

Editor's note: Appealed -- aff'd, sub nom. Maude McDonald v. Andrus, Civ. No. S77-0333(C) (S.D. Miss. Jan. 29, 1980), aff'd in part, reversed as to retroactive application, No. 80-3155 (5th Cir. Aug. 21, 1981) 653 F.2d 1035

RAY H. THAMES

IBLA 77-298

Decided July 5, 1977

Appeal from decision of Eastern States Office, Bureau of Land Management, dismissing protest to issuance of oil and gas lease ES 16628.

Reversed.

1. Oil and Gas Leases: Applications: Generally--Oil and Gas Leases: Applications: Drawings

Reproduction of the franked postal drawing entry card is not authorized and offers filed on copies of such form must be rejected. An offer will not be rejected for this reason when an examination of several cards submitted by the same offerors fails to establish that the cards were reproductions.

2. 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.

3. Oil and Gas Leases: Applications: Generally--Oil and Gas Leases: Applications: Attorneys-in-Fact or Agents

A BLM office need not presume that an applicant rather than an agent stamped a facsimile signature on a drawing entry card, and where no agent's statement has

been submitted as required by 43 CFR 3102.6-1, a Bureau office may inquire as to whether the applicant's signature was imprinted at his request and whether he formulated the offer.

4. 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 or other 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.

APPEARANCES: Ray H. Thames, pro se.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

The simultaneously filed drawing entry card of Maude E. McDonald and Harriet S. Walsh was first drawn by the Eastern States Office, Bureau of Land Management (BLM) in a drawing held on November 5, 1976, to determine the priority of consideration for awarding an oil and gas lease for Parcel No. ES 7. Ray H. Thames' card was drawn second, and on December 7, 1976, he filed a protest with the Eastern States Office against the issuance of a lease to the first priority winners.

Thames claimed that the winners used an entry card which was a reproduction of the official franked postal entry card. He asserted that each of the cards submitted by Maude McDonald and Harriet Walsh for Parcels Nos. ES 3, 5, 8, 9, 10 and 11 was compared with the one drawn for Parcel No. ES 7 and the comparison revealed that both names shown on the cards intersected the lines on the cards perfectly. He also pointed out that every letter intersected the wording "Signature of Applicant." Appellant emphasized that such exactness could be achieved only "by shooting the card with the signature thereon and reproducing it."

Thames suggested that the intent behind using a facsimile signature should be evaluated. He contended that use of such a device by a leasing service "syndicate" to destroy competition flouts the intent of the regulations. He further argued that BLM

had no way of knowing whether the facsimile signature was properly used, especially in light of the fact that all 1,004 cards submitted through the leasing service used the same address: 100 S. Wacker Drive, Room 202, Chicago, Illinois 60606. Thames surmised that the relationship between the winners and the leasing service was one of principal and agent. If an agency situation existed, he said, it was necessary for a statement to accompany the entry card as required by 43 CFR 3102.6-1 in order that the applicant be considered qualified. No such statement was filed in this case.

Thames contended that the first drawees were not the sole parties in interest, and therefore their offer should be rejected for failure to comply with the regulation requiring that other parties in interest be disclosed. He believed that one John Runnells who also submitted a card for Parcel No. 7 was a party in interest to the winners' lease offer because, after the drawing, Runnells sent a mailgram to the Eastern States Office which read as follows: "to cover rental of Parcel No. 7 awarded to me in the October 1976 drawing, John Runnells." This information also led appellant to believe that 43 CFR 3112.5-2, the regulation prohibiting multiple filings, had been violated.

The decision issued by the Eastern States Office found that the winners' card was not a reproduction of the official form; that inquiry would be made to ascertain if an agent or attorney-in-fact had affixed the facsimile signature; 1/ that there was no evidence that an enforceable agreement existed in the November 5, 1976, drawing for a division of interests in the lease offers with undisclosed parties.

In his statement of reasons, appellant presents the same arguments which he set forth in his protest.

[1] Appellant correctly states that reproduction of the franked postal entry card is not authorized and that offers filed on such copies of that form must be rejected. Charles J. Babington, 22 IBLA 143 (1975). See also 18 U.S.C. § 501 (1970).

However, we are not persuaded by appellant's contention that the winners' card for Parcel No. 7 was a reproduction of the official form. It is apparent that the blanks on both sides of the

1/ Once it had determined that further inquiry would be made, it is not clear why Eastern States Office dismissed the protest without waiting until the necessary information was received and then making the appropriate decision based thereon.

drawing entry cards submitted by McDonald and Walsh for Parcel Nos. ES 3, 5, 7, 8, 9, 10 and 11 were all completed by a printing or other reproduction process, including the signatures. However, there is no evidence to support the conclusion that the cards themselves were reproduced unofficially. On the contrary, they appear to be the official cards printed by the Government Printing Office (GPO). Also, in its decision the Eastern States Office noted that it compared all three entry cards drawn for Parcel No. 7 with each other and with blank entry cards (Form 3112-1) chosen at random from the supply at the Eastern States Office. The Eastern States Office said the first priority winners' card came from the same United States Government Printing Office run (USGPO: 1976-678-526) as the cards used for comparison. The Eastern States Office found that the printing on this run is not consistently uniform and that there is variation in the quality of printing on all cards but no unique variation on the winners' card that would indicate that it had been reproduced.

