessary. What is needed is evidence as to what he did in this particular instance. An admission by State Office personnel that they saw and mislaid the statement would surely be enough. Would the majority accept and require the evidence of one, two, or three or more witnesses that they saw Owen enclose the statement along with his entry card?

In so ordinary a transaction as this, it is extremely unlikely that an applicant would think of having his actions witnessed and noted for use in a future dispute. We can discern no motive, or any possible benefit, for his failure to file the statement.

The evidence against Owen's position is (1) that the form was not found and (2) that if he had submitted one, its presence would have been noted by a stamp on his entry card. There is no direct statement that the statement did not accompany the card, as Owen claims that it did. This, of course, is negative evidence. In

general positive evidence outweighs negative evidence, though the trier of fact can weigh both aspects in reaching his conclusion. Jones, supra, § 29.4.

The majority buttresses this negative evidence by reference to the State Office practice by which statements such as Owen's are supposed to be noted and filed. It refers to a presumption of regularity in the performance of official duty to support this negative evidence.

A leading authority comments on the presumption thus:

Regularity: (1) Performance of Official Duty and Regularity of Proceedings. The general experience that a rule of official duty, or a requirement of legal conditions is fulfilled by those upon whom it is incumbent has given rise occasionally to a presumption of due performance of official duty. This presumption is more often mentioned than enforced; and its scope as a real presumption is indefinite and hardly capable of reduction to rules.

It may be said that most of the instances of its application are found attended by several conditions; first, that the matter is more or less in the past, and incapable of easily procured evidence; secondly, that it involves a mere formality, or detail of required procedure, in the routine of a litigation or of a public officer's action; next, that it involves to some extent the security of apparently vested rights, so that the presumption will serve to prevent an unwholesome uncertainty; and, finally, that the circumstances of the particular case add some element of probability. * * * [Footnote omitted.]

IX Wigmore on Evidence, 3rd Ed. § 2534 (1940).

A recent case presents a striking example of the limited effect of the presumption of procedural regularity. Legelle v. Teqtmeyer, 382 F. Supp. 166 (D.C.D.C., 1974). There an applicant had mailed his application for a patent on March 1, 1973. To protect his rights as an inventor, the applicant had to have his application on file in the Patent Office not later than March 6, 1973. The Patent Office stamped the application as having been received on March 8, 1973. The evidence established that the normal time for delivery from East Hartford, Connecticut, where the application was mailed, to Washington D.C., was 2 days. The applicant contended that his application should be considered as timely filed because of the presumption that mails properly addressed, having fully prepaid postage, and deposited in proper receptacles will be received by the

addressee in the ordinary course of the mails. The defendant, the Commissioner of Patents, filed an affidavit setting forth in detail the manner, custom, practice and habit by which incoming mail is handled at the Patent Office and that there was no evidence that this application had not been handled routinely. The Court found that the presumption of regular performance of duty could not overcome the strong presumption that properly dispatched mail was received in the ordinary course of the mails. It cited several cases in which the facts were substantially similar: Arkansas Motor Coaches, Limited, Inc. v. Commissioner, 198 F.2d 189 (8th Cir. 1952) and Charlson Realty Company v. United States, 384 F.2d 434 (U.S. Ct. of Claims, 1967). It quoted the following from Charlson where an application for a tax refund was stamped as having been received 1 day late, but which had been mailed 7 days before the last date.

The defendant seeks to overcome the presumption of the arrival of the petition in due course of the mails by presenting evidence of the habit and custom of the officers and employees of the court, showing in detail their method and procedure of handling mail arriving at the court, including the placing of a date stamp thereon. This is nothing but habit or custom evidence and is not sufficient to overcome the presumption of arrival in due course of mails. Such was the holding of the court in the case of Crude Oil Corp. v. Commissioner, 161 F.2d 809 (10th Cir. 1947). There the defendant proved the detailed method of handling the mail by the officers in the Internal Revenue Office in an attempt to show the late arrival of the document in that case. The court said this was not enough to overcome or rebut the assumption that it had arrived in due course of the mails.

* * * * *

The evidence as to the habit and custom of the court's officers and employees in handling the mail is negative evidence and has no appreciable value in proving the omission or commission of a specific act at a particular time when there is a presumption to the contrary as in this case. [Emphasis added.]

* * * * *

Negative evidence as to habit, custom and procedure may create a presumption that the ordinary course of business or procedure was followed on a given day. [cites omitted]. However, if such a presumption was

created in this case by the offered testimony as to the custom and procedure in handling the mail at the court when it is received, it is not sufficient to overcome the strong presumption of the arrival of plaintiff's petition in due course of the mails. The cases hold that the presumption of arrival in due course of the mails cannot be overcome by another presumption. Arkansas Motor Coaches, Ltd., Inc. v. Commissioner, supra; Rosengarten v. United States, supra.

