

Appeal from decision of the Wyoming State Office, Bureau of Land Management, rejecting simultaneous oil and gas lease offer W-57735.

Affirmed as modified.

1. Oil and Gas Leases: Applications: Generally--Oil and Gas Leases: Applications: Sole Party in Interest--Oil and Gas Leases: First Qualified Applicant

When an individual files an oil and gas lease offer through a leasing service under an agreement where the leasing service is authorized to act as the sole and exclusive agent to negotiate for sublease, assignment or sale of any rights obtained by the offeror; where the offeror is required to pay the leasing service according to a set schedule even if the offeror negotiates the sale; and where such agency to negotiate is to be valid for 5 years, the leasing service has an enforceable right to share in the proceeds of any sale of the lease or any interest therein. Such an agreement creates for the leasing service an interest in the lease as that term is defined in 43 CFR 3100.0-5(b).

2. Oil and Gas Leases: Applications: Generally--Oil and Gas Leases: Applications: Sole Party in Interest

When a leasing service holds an interest in a lease at the time it files an offer on behalf of an offeror, the offeror is not the sole party in interest and he is required by regulation, 43 CFR 3102.7, to provide the

names of other interested parties, the nature and extent of their interest and the nature of the agreement between them not later than 15 days after the filing of the offer. Failure to file the required statements results in rejection of the offer.

APPEARANCES: Lola I. Doe, pro se.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

Lola I. Doe has appealed from a decision of the Wyoming State Office, Bureau of Land Management (BLM), which rejected her simultaneously filed oil and gas lease offer W-57735 which was first drawn for parcel WY 97 in the November 1976 drawing held in the Wyoming State Office, BLM.

Appellant's lease offer was rejected by BLM following the receipt by BLM of a protest against the issuance of an oil and gas lease to appellant. The protest was filed by one Eugene R. Fischer, Milwaukee, Wisconsin. The protest charged that appellant was subject to a binding agreement with the Resource Service Company (RSC) which established a nonrevokable and exclusive agency on the part of the company whereby the company would have an interest in the lease which would be ordinarily issued. BLM found that the service agreement used by RSC was an "agreement, scheme, or plan" within the meaning of 43 CFR 3112.5-2, which is the regulation governing multiple filings. BLM concluded that the offer should be rejected because the language of the service agreement violated the regulation against multiple filings. BLM also indicated that since RSC had an interest in the lease offer at the time it was filed, the offeror was required by regulation, 43 CFR 3102.7, 1/ to file an additional statement disclosing such interest.

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1/ 43 CFR 3102.7 reads as follows:

"§ 3102.7 Showing as to sole party in interest.

A signed statement by the offeror that he is the sole party in interest in the offer and the lease, if issued; if not he shall set forth the names of the other interested parties. 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

The pertinent language in the service agreement used by RSC provides:

If I am successful in a drawing, I hereby authorize you to act as my sole and exclusive agent to negotiate for me and on my behalf with any party, firm or corporation for sub-lease, assignment or sale of any rights I obtain by reason of being successful in a drawing for the best price obtainable by you. Any final negotiated price is subject to my approval. If you have successfully negotiated a sale, assignment or lease of my rights by reason of a successful drawing or if I do so during the term of this agency, I hereby agree to pay you for your services in accordance with the schedule detailed below. This agency to negotiate shall be valid for a period of five (5) years. (Emphasis in original.)

On appeal appellant makes the following assertions, inter alia: 2/

1. I was not aware that it was illegal for Resource Service Company to claim 16% of its clients winnings.

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4. Mr. Fred Engle of RSC has been claiming 16 % of his clients winnings for a long time. Why did Mr. Eugene R. Fischer pick out only the winners of November 1976? This seems a bit unfair.

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6. Mr. Fred Engle of RSC misrepresented his talents and I feel I should not be punished for his mistakes.

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fn. 1 (continued)

that may have been issued pursuant to the offer. Upon execution of the lease the first year's rental will be earned and deposited in the U.S. Treasury and will not be returnable even though the lease is canceled." 2/ On April 5, 1977, appellant filed a notice of appeal and statement of reasons with the Wyoming State Office. On April 4, 1977, a notice of appeal had been filed by one Harry W. Theuerkauf, Esq., indicating that he was representing Mrs. Doe in this matter. By letter dated April 11, 1977, Mrs. Doe informed Mr. Theuerkauf: "This is to inform you that you are not my lawyer. I don't see how you can possibly represent Mr. Engle and me at the same time and on the same case. \* \* \* I prefer to handle this matter myself at the present time." Mrs. Doe forwarded a copy of her letter to BLM in Cheyenne. No correspondence has been received by the Board from Mr. Theuerkauf on behalf of Mrs. Doe.

[1] The initial question presented by appellant's appeal is whether the execution of the service agreement by appellant created an interest in the lease for RSC at the time of the drawing.

