

MICHAEL J. RADIGAN
ROBERT K. RAINES

IBLA 77-158

Decided June 23, 1977

Appeal from a decision of the New Mexico State Office, Bureau of Land Management, rejecting oil and gas simultaneous lease offer NM 29238.

Affirmed.

1. Administrative Practice--Oil and Gas Leases:
Applications: Drawings--Oil and Gas Leases:
Applications: Sole Party in Interest

Where an oil and gas lease offer filed on a drawing entry card in a simultaneous filing procedure contains the name of an additional party in interest and the statement of interest, copy or explanation of the agreement between the parties, and evidence of the qualifications of the additional party are not filed within the time required by 43 CFR 3102.7, the offer must be rejected.

APPEARANCES: Michael J. Radigan and Robert K. Raines, pro se.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

Michael J. Radigan and Robert K. Raines appeal from the January 18, 1977, decision of the New Mexico State Office, Bureau of Land Management, rejecting their offer for oil and gas lease NM 29238 because their drawing entry card indicated that there were additional parties in interest, but no statement required by 43 CFR 3102.7 had been timely filed. That regulation provides in part as follows:

If there are other parties interested in the offer a separate statement must be signed by them and by the offeror, setting forth the nature and extent of the

interest of each in the offer, the nature of the agreement between them if oral, and a copy of such agreement if written. All interested parties must furnish evidence of their qualifications to hold such lease interest. Such separate statement and written agreement, if any, must be filed not later than 15 days after the filing of the lease offer. Failure to file the statement and written agreement within the time allowed will result in the cancellation of any lease that may have been issued pursuant to the offer. * * *

In a drawing held on November 15, 1976, appellants' card was drawn first from the offers for the subject parcel filed during the simultaneous filing period which ended on October 22, 1976. Because appellants' offer indicated that there were additional parties in interest, appellants' offer could not be deemed qualified unless appellants had filed the statement required by the above-quoted regulation no later than November 8, 1976.

[1] Appellants state that they filed the offer through a leasing service which failed to inform them of the need for the statement at a time when it could have been timely filed, and they ask that we give some consideration to this alleged negligence of the leasing service in the disposition of their appeal. However, in other contexts, we have held that an agent's failure to comply with regulatory requirements provides a principal with no greater an excuse than if the principal had been acting on his own behalf and had failed to comply. See, e.g., Lone Star Producing Co., 28 IBLA 132 (1976); Monturah Company, 10 IBLA 347 (1973). This concept is pertinent here.

Furthermore, under the Mineral Leasing Act, this Department may issue a noncompetitive oil and gas lease only to the first qualified applicant. 30 U.S.C. § 226(c) (1970). When the simultaneous filing procedure is used, a first qualified applicant is one who has established his priority in a drawing and has complied timely with those regulations, such as 43 CFR 3102.7, which establish an applicant's qualifications. Under the special simultaneous drawing procedure, an unqualified first-drawn offeror may not be given an opportunity to cure the defect in his offer because two other offers are drawn with priority and if all three successful drawees are unqualified the lands will be included in another list of lands available for simultaneous filing. 43 CFR 3112.2-1(a)(3) and 3112.5-1. See Ballard E. Spencer Trust, Inc. v. Morton, 544 F.2d 1067 (10th Cir. 1976). For this reason, we cannot give favorable consideration to the statement dated February 2, 1977, signed by appellants and the other two parties in interest. A drawing entry card offer must be rejected when an applicant has failed to establish his qualifications by failure to provide the statement required

by 43 CFR 3102.7. Charmay B. Allred, 26 IBLA 276 (1976); Lyle W. Todd, 26 IBLA 246 (1976); Wesley Warnock, 17 IBLA 338 (1974); W. D. Girand, 13 IBLA 112 (1973).

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.

Joan B. Thompson
Administrative Judge

We concur:

Anne Poindexter Lewis
Administrative Judge

Douglas E. Henriques
Administrative Judge