

Appeal from decision of the New Mexico State Office, Bureau of Land Management, dismissing protest against issuance of oil and gas lease NM 29239.

Affirmed.

1. Oil and Gas Leases: Applications: Drawings

The fact that the addresses of the lease offeror and a filing service are identical merely indicates the use of a filing service and does not in itself give the offeror or agent a greater probability of successfully obtaining a lease or interest therein in violation of 43 CFR 3112.5-2.

2. Administrative Practice--Bureau of Land Management-- Oil and Gas Leases: Applications: Generally--Rules of Practice: Protests

Where a protest has been made against the validity of a drawing entry card (DEC) in the simultaneous oil and gas lease filing procedure, it is improper to issue a lease in response to the protested DEC before the protest is finally dismissed. The Board of Land Appeals, rather than a BLM state office, has the authority to make final administrative determinations for the Department in matters relating to protests against oil and gas lease offers.

APPEARANCES: D. E. Pack, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

On October 18, 1976, pursuant to 43 CFR Subpart 3112, a notice of lands available for oil and gas filings was posted in the New Mexico State Office, Bureau of Land Management, including, inter alia, Parcel NM-87 for 1,200 acres of land in T. 22 S., R. 33 E., N.M.P.M., New Mexico. This parcel attracted a total of 4,969 drawing entry cards (DEC) during the regulatory filing period. At a public drawing held November 15, 1976, first priority to parcel NM-87 was given to the DEC filed by Charles L. Bircheat, c/o Independent Leasing, Box 28042, Dallas, Texas 75228. Second priority went to the DEC of James A. White, P. O. Box Drawer 1978, Roswell, New Mexico 88201, and third priority to the DEC of Leonard A. Frenza, 840 Washington Avenue, Waterbury, Connecticut 06708. Serial number NM 29239 was assigned to this case.

A notice, dated December 1, 1976, to pay the first year's rental was sent to Bircheat at his address of record in Dallas. 43 CFR 3112.4-1. Independent Leasing received the notice and made payment of the rental, which was received in the State Office December 10, 1976.

On December 22, D. E. Pack, asserting he had filed a DEC for parcel NM 87, protested against issuance of a lease in response to the DEC of Bircheat, alleging an untrue address on the DEC, and questioning the authenticity of Bircheat's signature. The State Office dismissed this protest by decision of December 29, 1976, because Pack gave no evidence to support his charges. The decision was modified editorially by a State Office decision dated January 5, 1977, which allowed Pack a 30-day period within which to appeal. 1/

On December 27, 1976, an assignment of the entire record title to lease NM 29239, when issued, from Bircheat to G. W. Allen was filed in the State Office, together with a request for approval of the assignment. The assignment reserved a 3 percent overriding royalty interest to Bircheat. 2/

1/ On January 14, 1977, after issuance of the lease to Bircheat, Leonard A. Frenza, whose DEC had been given third priority for parcel NM-87, filed a written protest against both the first and second priority DEC's for the parcel, using language identical to that in the Pack protest. The Frenza protest was dismissed by State Office decision dated January 27, 1977. Notice of appeal to this Board was timely filed by Frenza, but he did not perfect his appeal by a statement of reasons. The appeal of Frenza was summarily dismissed by Board Order, dated July 19, 1977. 43 CFR 4.402.

2/ An assignment of the entire record title to lease NM 29239 from Allen to El Paso Natural Gas Company was executed January 18, 1977,

The Geological Survey reported that, as of December 30, 1976, none of the lands included in parcel NM-87 were within any known geologic structure of a producing oil or gas field. Thereafter, on January 5, 1977, effective February 1, 1977, lease NM 29239 was executed on behalf of the United States. The assignment from Bircheat to Allen was likewise approved at the same time, with the same effective date of February 1.

The initial protest by Pack stated:

I * * * PROTEST the winner of Parcel # NM 87 Drawn on November 15, 1976, in your office BECAUSE I judge that the first card drawn is not his true address and THEREFORE I question his existence. It is not known at this time if his card bears a TRUE SIGNATURE or is RUBBER STAMPED, which is NOT A LEGAL SIGNATURE.