[2, 3, 4] As for the rubber stamp signature, appellant presents a valid argument which is dispositive of this appeal. The Board has held that such signature can satisfy the requirement that the drawing entry card be signed and executed, 43 CFR 3112.2-1(a), if it is the offeror's intention that the stamp be his signature. Charlotte L. Thornton, 31 IBLA 3 (1977); Arthur S. Watkins, 28 IBLA 79 (1976); Evelyn Chambers, 27 IBLA 317, 83 I.D. 533 (1976); Robert C. Leary, 27 IBLA 296 (1976); Mary I. Arata, 4 IBLA 201, 78 I.D. 397 (1971). A State Office, however, need not presume that an applicant rather than an agent stamped the card, and where no agent's statement has been submitted a State Office may take appropriate action to establish whether a person other than the offeror executed the facsimile signature by applying it on the entry card and, if so, whether that person served as the offeror's agent. D. E. Pack, 30 IBLA 166, 84 I.D. 192 (1977); Arthur S. Watkins, *supra*; Robert C. Leary, *supra*.

If the entry card is signed by an agent of the offeror rather than by the offeror himself, 43 CFR 3102.6-1(a)(2) requires the filing of separate statements of interest by both the offeror and his agent in order for the offeror to be qualified. 30 U.S.C. § 226 (1970); 43 CFR Subpart 3102. If these statements are not filed, the offer is properly rejected. Southern Union Production Company, 22 IBLA 379 (1975). The same requirement applies where a facsimile signature is affixed on the offer by an agent or attorney-in-fact. D. E. Pack, *supra* at 171; Evelyn Chambers, *supra* at 323; Robert C. Leary, *supra* at 299.

The Eastern States Office made the appropriate inquiries and Maude McDonald and Harriet Walsh responded with signed statements which read as follows:

It was my intention that the rubber stamp used to place my signature on offer to lease ES 16628 be my signature.

The rubber stamp signature was placed on the entry card with my permission by an employee of Stewart Capital Corporation, a service corporation with which I have a contract to perform this service for me. The corporation and its employees are my contract employees.

A similar response was made to a State Office inquiry in D. E. Pack, supra, at 170-171, a case which also involved the services of Stewart Capital Corporation (Stewart). In that case the Board found that the response indicated that the offeror had intended the rubber-stamped facsimile to be regarded as the offeror's signature, but that Stewart, rather than the offeror himself, had affixed the facsimile signature on the entry card. The Board examined the circumstances under which the signature was stamped on the entry card and determined that Stewart was the offeror's agent, thereby requiring statements to be filed as provided by 43 CFR 3102.6-1(a)(2).

The Board based its conclusion on the following, at 171-172:

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. * * *

In reaching its determination, the Board stated that it took official notice of a brochure describing Stewart's Federal Oil Land Acquisition Program by which Stewart, on behalf of the offeror, selects land on which the offer is made, applies the signature stamp, files the entry card and pays the first year's rental. The Board found that the services performed by Stewart were distinguishable from those performed by an employee acting in a purely mechanical capacity as an amanuensis.

No information has been submitted which would indicate that Stewart did not perform the same services in this case as it did in

Pack, supra. Since Stewart was acting as the offeror's agent, 43 CFR 3102.6-1 applies and requires the filing of separate statements of interest by both the offeror and Stewart. No such statements were filed, and the offer must therefore be rejected.

Appellant's contentions that John Runnells was a party in interest to the lease or that the regulation prohibiting multiple filings had been violated are without merit. The fact that Runnell's name appeared on a mailgram to the Eastern States Office is of no significance. The Eastern States Office explained that the name of Runnells, who was first priority winner for Parcel No. ES 3 in the same drawing, appeared on four mailgrams sent to that office. Four first priority winners in the drawing used the same mailing address as McDonald and Walsh, and apparently Runnell's name was mistakenly placed on the three mailgrams by Stewart Capital Corporation acting in its capacity as agent for Runnells and the other first-drawn offerors.

Appellant did not present any substantial evidence of an enforceable agreement either between McDonald and Walsh and Stewart or between McDonald and Walsh and John Runnells which would violate the provisions of the regulations dealing with sole party in interest or multiple filings. John V. Steffens, 74 I.D. 46 (1967); D. E. Pack, 30 IBLA 230 (1977).

Failure of the first priority winners to submit the statements required by 43 CFR 3102.6-1 necessitates rejection of their offer. The record indicates that appellant's entry card was drawn second. We accordingly direct BLM to issue the lease in question to him, provided 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:

Douglas E. Henriques
Administrative Judge

Martin Ritvo
Administrative Judge