

VIRGINIA L. JONES

IBLA 78-18 Decided March 21, 1978

Appeal from decision of the New Mexico State Office, Bureau of Land Management, dismissing protest to issuance of oil and gas lease NM 31307.

Affirmed as modified.

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

An offeror's use of a leasing service's address on a simultaneous noncompetitive oil and gas lease offer drawing entry card does not disqualify the offer.

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

An offeror who submits a drawing entry card signed on his behalf by his agent leasing service meets the requirements of 43 CFR 3102.6-1 if satisfactory agency statements by him and his agent are submitted along with his offer card.

3. Oil and Gas Leases: Applications: Generally--Oil and Gas Leases: Applications: Attorneys-in-Fact or Agents--Oil and Gas Leases: Applications: Drawings--Oil and Gas Leases: Applications: Sole Party in Interest

Where an offeror and his agent filing service submit statements along with a drawing entry card, which statements indicate unequivocally that there is no agreement between

them creating an interest in the agent, thus apparently obviating the need to submit details of the offeror/agent agreement per 43 CFR 3102.6-1, BLM, in its discretion, may either decline to inquire further into the details of the agreement or may request and examine a copy of the agreement to determine whether such an "interest" in the agent existed at the time the offer was filed.

4. Oil and Gas Leases: Applications: Generally—Oil and Gas Leases: Applications: Attorneys-in-Fact or Agents—Oil and Gas Leases: Applications: Drawings—Oil and Gas Leases: Applications: Sole Party in Interest

Where there is no evidence in the administrative record that the offeror with first priority in a drawing of simultaneous non-competitive oil and gas lease offers is not the sole party in interest, as stated by both the offeror and his agent, the burden is on a protestant attacking the validity of the offer to prove an accusation that the offeror/agent agreement gives the agent an enforceable interest in the lease to be issued.

5. Oil and Gas Leases: Applications: Generally—Oil and Gas Leases: Applications: Attorneys-in-Fact or Agents—Oil and Gas Leases: Applications: Drawings—Oil and Gas Leases: Applications: Sole Party in Interest—Words and Phrases

"Interest." Where there is an agreement giving an offeror the option of selling part of an oil and gas lease to his agent leasing service, exercisable solely at the offeror's discretion, the agent has a mere hope or expectancy and not an "interest" in the offer, as defined in 43 CFR 3100.0-5(b).

APPEARANCES: Joseph V. Crawford, Esq., Austin, Texas, for appellant; James W. McDade, Esq., Washington, D.C., and Craig Carver, Esq., Denver, Colorado, for John M. Fillingim.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Virginia L. Jones (appellant) and John M. Fillingim filed drawing entry cards for parcel number NM-827 in the public drawing for simultaneously-filed noncompetitive oil and gas lease offers held on August 7, 1977, by the New Mexico State Office, Bureau of Land Management (BLM). In this drawing, Fillingim's offer was drawn with first priority, and appellant's was drawn with second priority. Fillingim's drawing entry card bore a rubber-stamped facsimile of his signature and was accompanied by statements by him and the Stewart Capital Corporation (Stewart). Fillingim's statement indicates, in part, as follows:

I have contracted with Stewart Capital Corporation to perform the following functions: affix my signature by means of rubber stamp or other facsimile to offering cards and this statement (which facsimile signatures shall be deemed mine for all purposes); supply me with the benefit of a ranking of the lease parcels available each month under the simultaneous program; prepare a set number of offering cards on my behalf for a set number of months; file such offering cards on the ranked parcels available each month during the life of my contract; advise me of any winning leases obtained under the program; advance any rental payments due on winning leases and bill me therefor immediately.

Neither Stewart Capital Corporation nor any other person or organization not named on my offering card has any interest in my offering. No agreement nor understanding exists between me and Stewart Capital Corporation or any other person not named on the offering card, either oral or written, by which Stewart Capital Corporation or such other person has received, or is to receive any interest in a lease if issued as a result of this filing, including royalty interest or interest in any operating agreement. I do, of course, preserve the right, after filing this offer, to create a contract of assignment or sale of my interest in this offer, to any qualified person or organization. [Emphasis supplied.]