[1] There are no regulatory qualifications for any address other than the requirement that the address given shall be one at which the applicant can receive communications from BLM or the Department. One who deals with the Department has an obligation to keep it informed of an address at which communications from the Department will reach him. 43 CFR 4.401(c)(3). If the address is faulty he must bear the consequences. Kewanee Oil Company, 67 I.D. 305 (1960); Lone Star Producing Co., 28 IBLA 132 (1976). The departmental regulations, at 43 CFR 1810.2(b), provide for constructive service of documents mailed to an address of record and which are returned by the postal service as undeliverable. Further, the fact that the addresses of an applicant and of a filing service are identical merely indicates the use of a filing service in some capacity and does not, in and of itself, show collusion or that the offeror, or the filing service, had a greater probability of obtaining a lease or interest therein in violation of 43 CFR 3112.5-2. Harry L. Matthews, 29 IBLA 240 (1977).

The protestant errs in his assertion of what is a "legal signature." As this Board pointed out in Mary I. Arata, 4 IBLA 201, 78 I.D. 397 (1971), "the law is well settled that a printed name upon an instrument with the intention that it should be the signature of the person is valid and has the same effect as though the name were written in the person's own handwriting," citing Roberts v. Johnson, 212 F.2d 672 (10th Cir. 1954). See Louis Alford, 4 IBLA 277 (1972).

fn. 2 (continued)

and filed in the State Office for approval April 14, 1977. The assignment reserved 2% overriding royalty to Allen, in addition to the 3% overriding royalty earlier reserved to Bircheat.

Thus, in appropriate circumstances a rubber-stamped signature on a DEC is valid. See, e.g., Evelyn Chambers, 27 IBLA 317 (1976); Robert C. Leary, 27 IBLA 296 (1976). In any event, however, the argument is moot here as the DEC of Bircheat clearly discloses a handwritten signature.

[2] Dismissal of the protest by Pack, with right of appeal, was not an improper action by the State Office, based on the naked allegations of improper address and a possibly invalid signature. What was improper was the action of the State Office issuing a lease to Bircheat in response to the protested DEC during the period allowed for appeal by the protestant Pack. The status quo of the protested application must be maintained until final disposition of the protestant against the bona fides of the applicant. The filing of a written protest ordinarily stays the action being protested until such time as a decision on the protest is issued and, under 43 CFR 4.21, the time in which a person adversely affected may file a notice of appeal therefrom. California Association of Four Wheel Vehicle Clubs, 30 IBLA 283 (1977). This Board, as delegate of the Secretary, and not the State Office, has the authority to dismiss finally a protest, and is obliged to consider everything in the record in reaching its conclusion in the matter. Cf. United States v. Nelson, 8 IBLA 294 (1972).

In support of his appeal, Pack has augmented his initial protest by alleging a number of specific violations of the oil and gas regulations by Bircheat and others in the formulation and submission of the DEC which is under discussion: using an agent to complete the card after signing it in blank, 43 CFR 3112.2-1(a); attempting to assign the lease prior to its issuance, 43 CFR 3106.3-4; and collusive relations between Bircheat and Allen, 43 CFR 3112.5-2. Although Pack submitted a large volume of exhibits which he asserts are proof of his allegations, the exhibits fall far short of proving his above listed charges.

Looking at the assignment from Bircheat to Allen, executed and filed with BLM prior to issuance of lease NM 29239, we are constrained to the opinion that Pack does not understand the regulation, 43 CFR 3106.3-4, which reads:

§ 3106.3-4 Transfer of offer.

A transfer of the whole interest in all or any part of the offer may be approved as an incident to the transfer, by assignment or otherwise, of the whole interest in all or any part of the lease. A transfer of an undivided fractional interest in the whole offer may be approved as an incident to the transfer of an undivided fractional interest in the whole lease. An application for approval of a transfer of an offer must include

a statement that the transferee agrees to be bound by the offer to the extent that it is transferred and must be signed by the transferee. In other instances transfers of an offer will not be approved prior to the issuance of a lease for the lands or deposits covered by the said transfers.

