

WILLIAM MILLER

IBLA 78-294

Decided August 28, 1978

Appeal from decision of the New Mexico State Office, Bureau of Land Management, dismissing a protest to the issuance of oil and gas lease NM 31649.

Affirmed.

1. Oil and Gas Leases: Applications: Drawings

The mere use by an offeror of a filing service's address on a drawing entry card does not violate any applicable statute or regulation and therefore is not a ground for rejecting the card.

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

A handwritten signature is presumed to be written by the person named. Where an attorney-in-fact or an agent does not sign a drawing entry card, the provisions of 43 CFR 3102.6-1 are not invoked.

3. Administrative Authority: Generally -- Courts -- Oil and Gas Leases: Attorneys-in-Fact or Agents

A consent decree obtained by the Securities and Exchange Commission (SEC) establishes no precedent for cases involving other parties. The Board of Land Appeals lacks jurisdiction over matters delegated to the SEC. Allegations of Federal securities law violations should be directed to the SEC rather than to the Board of Land Appeals.

4. Oil and Gas Leases: Applications: Drawings

The burden is on the protestant to prove by competent evidence justification for

the disqualification of the successful drawee in an oil and gas lease offer simultaneous filing. Mere allegations are insufficient.

APPEARANCES: William C. Miller, pro se; Don E. Williams, Esq., of Moore and Peterson, Dallas, Texas, for Van G. Melson and Federal Oil and Gas Leasing, Inc.

#### OPINION BY ADMINISTRATIVE JUDGE THOMPSON

William C. Miller appeals from the January 31, 1978, decision of the New Mexico State Office, Bureau of Land Management (BLM), dismissing his protest against the determination that oil and gas lease NM 31649 (Parcel No. NM 1029) be issued to Van Melson. Melson's drawing entry card for this lease was drawn first and appellant's entry card drew second priority.

In his protest to the BLM State Office, Miller contended that the address on Melson's entry card was not Melson's true address and that the entry card was filed for Melson by an agent who may have had an interest in the application. The BLM State Office dismissed the protest because appellant lacked evidence supporting his allegations, and because the applicable regulations contain no requirement as to which address must be used on an entry card.

On Melson's winning entry card was inscribed the address of Federal Oil and Gas Leases, Inc. (FOGL), a lease filing service. Melson alleges he marked in the space for "parcel number applied for" on the DEC the number which corresponded to that on a list of lottery choices sent him by FOGL; after filling out the rest of the card, Melson signed it and forwarded it to FOGL, where the date was changed and parcel number changed to correspond with the official BLM list before sending the card on to BLM.

Appellant lists a great number of horrendous potential situations, by way of general protest against the existence of filing services in general and this filing service in particular. His allegations relating to the specific lease at issue are as follows. First, appellant maintains that use of a common address results in control over the lease applicant and so constitutes a hidden interest in any oil and gas lease ultimately awarded, thus violating 43 CFR 3102.7. Second, appellant alleges that FOGL is an agent for Melson as established by a statement in a FOGL brochure to the effect that if the BLM deletes an applicant's choice in the official listings, FOGL would substitute another choice. He claims that thus FOGL can exercise that discretion typical of an agent and that FOGL exceeded an amanuensis relationship beyond the acceptable limits of 43 CFR 3102.6-1. Moreover, appellant maintains that a subsequent statement in FOGL's brochure, disclaiming any interest in the lease,

is without merit. Third, appellant alleges that FOGL and Melson perpetrated a fraud on the Federal Government in violation of 18 U.S.C. § 1001 (1976) by telling the BLM that Melson had chosen the parcel on the basis of the BLM list rather than the FOGL preliminary list. Appellant also alleges that changing the date and the parcel number and submitting to the BLM a copy of FOGL's suggested lease list without the substitution and disclaimer statements shown constituted fraud. Finally, appellant claims that the president of FOGL sells investment contracts in connection with the simultaneous oil and gas lease lottery. As authority for this allegation, appellant cites Securities and Exchange Commission v. Wilson, Civil No. 77-133M (June 15, 1977).

Counsel for Mr. Melson agrees that the date and parcel number were changed by the FOGL office prior to filing, but denies all allegations of fraud.

[1] This Board has consistently held that an offeror's mere use of a filing service address on a drawing entry card does not violate any applicable statute or regulation and is therefore not a ground for rejecting the card. Marion Bacil, 35 IBLA 366 (1978); D. E. Pack, 31 IBLA 283 (1977).

[2] The applicable regulation, 43 CFR 3112.5-2, is designed to prevent any individual offeror from obtaining a greater probability of successfully obtaining a lease or lease interest in any given lottery. What a successful drawee decides to do with his lease, after he has obtained it, is irrelevant to the odds in the lottery itself. Even a hope or expectation of sharing in the profits of a lease is not the same as the right to share in any such lease. John V. Steffens, 74 I.D. 46 (1967). So long as no enforceable agreement exists obligating the offeror to transfer an interest in the lease to the filing service, the filing service is not considered to have an interest in the lease. Harry L. Matthews, 29 IBLA 240 (1977); R. M. Barton, 7 IBLA 68 (1972). Appellant has not made such showing here.

Appellant never alleged that Melson did not sign his own drawing entry card. The presumption that a handwritten signature was written by the person named provides a satisfactory basis for concluding that no agent was involved in the signing. 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." Elias C. Bacil, 34 IBLA 322, 324 (1978).

[3] Appellant's allegation that a broker relationship was established because FOGL charged a fee for filing the card is without foundation. This argument is based on the judgment in SEC v. Wilson, supra. This consent decree enjoined the subject filing service from future violations of Federal securities laws. As in most consent decrees, the allegations in the SEC's complaint were

neither admitted nor denied as the parties reached an agreement regarding Wilson's future conduct. Such a consent decree has little if any precedential value in other cases. Ware v. Ester, 328 F. Supp. 657, 659 (N.D. Tex. 1971), aff'd mem., 458 F.2d 1360 (5th Cir.), cert. denied, 409 U.S. 1027 (1972). There is no evidence that any injunction similar to that in the Wilson case applies to the leasing service here, FOGL.

Allegations of Federal securities law violations should be directed to the SEC, which has jurisdiction over such matters. This Board lacks jurisdiction over matters delegated to the SEC. The Board's jurisdiction extends instead to matters involving compliance with oil and gas leasing statutes and regulations. 43 CFR 4.1(3); Marion Bacil, supra.

[4] The burden is on the protestant to prove by competent evidence justification for the disqualification of the successful drawee in a simultaneous filing. Harry L. Matthews, 29 IBLA 240, 242 (1977); Georgette B. Lee, 3 IBLA 171 (1971). Mere accusations that an individual or a company engaged in illegal practices with respect to the drawing are insufficient to prove violations. Elias C. Bacil, supra; Harry L. Matthews, supra; Duncan Miller, 26 IBLA 37 (1976). Appellant asserts that Melson made false statements in an affidavit to BLM. We see no indication that the statements were false. Melson referred to the list he received from FOGL, not to the BLM list, as alleged by appellant. Appellant makes numerous other allegations, but these are generally directed to the practices of leasing services and this particular company. We see no basis for rejecting Melson's entry card. Appellant has not shown a violation of a regulation which would compel rejection of the card. Therefore, dismissal of appellant's protest against issuance of the lease must be upheld. Appellant is free to make suggestions to BLM for changes in the regulations to meet practices and problems to which he now objects.

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.

Joan B. Thompson  
Administrative Judge

We concur:

Douglas E. Henriques  
Administrative Judge

Joseph W. Goss  
Administrative Judge