On August 23, 1977, BLM issued a decision requiring that Fillingim supply additional evidence by completing a questionnaire concerning the circumstances surrounding the affixing of his signature and a certified copy of the contract between himself and Stewart. BLM required this additional evidence because Fillingim had used a facsimile signature and a common address on his drawing entry card. On September 16, 1977, Fillingim, through Craig Carver, Esq., filed

information in response to this request indicating that Stewart had acted as his agent in preparing his offer and had affixed the facsimile of his signature on the drawing entry card on his behalf. Fillingim did not respond to questions advanced by BLM concerning the sequence of the formulating of the offer and the affixing of the facsimile signature. On October 20, 1977, Fillingim filed a copy of an agreement concerning the filing of oil and gas lease offers on his behalf between himself and the Aspen Corporation, a stranger to the record.

On August 25, 1977, Joseph V. Crawford, Esq., on behalf of appellant, the second drawee, filed a protest to Fillingim's offer. As grounds for this protest, appellant asserted that Fillingim had used a common address on his drawing card which invalidated his offer. ^{1/} On September 2, 1977, BLM issued a decision (erroneously captioned in Crawford's rather than appellant's name) dismissing the protest because no evidence was furnished in support of its allegations. On October 4, 1977, BLM amended its decision by changing its caption to "Virginia L. Jones." Jones has appealed from the denial of her protest. ^{2/}

[1] The sole basis of the protest presented to BLM was that Fillingim's offer card should be rejected because it included a common address rather than his own. Appellant asserts that the practice of using a common address is a violation of the rules governing simultaneous noncompetitive oil and gas leases. This argument is without merit. There is no regulation barring the use of a common address on

^{1/} On September 12, 1977, after BLM issued its decision dismissing appellant's protest, she filed a supplement to her protest, identifying the common address as Stewart's and asserting that Fillingim's offer should be rejected because he used it rather than his own "in violation of the filing rules set down by the Bureau of Land Management." This supplement crossed in the mails with BLM's decision. Cf. note 2.

^{2/} Appellant has filed the following substantive pleadings in this dispute: on October 3, 1977, a notice of appeal from BLM's dismissal of her protest; on October 26, 1977, a statement of reasons in support of this appeal, styled "Appeal from Dismissal of Protest"; on October 28, 1977, a supplementary statement of reasons, styled "Supplement to Appeal from Dismissal of Protest"; on November 18, 1977, a response to Fillingim's motion to consolidate; and on December 8, 1977, a letter to this Board with attachments, apparently unserved on Fillingim. Additionally, on October 3, 1977, appellant filed with BLM a second protest, this one of BLM's notice to her that her offer had been selected with second priority. BLM has not ruled on this protest. This decision considers all arguments raised in these substantive pleadings, this second protest, and the supplementary material filed on September 2, 1977.

a drawing entry card. It is settled that an offeror's use of a common address does not disqualify the offer. Nadine H. Sanford, 31 IBLA 184 (1977); D. E. Pack, 30 IBLA 230 (1977); 3/ Harry L. Matthews, 29 IBLA 240 (1977); R. M. Barton, 4 IBLA 229 (1972); John V. Steffens, 74 I.D. 46 (1967). Thus, BLM properly dismissed appellant's protest, although it should have applied this rule instead of relying on appellant's failure to submit adequate supporting evidence, as appellant arguably corrected this failure by subsequently furnishing proof that Fillingim had used Stewart's address rather than his own.

[2] Appellant raises several arguments for the first time on appeal. She asserts that Fillingim did not in fact make his offer, but that instead Stewart did so, as his agent and employee, and that by so doing, Fillingim violated the laws and statutes governing lease drawings.

Under 43 CFR 3102.6-1 an agent or attorney-in-fact of an offeror may file an offer on the offeror's behalf, provided that, if the agent signs the offer for the offeror, separate agency statements signed by both the offeror and his agent are submitted along with the drawing entry card. These statements must indicate whether there is an agreement between the offeror and his agent under which the agent receives or will receive any interest in the lease, if issued. If an agreement establishing an interest in the agent does exist, a copy of it must be submitted (if it is written) or a description of its terms must be included (if it is oral) with the signed statements which accompany the offer card.

In the instant case, Fillingim's offer meets the requirements of these regulations. It bears a rubber-stamped facsimile of his signature, admittedly affixed on his behalf by Stewart, his designated agent. Thus, the requirement that separate statements be filed operates here. Fillingim did in fact submit these separate statements along with his drawing entry card. These statements indicate unequivocally that no agreement exists between him and Stewart under which Stewart receives or will receive any interest in the lease if issued. Since it was declared that there was no agreement creating an interest in Stewart, Fillingim was not required to submit a copy of "any such agreement" with his offer card. Accordingly, BLM's decision dismissing appellant's protest must be affirmed, since the present record does not show that Fillingim failed to comply with any regulation concerning the filing of simultaneous noncompetitive oil and gas lease offers.