The ultimate sentence provides that an assignment of a lease offer may be filed with BLM but it will not be approved by BLM until the lease actually issues. We point out that it is now and for years past has been common practice to file assignments with BLM before a lease has been issued, and later for BLM to approve the assignment concurrently with issuance of the lease, as was done in this case. Filing an assignment before issuance of an oil and gas lease is not a violation of any regulation. Appellant has not shown that any enforceable agreement to sell the possible resulting lease existed between Bircheat and Allen before Bircheat's DEC was filed or before the drawing which afforded first priority to this DEC for parcel NM 87. Additionally, Pack has not shown that use of a filing service by Bircheat created a violation of 43 CFR 3112.5-2. The burden is on the protestant to prove by competent evidence an accusation that a filing service is filing offers on behalf of more than one offeror and that there is an enforceable agreement it will participate in the proceeds of the lease. A mere offer to buy leases from a successful drawee does not violate the regulation prohibiting anyone from having a greater probability of success in a drawing or constitute an agreement giving an agent or broker an interest in the proceeds or a lease. Matthews, supra; D. E. Pack, 30 IBLA 230 (1977).

The exhibits from Pack relating to the purchase of lease NM 29239 by Allen from Bircheat bear dates subsequent to the establishment of the Bircheat DEC as number one priority for parcel NM 87, and in no way support a charge of collusion between Bircheat and Allen.

The charge that Bircheat did not sign and fully execute the DEC is unsupported by any evidence from Pack, but examination of the DEC indicates that, in all probability, several persons participated in its preparation, i.e., differences in type face between the name and the address; different colors of ink and styles of handwriting between the signature of Bircheat and the parcel number; a rubber-stamped date. However, the regulation, 43 CFR 3112.2-1(a), does not interdict completion of a DEC by a "duly authorized agent," nor does the regulation require any showing to BLM from either the applicant or the agent if, in fact, an agent has been employed to assist in the preparation of the DEC. 43 CFR 3102.6-1(a) requires a statement from an attorney-in-fact or agent only where he signs the DEC on behalf of the applicant. Here, where the DEC was signed by the applicant, completion of the DEC by a duly-authorized agent is not contrary to the regulations. Cf. D. E. Pack, 30 IBLA 166 (1977). No place does Pack intimate that an unauthorized agent completed the Bircheat DEC.

We point out, that prior to April 1, 1964, the regulation required statements from both applicant and agent if an agent acted in any capacity for the applicant in the preparation of the application (DEC), but this requirement was deleted in the recodification from 43 CFR 192.42(e)(4) of January 1, 1964, to 43 CFR 3123.2(d)(1) on April 1, 1964. There was no material change in language in the subsequent recodification to the present 43 CFR 3102.6-1(a). Unless the regulation is amended to require specifically a statement from a duly authorized agent who acts in any capacity for the application in a DEC, we cannot hold that a DEC completed by an agent violates the regulations, if the applicant signed the DEC himself.

Although the State Office should not have issued the lease to Bircheat before final disposition had been made of the protest by Pack, no violation of law or regulation by Bircheat has been shown. Accordingly, there is no reason to cancel the lease to Bircheat. The demand by Pack for this action is denied.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision dismissing the Pack protest is affirmed.

Douglas E. Henriques
Administrative Judge

I concur:

Anne Poindexter Lewis
Administrative Judge

ADMINISTRATIVE JUDGE THOMPSON CONCURRING IN THE RESULTS:

I am in general agreement with the conclusion reached in this case that appellant has not shown a sufficient reason for sustaining his protest. He has failed to show specifically that a law or regulation has been violated which would require us to cancel the lease involved in this case. Therefore, unless there is further information that would establish a violation of law and regulation, there is no reason to cancel the lease here merely because procedurally the Bureau's State Office should have held up issuance of the lease until final action on the protest was taken. This Board must have a justifiable factual and legal basis for action which could affect the substantive rights of a lessee. This case presently does not present such a basis.

Nevertheless, I have sympathy with some of appellant's objections to practices of such leasing services and I adhere to my views about leasing services previously expressed in concurring opinions in D. E. Pack, 30 IBLA 166, 178, 84 I.D. ____ (1977); and R. M. Barton, 4 IBLA 229, 234 (1972).

Joan B. Thompson
Administrative Judge