A presumption cannot be overturned or rebutted by speculation or suspicion. It can only be destroyed or overcome by convincing and uncontradicted evidence as to the contrary which clearly and distinctly establishes a fact so that reasonable minds can draw but one inference. Falstaff Brewing Corp. v. Thompson, 101 F.2d 301, 304 (8th Cir. 1939), cert. denied, 307 U.S. 631, 59 S.Ct. 834, 83 L.Ed. 1514; Wolfgang v. Burrows, 86 U.S. App. D.C. 340, 181 F.2d 630, 631 (1950), cert. denied, 340 U.S. 826, 71 S.Ct. 61, 95 L.Ed. 606. In addition to the foregoing, to overcome the strong presumption of the arrival of a letter in due course of the mails, the countervailing evidence must show the contrary to be true by direct and positive proof of affirmative facts. The negative evidence offered by the defendant in this case fails to meet these requirements.

3.82 F.2d at 168.

It then concluded: "In like manner, the negative evidence in this case detailing the manner, custom, practice and habit of handling incoming mail by the Patent Office fails to overcome or rebut the strong presumption that the applications were timely delivered in the regular course of the mails to the Patent Office."

Here Owen's testimony consists of direct evidence plus the presumption arising from habit or custom. It is rebutted solely by what is so aptly characterized as negative evidence, which the courts the cited cases refused to accept as convincing.

The majority states that even if appellant had in the past always acted as he says he did here, it still would not prove that he had not failed to comply this time. This point is plainly true, but essentially meaningless, for all presumptions and, indeed much evidence, is based on the probative value or inference by which the unknown is deduced from the known. Wigmore, supra, § 2498(2)

Under the majority view there would be no room for any presumption, even one of procedural validity, for the evidence of past State Office practice no more "proves" what it did on this occasion than appellant's past practice "proves" what he did.

The real issue in the case is whether on all the evidence we have before us, we should accept appellant's version of the events.

In this case we have more than a mere allegation that appellant filed the necessary statement with his offer. We are confronted with his standard business practice of filing the separate statement accepted and supported by the BLM. This Board has in similar situations accepted evidence of standard operating procedures to lend circumstantial support and credibility to assertions on appeal. See Elliot and Leon Davis, 26 IBLA 91, 95 (1976); Mary White and James White, Sr., 13 IBLA 363, 364 (1973).

I would point out that the majority attributes to the State Office's failure to find and note the statement a conclusive effect and assumption of infallibility rare in terrestrial affairs. That the State Office may err, as most humans do, has quite recently been vividly demonstrated. In a recent case, the State Office had held that an oil and gas lease had been automatically terminated for failure to timely pay the annual rental. The lessee asserted that he had submitted a check, but the State Office not being able to find a check in its precincts held the lease terminated. Some 8 months later, while the appeal was pending before this Board, the State Office informed it that the check had been found. Thereupon the Board issued decision setting aside the decision cancelling the lease and remanding the case. Katherine Dalton, 31 IBLA 1 (1977). It is of some interest to contemplate what would have been the disposition of the case if the State Office had not found the lost check.

I would also call attention to a Board decision, United States v. Kiggins, 24 IBLA 187 (1976), in which it was noted that a petition for reconsideration filed in 1969 was either lost or misplaced and did not come to light until 1972. Id. at 188, footnote 2.

Finally, in a recent series of cases involving the circumstances under which a stamped signature has been placed on a drawing entry card, the Board has accepted the offeror's statement that he himself place the stamp on the card. See e.g., Louis J. Boland, 30 IBLA 237 (1977). Why we accept an offeror's statement in one case and not in another escapes me. In each situation the interests at stake are exactly the same, that is, the validity of the offer depends on the truth of what the offeror says.

In view of the fact that the BLM has substantiated appellant's business practice of filing the necessary statements on separate papers and such a filing pattern has sufficiently met the requirements in past drawings, I am persuaded that appellant's actions in this matter should be deemed adequate and timely compliance with the then requirements of the regulation.

The majority rightly shows concern for possible abuses stemming from reliance on past business practice to establish the fact of a filing. I share its concern. However, here we have a direct statement that an act was performed, a past practice corroborated by the State Office, and only a negative rebuttal. There is no question but that entry cards were mailed and received, and a proper statement filed for one lot. There is a complete absence of any possible advantage to Owen from his failure to file the required statement. This is far removed from an attempt to prove that a rental that was never received had indeed been mailed.

Therefore I would reverse the decision of the State Office, find Owen had filed the required statement, and remand for further proceedings.

Martin Ritvo
Administrative Judge