"Interest" in a lease is defined in 43 CFR 3100.0-5(b) which provides:

Sole party in interest. A sole party in interest in a lease or offer to lease is a party who is and will be vested with all legal and equitable rights under the lease. No one is, or shall be deemed to be, a sole party in interest with respect to a lease in which any other party has any of the interests described in this section. The requirement of disclosure in an offer to lease of an offeror's or other parties' interest in a lease, if issued, is predicated on the departmental policy that all offerors and other parties having an interest in simultaneously filed offers to lease shall have an equal opportunity for success in the drawings to determine priorities. Additionally, such disclosures provide the means for maintaining adequate records of acreage holdings of all such parties where such interests constitute chargeable acreage holdings. An "interest" in the lease includes, but is not limited to, record title interests, overriding royalty interests, working interests, operating rights or options, or any agreements covering such "interests." Any claim or any prospective or future claim to an advantage or benefit from a lease, and any participation or any defined or undefined share in any increments, issues, or profits which may be derived from or which may accrue in any manner from the lease based upon or pursuant to any agreement or understanding existing at the time when the offer is filed, is deemed to constitute an "interest" in such lease.

Under the terms of the service agreement RSC was authorized to complete the appropriate government forms and to select parcels of land on behalf of the offeror. The offeror agreed to repay RSC for any advance rental fees paid on behalf of the offeror. RSC was also authorized to act as the sole and exclusive agent to negotiate for sublease, assignment or sale of any rights obtained by the offeror. Any negotiated price would be subject to the approval of the offeror. Also, even if the offeror negotiated a sale, assignment or sublease, the offeror was required to pay RSC according to a schedule set forth in the agreement. RSC's agency to negotiate was to be valid for 5 years.

The leading departmental case examining the question of sole party in interest is John V. Steffens, 74 I.D. 46 (1967). In Steffens, a leasing service selected lands, filed offers, and advanced funds on behalf of its client for leases which the leasing service was willing to purchase from any successful client. It was held that the leasing service did not hold an "interest" in the offers which it filed on behalf of its clients. The service had no enforceable right to purchase the leases. It had merely a hope or expectation of sharing in the profits, and a hope or expectation is not the same as the right to share in such a lease. Id. at 53. See also, D. E. Pack, 30 IBLA 166, 175, 84 I.D. 192 (1977).

Steffens and Pack are clearly distinguishable from the case at bar. Herein, the service agreement provides RSC with more than a mere hope or expectation of sharing in the profits. RSC has an enforceable right by the terms of the agency provision of the agreement to share in the profits of any sublease, assignment or sale of a lease, whether such sublease, assignment or sale is negotiated by RSC or by the offeror. In addition, such a right is enforceable for a period of 5 years.

The service agreement created an "interest" in the lease as that term is defined in 43 CFR 3100.0-5(b). The definition of an interest in a lease is broad in scope. It includes, "but is not limited to, record title interests, overriding royalty interests, working interests, operating rights or options, or any agreements covering such interests'." RSC has a prospective claim to a benefit from a lease. The service agreement serves to provide RSC with a defined share of any profits which may be derived from the lease pursuant to the agreement which was in existence at the time the offer was filed.

[2] At the time appellant's offer was filed, she had executed a copy of the service agreement provided by RSC. Such agreement created an "interest" in any lease which would issue to her. Since RSC held an interest at the time the offer was filed, appellant was not the sole party in interest of her offer. As such she was required by 43 CFR 3102.7, set forth supra, to provide the names of other interested parties, the nature and extent of their interest and the nature of the agreement between them. Pursuant to the regulation, such a filing must be made not later than 15 days after the filing of the lease offer. Appellant's failure to file the required statement is a sufficient ground for rejection of her offer.

Having established that RSC held an interest in the lease, it is clear that if any other offeror availed himself of RSC's services, thereby executing a service agreement, and if such an offeror's entry card was filed by RSC in a drawing with another offeror filing through RSC, the regulation prohibiting multiple filings, 43 CFR 3112.5-2, would be violated. Such a violation would necessitate a rejection of all offers filed by RSC on behalf of offerors who had executed the service agreement containing the fatal language. However, despite the fact that BLM primarily based its rejection of appellant's offer on a violation of 43 CFR 3112.5-2, the record does not support a finding of multiple filings. There is no evidence in the record that more than one offer was filed through RSC in the drawing for this parcel, therefore, it is impossible to conclude that 43 CFR 3112.5-2 was violated. 3/

The lack of evidence concerning multiple filings, however, does not affect the result of the BLM decision. The lease offer was properly rejected because of RSC's interest in the offer. As stated by BLM in its decision: "An additional statement was required for your lease offer in accordance with 43 CFR 3102.7 (showing as to sole party in interest). Your failure to provide the additional statement is itself grounds for rejection of your lease offer."

Appellant's statements on appeal do not establish that the BLM decision was in error. Such statements appear to be an example of the confusion and frustration felt by appellant in having her offer rejected. She questions why protests would be filed against "only the winners of November 1976" when RSC had been claiming a portion of leases for a "long long time." We do not have an answer for such a question but it should be pointed out that regardless of any long-standing practice by RSC in requiring execution of a service agreement containing the agency language, such language has been determined in this case to create an interest in RSC. And as explained above, such an interest can result in rejection of an offer as violating 43 CFR 3102.7 and, under the proper circumstances as violating 43 CFR 3112.5-2.

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3/ This does not constitute a finding that BLM was wrong in this regard, but only a finding that on the basis of the record before us we cannot hold that the Bureau was correct.

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 affirmed as modified.

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Frederick Fishman  
Administrative Judge

We concur:

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Edward W. Stuebing  
Administrative Judge

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Joan B. Thompson  
Administrative Judge