

JACK M. CHODAR

IBLA 78-356

Decided August 23, 1978

Appeal from decision of the Wyoming State Office, Bureau of Land Management, rejecting bid in competitive oil and gas sale. Serial number W 62859.

Affirmed.

1. Oil and Gas Leases: Application: Generally -- Oil and Gas Leases: Competitive Leases

Where a high bid was timely filed prior to the deadline for bids, but was subsequently mislaid by BLM and was not relocated until after another lower bid was declared high, BLM properly accepted the true high bid and retracted its declaration regarding the lower bid.

APPEARANCES: Jack M. Chodar, pro se.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

On February 14, 1978, Jack M. Chodar submitted a sealed bid for parcel number 4 in the oil and gas lease sale held on February 15, 1978, in the Wyoming State Office, Bureau of Land Management (BLM). The amount of this bid was apparently \$13.13 per acre. 1/ On February 17, 1978, BLM notified Chodar that he was the high bidder on this parcel, and that if his bid was approved by the Geological Survey (GS), he would be sent lease forms and instructions regarding the lease. 2/ On February 22, 1978, GS notified BLM that it recommended that Chodar's bid be accepted.

1/ Chodar's bid form was returned to him on March 23, 1978. However, a letter also dated March 23, 1978, to Rains & Williamson Oil Co., Inc., indicated that Chodar bid \$13.13 per acre.

2/ There is no copy of this letter in the BLM record. Chodar has supplied a copy with his statement of reasons.

On March 23, 1978, BLM sent a letter to Chodar advising him that after the sale had been held, its mail room discovered that a bid by Rains & Williamson Oil Co., Inc. (Rains & Williamson), for parcel number 4, which had been received on February 13, 1978, had not been included in the sale. BLM advised Chodar that, as the omitted bid had been received timely and was higher than his (\$128 per acre), Rains & Williamson had been declared the high bidder for parcel number 4 instead of him. BLM returned Chodar's bid form with the letter and notified him that his deposit was being scheduled for refund. Although BLM did not include the standard paragraph informing Chodar of his right to appeal to this Board, Chodar (appellant) filed a timely notice of appeal of this decision.

There is no doubt that Rains & Williamson's bid was received by BLM on February 13, 1978. In the record there is an envelope bearing a U.S. Postal Service Express Mail Service mailing label which indicates that it was delivered at 10:05 a.m., February 13, 1978. The envelope is date-stamped by BLM at 10 a.m., February 13, 1978. The Express Mail Service mailing label is a large label, and it was affixed on the envelope in such a way that the address, return address, and instructions on the envelope are totally obscured. However, by reading through the back of the envelope, it may be seen that the envelope was identified by Rains & Williamson as containing a "bid for oil and gas lease in Northwest Horchem Field, Parcel No. 4 -2-15-78 (bid opening)."

The record does not indicate exactly how Rains & Williamson's offer was mislaid after it arrived at BLM, or when BLM located it. The envelope in which it was sent bears the notation that it was "opened in error" on February 13, 1978, by "Cleasner." It is clear that a BLM official conducting the sale did not have Rains & Williamson's offer in hand when the bids were opened and recorded on February 17, as appellant was notified on this date that his offer, not Rains & Williamson's, was the high bid on parcel number 4. On March 23, 1978, BLM explained in letters to appellant and Rains & Williamson that Rains and Williamson's offer had been mislaid, apparently in the mailroom. BLM did not state when it had relocated the bid.

BLM's statements that Rains & Williamson's bid was mislaid as of 1 p.m., February 15, 1978, the time of the bid sale, are placed in some doubt by the fact that BLM date-stamped this bid as of 1 p.m., February 15, as though it had been opened with the other bid(s) for the tract. However, it is more likely that the bid was actually backdated, as BLM apparently did not know about it on February 17, since it regarded appellant's bid as high on this date. It is clear that Rains & Williamson's bid arrived on February 13 and that it was opened in error, probably because the printing on the envelope identifying it as containing a sealed bid was obscured

by the large mailing label affixed to it. It is likely that the bid remained mislaid in the mailroom until some time after February 17. Some time before March 23, BLM apparently found it and, noting that it had been filed before the deadline for bids, probably backdated it with the BLM date stamp to show that, in its view, the bid was entitled to be considered as filed at the time of the bid sale.

