

BESSIE B. LANDIS

IBLA 77-21

Decided July 6, 1977

Appeal from decision of the New Mexico State Office, Bureau of Land Management, rejecting oil and gas lease offer NM 28863.

Set aside and remanded.

1. Oil and Gas Leases: Applications:
Drawings

A simultaneous drawing entry card which is filed with one name in the proper box for the name of the first offeror and a second name (that of offeror's husband) appears in the area below the space provided for the name of the second offeror as part of the first offeror's address and which is signed on the reverse by only the offeror is not prima facie defective and is not to be rejected as not "signed and fully executed," where the second name is not in proper order, is not supported by a social security number and the offeror and her husband state that he had no interest in the offer and that his name appeared on the address stamp which offeror used to place her address on the drawing entry card.

APPEARANCES: Bessie B. Landis, pro se. 1/

OPINION BY ADMINISTRATIVE JUDGE RITVO

Bessie B. Landis has appealed from a decision of the New Mexico State Office, Bureau of Land Management (BLM), dated October 14,

1/ In addition to the statement of reasons on appeal filed by Bessie B. Landis, appellant's husband, Paul H. Landis, also filed a statement of reasons in support of her appeal.

1976, rejecting oil and gas lease offer NM 28863. The offer was drawn number one at the public drawing held September 9, 1976.

The decision held that the entry card had not been signed and fully executed by an applicant as required by 43 CFR 3112.2-1. The decision stated:

Pursuant to the regulations Title 43 CFR 3112.2-1 Offer to lease. (a) Entry Card. Offers to lease such designated units by parcel numbers must be submitted on a form approved by the Director, "Simultaneous Oil and Gas Entry Card" signed and fully executed by the applicant or his duly authorized agent in his behalf. The face of the entry card shows Bessie B. Landis and Paul H. Landis as the Applicants. Bessie B. Landis shows her social security number on the face of the card and she signed and dated the reverse side of the entry card. Paul H. Landis failed to show his social security number on the space provided and failed to sign and date the reverse side of the card. See copy attached.

On appeal appellant states that her husband was not a party to the drawing and that only her name appears on the card as an applicant. Appellant explains that her husband had a stamp made with their common address on it. She states that the stamp was affixed to the entry card in the "address column, and not in the column of an applicant." She also asserts that she has filed cards in the same manner over a period of many months and the procedure has not been questioned. 2/

The name of Paul Landis was not stamped in proper order (i.e., last name first, first name, middle initial), it was not directly in the boxes provided for the name of a second applicant and finally his social security number was not given, as was that of appellant. Rather his name appeared in the blank space between the boxes provided for the second applicant and the applicant's street address. It and a street address, consisting of two lines, were stamped at a slight angle to the horizontal lines of the entry card. The name, Paul Landis, and the address comprise one stamp.

Appellant alleges that she used the stamp only to mark her address and that her husband's name was merely an extraneous part of that address. This, of course, is a perfectly acceptable explanation for the appearance of her husband's name on the card, but the question is whether it can be accepted after the drawing or whether the

2/ Paul H. Landis makes essentially the same assertions in the statement of reasons he filed in support of his wife's appeal.

mere appearance of another name on the face of the entry card renders it defective if the card does not have a corresponding signature on the reverse side.

Here the State Office leaped from the presence of two names on the face of the card to the conclusion that there were two applicants. However the absence of a social security number, a signature for the second name, and the irregular position of the second name are at least as consistent with the conclusion that the second name is not that of an applicant.

In a series of recent cases, the Board has held that where the appearance of an entry card raises questions as to its validity, the State Office may demand an explanation from the offeror and if the explanation demonstrates that the card was proper, it may be processed as a card valid when filed. For example in William Sparks, 27 IBLA 330; ___ I.D. ___ (1976); Evelyn Chambers, 27 IBLA 317, ___ I.D. ___ (1976); and Robert C. Leary, 27 IBLA 296 (1976), the Board held that, while a signature affixed by a rubber stamp may be valid, the Board may inquire into the circumstances under which the stamp was affixed to determine whether it was done by the applicant himself or an agent, and depending on these circumstances, judge the validity of the entry card. In Louis J. Boland, 30 IBLA 237 (1977), the Board held that the applicant's statement that he personally stamped the drawing entry card with his facsimile signature may be accepted and a lease issued to him.

