

ELIAS C. BACIL

IBLA 77-580

Decided May 24, 1978

Appeal from decision of Wyoming State Office, Bureau of Land Management, dismissing protest against entitlement of successful drawee in simultaneously filed oil and gas lease drawing.

Affirmed.

1. Oil and Gas Leases: Applications: Drawings

Where an attorney-in-fact or an agent does not sign the drawing card, the showings as to the agent embodied in 43 CFR 3102.6-1 need not be submitted.

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

Appellant's charges in respect of filing of registration statements for compliance with securities laws go to question of relationships between filing service companies and their investors, and as such, are properly for consideration by Securities and Exchange Commission. Where they do not indicate noncompliance with oil and gas leasing statutes, regulations, and decisions of this Department, such charges are not proper for consideration by the Department of the Interior, which has not been delegated responsibility for enforcement of securities laws.

APPEARANCES: Elias C. Bacil, Fremont, California, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Elias C. Bacil appeals from a decision of the Wyoming State Office, Bureau of Land Management (BLM), dated August 25, 1977, dismissing his protest concerning the award of a noncompetitive oil and gas lease to the first drawn participant in a simultaneous

drawing for parcel WY-68 held August 12, 1977. Mr. Bacil's objections are threefold: Firstly, Bacil objects that the address of record of the first drawn entrant <sup>1/</sup> is an address used by a number of other participants in the drawing and is thus not the "true address" of the winner, Judith M. Nicolazzi. Secondly, Bacil states that the winner's address is, in fact, that of an oil and gas "filing service," and alleges that the winning drawing entry card (DEC) is "illegal" in light of the recent case of Securities and Exchange Commission v. Max Wilson, Inc., No. C-77-133-M (D.N.M. June 15, 1977). Wilson, supra, involved an SEC action against an investment brokerage firm which had allegedly failed to meet the registration requirements of the Federal securities laws in its various dealings relating to Federal noncompetitive oil and gas lease drawings. Finally, Bacil states that,

In regards to the D.E.C. filed by Judith M. Nicolazzi, et al, it is presumed that the signature is a RUBBER STAMPED FACSIMILE, but REGARDLESS of the method of affixing the signature, and by whom, the fact still remains that: Whenever the Agent performs any act, using his authority to exercise his own discretion without the specific instructions or the direction of the client, such as selecting the parcel number to be filed or which State in which to file said card, etc., he becomes an Agent-in-fact of the client, and is not acting in a purely mechanical capacity as an amanuensis, [sic] and thus comes within the meaning of 43 CFR 3102.6-1 requiring Separate Statements of Interests by both Offeror and Agent to be filed at the same time and with the Drawing Entry Card. Regardless as to whether the D.E.C. is rubber stamped or is personally signed by the client. [Emphasis in original.]

[1] Recently in Elias C. Bacil, 34 IBLA 322 (1978), involving the dismissal of a protest filed by this same appellant under facts virtually identical to those now before us, this Board addressed all of the arguments which Bacil makes in this case. In that case, we considered Bacil's protest in the following terms:

We note that use of a facsimile signature may meet the requirements of the regulations governing filings for simultaneous oil and gas drawings. See Robert C. Leary, 27 IBLA 296 (1976). Where an attorney-in-fact or an agent does not sign the drawing entry card, the provisions of 43 CFR 3102.6-1 are not invoked.

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<sup>1/</sup> 100 South Wacker Drive, Room 202, Chicago, Illinois 60606.

We reaffirm our earlier holdings that the burden is on the protestant to show justification for the disqualification of the successful drawee in a simultaneous oil and gas drawing. The protestant must offer competent proof of violations, not merely accusations. See Harry L. Matthews, 29 IBLA 240, 242 (1977); Georgette B. Lee and James W. McDade, 3 IBLA 172 (1971); D. E. Pack, 30 IBLA 230 (1977) (pending reconsideration). Since appellant has offered no such proof, we hold that the State Office properly dismissed appellant's protest.

34 IBLA at 324

As was the case in the above-quoted appeal, appellant, herein, has offered "merely accusations" with respect to his contention that an agent, vested with "authority to exercise his own discretion without the specific instructions or the direction of the client" acted on behalf of the winning drawee. Similarly, appellant's protest regarding the winner's use of a leasing service's address on her DEC is without merit. As we held in D. E. Pack, 30 IBLA 166 (1977), the use of a leasing service's address on a DEC does not, itself, preclude the individual offeror from stating that he is the sole party in interest in the offer, nor does it make the service an agent-in-fact of client. See also, John V. Steffens, 74 I.D. 46 (1967). 2/

[2] Appellant's argument that the winning DEC is "illegal" under the securities laws is also without merit. As we held in Bacil, supra:

We considered the applicability of the Max Wilson judgment, cited by appellant, supra, in our decision in Virginia L. Jones, 34 IBLA 188 (1978), where we said:

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

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2/ We note that the subject DEC was accompanied by separate statements from the offerors and from the filing service relative to their contractual relationship under 43 CFR 3102.6-1, as they interpret that regulation.

affect the instant proceeding. Appellant has presented no indication that [the leasing service in issue] is under a similar injunction.

34 IBLA 193. Appellant's charges in respect of the filing of registration statements for compliance with the securities laws go to the question of the relationships between filing service companies and their investors, and as such, are properly for consideration by the Securities and Exchange Commission. Where they do not indicate noncompliance with the oil and gas leasing statutes and regulations, [and decisions of this Department] such charges are not proper for consideration by the Department of the Interior, which has not been delegated responsibility for enforcement of the securities laws.

34 IBLA at 324.

Our holding herein merely affirms the BLM decision rejecting Bacil's protest. It does not purport to rule in any fashion on the acceptability of the Nicolazzi offer to lease.

Accordingly, pursuant to the authority vested in 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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Douglas E. Henriques  
Administrative Judge

We concur:

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Frederick Fishman  
Administrative Judge

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Martin Ritvo  
Administrative Judge

