

CHARLES J. BABINGTON

IBLA 78-76

Decided July 14, 1978

Appeal from decision of Eastern States Office, Bureau of Land Management, rejecting simultaneous oil and gas lease offer ES 14966.

Affirmed.

1. Evidence: Presumptions -- Evidence: Sufficiency -- Oil and Gas Leases: Applications: Filing -- Oil and Gas Leases: Future and Fractional Interest Leases

Where BLM rejected appellant's offer for oil and gas lease because it failed to receive from him fractional interest statement required by 43 CFR 3130.4-4 (1975), and evidence affidavits by appellant and his wife were filed on appeal reciting that he mailed such statement with his entry card for simultaneous drawing, the presumption of administrative regularity obtains and appellant must be deemed to have not borne his risk of nonpersuasion.

APPEARANCES: Charles J. Babington, New Orleans, Louisiana, pro se.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

Charles J. Babington appeals from an October 28, 1977, decision of the Eastern States Office, Bureau of Land Management (BLM), rejecting his simultaneous oil and gas lease offer, ES 14966, which had been chosen second at a February 11, 1975, simultaneous drawing. The first-drawn card's offer was rejected because of filing deficiencies, and is not material to this case.

The mineral rights in the acquired lands in issue were 50 percent owned by the United States. Under 43 CFR 3130.4-4 (1975), the regulation applicable at the time material to this case, an offeror for a fractional present interest noncompetitive lease was required to submit with his drawing entry card a statement detailing his ownership of operating rights to the fractional mineral interest not owned by the United States. <sup>1/</sup> The State Office based its rejection of appellant's offer upon failure to comply with this mandate.

On appeal, Babington contends:

The decision of October 28, 1978 states that applicant did not submit the mandatory statement required by 43 CFR 3130.4-4.

At the time that the envelope in which the offers that appellant made for inclusion in the drawing of February 11, 1975 was placed in the United States mails, the required statement was included and attached to the offer covering Parcel 109 of List 75-1 and if it was not found with the offer for Parcel 109, it was lost or misplaced by the Bureau of Land Management.

In support of his assertion, Babington has filed separate affidavits by himself and his wife. He also submits a copy of a carbon copy of the fractional interest statement required by the regulation, as well as a copy of a note allegedly marked up by his wife at the time of her working on the filing. His wife avers that this note indicates that she had then determined that all the requirements of the regulations had been satisfied prior to the mailing of the offer.

Appellant's affidavit, sealed and subscribed by Richard D. Williams, a notary public in the Parish of Orleans, Louisiana, says:

CHARLES J. BABINGTON who being duly sworn did depose and state:

That on or about January 22, 1975 he prepared an offer for the drawing of simultaneously filed oil and gas lease offers on a reproduction of required form 3112-1 (May 1974) for the \* \* \* [lands in issue].

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<sup>1/</sup> 43 CFR 3130.4-4 (1975) said:

"An offer for a fractional present interest noncompetitive lease must be executed on a form approved by the Director and it must be accompanied by a statement showing the extent of the offeror's ownership of the operating rights to the fractional mineral interest not owned by the United States in each tract covered by the offer to lease."

That \* \* \* in order to comply with the regulations (43 CFR 3130.4-4) affiant attached the original of the copy of a carbon copy of the statement to the offer as is attached hereto where he made the required declaration.

That this declaration was attached in separate form because there was no space designated for such declaration on Form 3112-1 (May 1974).

That the Form 3112-1 and the attached statement were mailed together with the required offer fee check to the Bureau of Land Management on or about January 23, 1975 \* \* \*.

Mrs. Ann H. Babington's affidavit, likewise sealed and subscribed, declares:

MRS. ANN H. BABINGTON who being duly sworn did depose and state:

\* \* \* \* \*

That she assisted her husband Charles J. Babington in the preparation of the required Form 3112-1 for Parcel 109 of List 75-1 which was prepared on or about January 22, 1975.

That after refreshing her memory by reference to the file covering the filings for the 75-1 list she is positive that the declaration required by 43 CFR 3130.4-4 was prepared on a separate slip of paper and attached to the offer filed by her husband on Parcel 109, List 75-1.

This Board has previously considered the problem of alleged BLM misplacement of an offeror's fractional interest statement. E.g., W. J. Langley, 32 IBLA 118 (1977); David F. Owen, 31 IBLA 24 (1977); Duncan Miller, 29 IBLA 43 (1977). In Owen and Langley we held that the evidence tendered by the appellants to show that they had in fact sent their fractional interest declarations along with their entry cards to the BLM was insufficient to rebut the legal presumption that administrative officials have properly discharged their duties and had not misplaced or lost the document in issue.

[1] We find that the assertions contained in the affidavits of appellant and his wife do not constitute a sufficient predicate for holding that the fractional interest statement was properly submitted to the BLM. The fact that the BLM does not now have that

statement implies presumptively that the BLM did not initially receive it. Therefore, we hold that the presumption of administrative regularity governs, and that 43 CFR 3130.4-4 (1975) was not satisfied. See United States v. Chemical Foundation, 272 U.S. 1, 14-15 (1926), and Owen and Langley, *supra*.

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.

Frederick Fishman  
Administrative Judge

We concur:

Edward W. Stuebing  
Administrative Judge

James L. Burski  
Administrative Judge

