

NEIL HIRSCH
ROBERTUS C. BOON

IBLA 78-143
78-145

Decided May 22, 1978

Appeals from decisions of the New Mexico State Office, Bureau of Land Management, rejecting offers to lease for oil and gas, NM 31946 and NM 31646.

Set aside and remanded.

1. Oil and Gas Leases: Applications: Generally

Where a successful drawee in a simultaneous oil and gas lease drawing, who is directed by a State Office to submit a copy of any agreement he may have with another person in regard to such drawing, submits a copy of an agreement which incorporates by reference a brochure issued by the leasing service with which he had an agreement, but not a copy of the brochure, he has not complied with the directive.

APPEARANCES: Weiner and Lawrence, P.C., East Rochester, New York, for appellants.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Neil Hirsch and Robertus C. Boon filed noncompetitive offers to lease for oil and gas dated September 20, 1977, and August 16, 1977, respectively, with the New Mexico State Office, Bureau of Land Management (BLM). The drawing entry cards (DEC's) thus filed by appellants Hirsch and Boon were drawn with first priority for parcels NM 1115 and NM 1026, respectively, but in October 1977, BLM requested both appellants to file additional evidence relating to the circumstances under which their offers were formulated and to file any agreements which they had entered into with third parties regarding the filing of offers to lease for oil and gas.

The reason which BLM set forth for this request for additional evidence was the use by appellants of a mailing address used by a number of other applicants. It is the position of BLM that the use of such a common address invites inquiry as to whether the DEC was formulated or filed by an agent and, in their replies to the BLM inquiry, both appellants indicated that they had engaged the aid of Eastern Investors Geological Services in preparing their offers to lease. Appellants submitted substantially identical copies of an agreement which they had made with Eastern Investors and both also sent copies of a promotional brochure headlined "High Profit Business Opportunity for the Sophisticated Investor" which described some of the services offered by Eastern. BLM concluded that the above-mentioned agreements between appellants and Eastern gave Eastern the discretionary authority to formulate and file offers on behalf of appellants and that an agency relationship had thus been formed within the meaning of 43 CFR 3102.6-1. BLM then held that appellants, having failed to file statements detailing this agency relationship as required by 43 CFR 3102.6-1, were disqualified as offerors, and rejected their offers to lease by decisions both dated November 29, 1977. Hirsch and Boon both appeal from this determination and, the issues presented by their cases being identical, their appeals have been joined for the sake of judicial efficiency.

[1] The decisions below rejecting appellants' offers to lease are both predicated upon an interpretation of the agreements between appellants and Eastern Investors which found that Eastern had been given discretionary authority to formulate and file offers for appellants. We find, however, that the evidence of contractual intent which was before BLM when it reached this conclusion was necessarily incomplete for the following reason.

The contracts between appellants and Eastern both contain a series of numbered paragraphs setting forth the various stipulations and agreements between the parties. In the case of both of the contracts now before us, the first of these numbered paragraphs provides as follows:

1. Retainer. Client hereby retains Eastern to provide it advisory services in connection with, and to file, approximately _____ filings per annum pursuant to Eastern Federal Oil Land Acquisition Program as described in the brochure heretofore delivered to Client by Eastern. Eastern hereby accepts such retainer.
[Emphasis added.]

While appellants have both filed with BLM copies of the promotional flyer "High Profit Business Opportunities," supra, published by Eastern, this flyer contains no description of a "Land Acquisition

Program" such as is incorporated by reference in the contract itself, supra. It is obvious from the face of this contract, moreover, that it cannot be properly construed or its real import weighed without an understanding of what, exactly, is meant by the "Land Acquisition Program," and it is further clear that appellants, by failing to send this information to BLM, have failed to fully comply with the BLM decisions, supra, which ordered appellants to provide copies of their agreements or contracts with Eastern.

We find, however, that the necessity of submitting a copy of the "Land Acquisition" brochure may not have been readily apparent to appellants and, therefore, they are given 30 days from the date hereof to submit a copy to the New Mexico State Office, BLM. The State Office may then adjudicate the offer, and if the brochure is not submitted within the time allowed, the offer will be rejected. Ricky L. Gifford, 34 IBLA 160 (1978).

We would also call attention to the question of whether the DEC was "signed" (1) by the offeror himself or his amanuensis, or (2) by the filing service. If it were the former, then the DEC is properly filed without regard to the services rendered by the filing service. Virginia L. Jones, 34 IBLA 188 (1978); Virginia A. Rapozo, 33 IBLA 344 (1978). If it were the latter, then the DEC must be rejected for the reasons stated in Jones, supra; Rapozo, supra; D. E. Pack, 30 IBLA 166 (1977). We suggest the evaluation of the agreement and record be made with these concepts in mind.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are set aside and remanded for further proceedings consistent with this opinion.

Douglas E. Henriques
Administrative Judge

We concur:

Martin Ritvo
Administrative Judge

Edward W. Stuebing
Administrative Judge