In Margo Panos Trust, 28 IBLA 1 (1976), the Board upheld the propriety of requiring information from a person who signed several entry cards as trustee for discrete trusts to determine whether the filings violated the regulation against multiple filings, 43 CFR 3112.5-2.

In those cases the Board did not hold that the filings created an ambiguity, as they did, since they could be valid or not depending on the circumstances, but permitted the applicant to explain the circumstances creating the doubt and then judge the offers in light of the explanation.

So here, too, the card on its face was not prima facie defective. Paul Landis' name was not in the box for a second applicant and was not in the order set out for an applicant. Thus, it required an interpretation that he was a second applicant to make the card defective. Since there was an innocent possibility, i.e., Landis' name was superfluous--as well as a disqualifying one, i.e., he was a second applicant, the applicant should have been permitted to explain Landis' status. In her appeal she has done so, in a manner which reveals that the entry card was valid when filed. Accordingly, I find her entry card acceptable and is to be adjudicated in regular course.

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 State Office is set aside and case remanded for further proceedings consistent herewith.

Martin Ritvo
Administrative Judge

I concur:

Anne Poindexter Lewis
Administrative Judge

ADMINISTRATIVE JUDGE FISHMAN DISSENTING:

I respectfully dissent from the majority opinion because the stamping of the name of Paul H. Landis on the face of the entry card created an ambiguity and in oil and gas adjudication an ambiguity will be construed against the person creating such ambiguity.

This Board has held on numerous occasions that failure to sign and fully execute a drawing entry card lease offer properly results in the rejection of that offer. Amy H. Hanthorn, 27 IBLA 369 (1976) and cases cited therein. The Board has also held that BLM has neither the authority nor the duty to correct a probable error in order to make an offer valid. Mountain Fuel Supply Co., 13 IBLA 85 (1973).

The effect of the majority decision is to place the BLM State Offices under an affirmative obligation to solicit an explanation from an offerer any time the appearance of a winning entry card is prima facie deficient and thus raises question as to its validity.

The cases cited by the majority relating to the affixing of a rubber stamp signature to a drawing entry card and the signature on various entry cards of an individual as trustee for discrete trusts are distinguishable from the present case. In those cases the cards were fully executed. However, the question arose whether there had been compliance with certain regulations and a request for an explanation was necessary.

In the present case two names appear on the front of the entry card, yet there is only one signature on the reverse. The card was not properly and fully executed. The rationale applied to the rubber stamp signature and trustee cases is inapposite here.

The Board's decision which governs this case is Joseph A. Winkler, 24 IBLA 380 (1976), aff'd Joseph A. Winkler v. Kleppe, Civ. No. C76-127K, D. Wyo. (May 19, 1977). In that case the Board held that BLM had properly rejected a drawing entry card which had been stamped with the name of an agency as the ostensible offeror ("J. A. Winkler Agency") but had been signed by an individual ("Joseph A. Winkler"). The basis for the Board's decision was that the card had not been properly executed. The Board stated:

Appellant contends that he intended to file as an individual. The fact remains, however, that the drawing entry card reads "J. A. Winkler Agency." The word "agency" connotes some entity other than an individual. The State Office cannot be charged with knowing that appellant intended to file as an individual but mistakenly used his business office stamp to fill in information needed on the card. [Footnote omitted.]

The logic of Winkler, approved by the District Court, seems singularly apropos to the case at bar. The State Office cannot be charged with knowledge that Bessie B. Landis intended that she be the only applicant when her husband's name was stamped on the face of the entry card.

Appellant created an ambiguity. To remove the ambiguity all appellant had to do was scratch out the name of Paul H. Landis before filing the card. She failed to do this and she must suffer the consequences. Appellant has no vested right to receive a lease. Appellant failed to comply with 43 CFR 3112.2-1.

I would affirm the BLM decision rejecting oil and gas lease offer NM 28863.

Frederick Fishman
Administrative Judge