[3] We do not imply that BLM is bound in all cases to accept without inquiry assertions in agency statements that an offeror's

3/ This case should not be confused with D. E. Pack, 30 IBLA 166, 84 I.D. 192 (1977), reconsideration of which is pending before this Board.

agent has no interest in the offer. If it deems it necessary, BLM may, after the drawing, request and examine a copy of the agreement between the offeror and his agent to see if it gave the offeror an "interest" at the time the offer was made. On the other hand, where the agency statements indicate that the agent had no such interest, BLM, in its discretion, may process the lease offer without inquiring further into the details of the offeror/agent agreement, if it is satisfied to accept these statements at face value.

In the instant case, BLM has required Fillingim to submit his agreement with Stewart for scrutiny. At present, Fillingim has submitted a copy of an agreement with the Aspen Corporation rather than with Stewart. Furthermore, the agreement submitted incorporates by reference documents bearing on the interest question which he has not provided yet. BLM may, in its discretion, either require Fillingim to file this missing information or may proceed to process his offer immediately if it is satisfied as to the accuracy of the representation in his agency statement that the agreement between him and Stewart creates no interest in Stewart.

[4, 5] Appellant suggests that Fillingim and Stewart are parties to an agreement giving Fillingim the right to require that Stewart purchase part of the lease, if issued, and argues that, pursuant to her appeal, we should inquire into the nature of this agreement. This argument is without merit. Where, as here, there is no evidence of any violation in the administrative record, the burden is on the protestant to submit competent proof of an accusation that there is an agreement giving the filing service an enforceable interest in the leases, or that the regulations have otherwise been violated, absent which the protest is properly rejected. Arjay Oil Co., 33 IBLA 102 (1977); Arjay Oil Co., 31 IBLA 300 (1977) (appeal pending); Harry L. Matthews, *supra*; Georgette B. Lee, 3 IBLA 171 (1971). In any event, an agreement giving an offeror the option of selling part of an oil and gas lease to a leasing service, exercisable only at his discretion, creates in the leasing service a mere hope or expectancy and not an "interest." 43 CFR 3100.0-5(b); D. E. Pack, *supra*; Harry L. Matthews, *supra*; R. M. Barton, *supra*; and John V. Steffens, *supra*; see Sidney H. Schreter, 32 IBLA 148 (1977); see Lola I. Doe, 31 IBLA 394 (1977). ^{4/}

Appellant also relies on SEC v. Max Wilson, Inc., et al., No. 77-133M (D.N.M. June 15, 1977), enjoining Max Wilson, Inc., from operating a leasing service until it filed a registration statement under the Securities Act of 1933. This case does not affect the instant proceeding. Appellant has presented no indication that Stewart is under a similar injunction.

^{4/} Appellant has cited a decision of the Wyoming State Office of BLM holding to the contrary. Apparently, this decision was not appealed. It is the function of this Board to review state office decisions. Accordingly, this decision does not provide binding precedent here.

Finally, Fillingim, through James McDade, Esq., has filed a motion to consolidate the present matter with other cases presently before this Board, further action on which is being withheld pending reconsideration of our decision in D. E. Pack, 30 IBLA 166, 84 I.D. 192 (1977). Appellant has opposed this motion. The instant case is clearly distinguishable from Pack, in which we held that an offeror's oil and gas offer should be rejected because it was signed by its agent but was not accompanied by the agency statements. In the instant case, we have held that Fillingim's offer should not be rejected, as proper agency statements did accompany it, all else being regular with the offer. Even assuming, arguendo, that upon reconsideration of Pack, the Board should hold that the agency statements are not required in these circumstances, Fillingim's offer in this instance would not be disqualified by reason of the fact that the statements were filed. Since the issue in the instant case is thus dissimilar to Pack, it is unnecessary to withhold consideration of this matter until resolution of Pack.

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 as modified herein.

Edward W. Stuebing
Administrative Judge

We concur.

Douglas E. Henriques
Administrative Judge

Joan B. Thompson
Administrative Judge

