

WILLIAM R. BOEHM

IBLA 78-106

Decided March 27, 1978

Appeal from decision of the Wyoming State Office, Bureau of Land Management, rejecting simultaneous oil and gas lease offer W 60940.

Affirmed.

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

Where an officer of a business enterprise files oil and gas lease drawing entry cards for a parcel on behalf of both his company and himself, the business gains a greater probability of success than other entrants, owing to the officer's fiduciary duty to hold the lease for the company's exclusive use and benefit, thereby warranting rejection of the lease offers of both the company and the officer per 43 CFR 3112.5-2.

APPEARANCES: William R. Boehm, pro se.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

William R. Boehm (appellant) has appealed from the October 26, 1977, decision of the Wyoming State Office, Bureau of Land Management (BLM), rejecting his noncompetitive oil and gas lease offer. Appellant submitted on his own behalf a drawing entry card for parcel number WY 166 in the August 1977 simultaneous oil and gas lease offer drawing, in which his card was drawn with second priority. Appellant also signed a drawing entry card on behalf of Graybill Terminals Company (Graybill), as its president, and submitted it in this drawing.

Appellant's offer was reviewed by BLM when the offer with first priority was rejected because the offeror failed to pay rental due on the lease. BLM rejected appellant's individual second-drawn offer, holding that the filing by him of two offers, one individually and one as president of Graybill, appeared to be a design to enhance the mathematical probabilities of success in the drawing, and that rejection of his offer was accordingly required by 43 CFR 3112.5-2.

The issues presented here are identical to those considered by this Board in Graybill Terminals Co., 33 IBLA 243 (1978), an appeal also brought by Boehm, but in his capacity as Graybill's president rather than in his individual capacity, as in the instant case. In Graybill Terminals Co., BLM had rejected Graybill's first-drawn entry cards for two parcels in the July 1977 drawing because Boehm had also filed drawing entry cards for these parcels on his own behalf. We affirmed BLM's holding that Boehm's filing of entry cards on behalf of both Graybill and himself required rejection of Graybill's offers. In the instant case, we affirm BLM's holding that Boehm's filing entry cards for parcel WY 166 in August 1977 on behalf of both Graybill and himself requires rejection of his offer as well.

[1] Where, as here, an officer of a business enterprise files offers on behalf of both his company and himself, the business gains a greater probability of successfully obtaining the lease, creating an inherently unfair situation warranting rejection of the lease offer of either the company or the officer. 43 CFR 3112.5-2; McKay v. Wahlenmaier, 226 F.2d 35, 41-43 (1955); Graybill Terminals Co., *supra* at 245; Panra Corporation, 27 IBLA 220, 222 (1976). The company's increased probability of success arises from the officer's fiduciary duty to hold an opportunity which is sought by the company for its exclusive use and benefit, and not his own, where the officer knew when he filed his offer that the company was interested in the opportunity. *1/* Graybill Terminals Co., *supra* at 245; Panra Corporation, *supra* at 221-222. Appellant clearly knew that Graybill desired this lease, as he himself filed its offer. Since Graybill would have been entitled to the benefit of the offer if either its own or appellant's card were selected, it effectively had a double chance to win, as compared with the chances of other entrants. Under 43 CFR 3112.5-2, BLM accordingly properly rejected appellant's offer.

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*1/* It is theoretically possible for both a corporate officer and his corporation to file legitimate conflicting applications, each as sole party in interest, under the circumstances outlined in Graybill Terminals, *supra* at pp. 245-246. However, there is no indication that such circumstances obtain in this instance.

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.

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Edward W. Stuebing  
Administrative Judge

We concur.

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Martin Ritvo  
Administrative Judge

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Joan B. Thompson  
Administrative Judge