[1] The issue presented is whether, in a competitive oil and gas lease "sale," a high bid which is filed prior to the deadline for bids, but which is subsequently mislaid by BLM, may be accepted even though it is found only after BLM has declared another lower bid as the "high bid," or whether, instead, a new lease sale must be held, or, alternatively, if the apparent high bidder at the bid opening (appellant) should be awarded the lease regardless of the error. As we have been able to locate no similar "lost bid" situations in the case law, and as BLM cited none in its decision, it appears that this is an issue of first impression. We conclude that BLM properly awarded the lease to Rains & Williamson.

Under 43 CFR 3120.3-1, BLM, if it decides to issue a lease following receipt of competitive offer for KGS lands, must award it to "the successful bidder." The successful bidder, per 43 CFR 3120.2-2, is "the qualified person who offers the highest bonus." Rains & Williamson's bid offered the highest bonus, was filed in a timely manner, and was otherwise acceptable. Thus, but for BLM's misplacing its bid, which obviously Rains & Williamson could do nothing to prevent, it would have received the lease without question, as it was the successful bidder for parcel number 4. Requiring a new bid sale at this time would be unfair, as the bidders now know what was bid for the lease, and new bids would reflect this knowledge. We conclude that BLM acted properly in reconstructing the sale as it should have occurred, but for its inadvertently misplacing Rains & Williamson's offer. Quite obviously, the statute does not authorize the granting of the lease to one who is not the highest qualified bidder. 30 U.S.C. § 226(b) (1976).

This decision accords with an opinion of the Comptroller General of the United States involving agency mishandling of an Air Force contract awarded to the apparent low bidder. 44 Comp. Gen. 19 (1964).

Appellant argues that he is being "penalized by the fallibility of the [BLM's] mailroom." The opposite is true. It is Rains & Williamson which was "penalized" by the misplacing of its offer, as, if not for the mailroom's error, it would have received the lease without question. BLM properly corrected its error by setting the matter as it should have been and giving the lease to Rains & Williamson.

Appellant raised an interesting point, based on dealings which he had with Wilson Rains, of Rains & Williamson. Apparently, Rains learned on February 15 or 16 that appellant's bid of \$13.13 per acre had been declared high bid, as appellant states he contacted him on February 16 and told him that he knew how much appellant had bid and offered to "buy" the lease from him at a higher price. Thus, appellant points out, Rains knew that appellant's winning bid was actually lower than that made by Rains & Williamson. Appellant questions why Rains would offer to "buy" the lease when he knew that his own company had in fact bid higher for the parcel and apparently should have won the lease. Appellant suggests that Rains & Williamson's bid was not made until after the February 15 deadline date, and that it was not in fact misplaced by BLM at all.

The record indicates otherwise. Both the BLM date stamp and the U.S. Postal Service mailing envelope show that Rains & Williamson's bid arrived at around 10 a.m., on February 13, 1978. Thus, there is no merit to appellant's suggestion that BLM gave credit to a late bid. Moreover, there are plausible explanations of why Rains attempted to "buy" appellant's lease rights despite his knowing that Rains & Williamson had timely filed a higher bid. Rains might have thought that Rains & Williamson's bid was rejected owing to a technical flaw. Or, as Rains & Williamson's bid, \$128 per acre, was much higher than appellant's bid, \$13.13 per acre, it is possible that Rains, in lieu of protesting the awarding of the lease to appellant, decided to leave well enough alone, at least for the present, and to attempt to buy the lease from appellant at a much lower rate than would apply if he pursued a protest against BLM, won, and had his company's bid accepted. Rains' attempt to buy appellant's lease shows only that he was trying to secure the lease at a price less than what his company had bid and does not indicate that no bid had been submitted for the parcel by Rains & Williamson at that time.

On June 7, 1978, appellant filed a letter pointing out that Rains & Williamson had failed to serve him "with a notice of appeal, a statement of reasons, and any other documents filed." Appellant cited 43 CFR 4.413, submitted a copy of the standard appeals information sheet, and underlined in red the provision warning that failure to follow these procedures will subject the appeal to dismissal. Appellant apparently contends that we should find the appeal in his favor, owing to Rains & Williamson's failure to serve him with copies of their pleadings.

Appellant has misperceived our appeal procedures. Rains & Williamson is not required to file a notice of appeal, statement of reasons, or any documents whatsoever in order to avoid having this appeal decided against it. The provisions to which appellant refers apply only to the party bringing the appeal. In the instant case,

Rains & Williamson has elected not to file any pleadings. Thus, appellant has received none. As Rains & Williamson was not required to file any pleadings, we cannot find fault with their decision not to do so.

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.

Edward W. Stuebing
Administrative Judge

We concur:

Joan B. Thompson
Administrative Judge

Joseph W. Goss
Administrative Judge

