

DEXTER B. SPALDING

IBLA 78-348

Decided September 6, 1978

Appeal from decision of Montana State Office, Bureau of Land Management, dismissing protest against entitlement of successful drawee in the simultaneous oil and gas leasing program. M 39720, M 39748.

Affirmed in part; dismissed in part.

1. Oil and Gas Leases: Applications: Generally--Oil and Gas Leases: Applications: 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.

2. Oil and Gas Leases: Applications: Drawings

The fact that the addresses of the lease offeror and a filing service are identical merely indicates the use of a filing service and does not thereby disqualify the offer.

APPEARANCES: Dexter B. Spalding, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Dexter B. Spalding appeals from a decision dated March 1, 1978, wherein the Montana State Office, Bureau of Land Management (BLM), dismissed his protest against the drawing entry cards (DEC) drawn with first priority for Parcels MT 470 (M 39720) and MT 498 (M 39748) in the January 1978 simultaneous oil and gas lease filing procedure. 43 CFR Part 3112.

The protest charged that the first drawn DEC's were illegally filed by a broker who was not registered with the Securities and Exchange Commission (SEC), citing SEC v. Wilson, Civil No. 77-133M (U.S.D.C. New Mexico, June 15, 1977), and further, that the DEC's illegally use the broker's address instead of the offeror's own address. The protest was dismissed because no competent proof was submitted to support the allegation.

It is noted that lease M 39748 had been issued to the first drawn DEC of Robert R. Laudico and Joseph E. Margarone, effective March 1, 1978. Where a protest has been made against the validity of a DEC in the simultaneous oil and gas filing procedure, it is improper to issue a lease in response to the protested DEC before such protest is finally dismissed. D.E. Pack, 31 IBLA 233 (1977). But in this case, it appears that the lease was executed on behalf of the United States before the receipt of the written protest by Spalding. Review of the file discloses no procedural error by BLM. Accordingly, the appeal of Spalding as to this lease is dismissed.

Appellant reiterates his charge relative to the required registration of oil and gas lease agents operating in New York with SEC and/or the Secretary of State for the State of New York, and that use of a common address is illegal. In addition, he makes new charges specifically contending that both the first and second drawn DEC for Parcel MT 470 (and several others) were filed by one Albert DiGuilio, Jr.; that each DEC recites the address of DiGuilio, 675 Delaware Avenue, Room 208, Buffalo, New York 14202; and that DiGuilio has violated the oil and gas leasing regulations which prohibit multiple filings in the simultaneous drawings, in that DiGuilio controls Pittsford Oil Investors, offeror on the first drawn DEC for Parcel MT 470, and is also a member of the partnership of Patricia M. McMullen and Albert DiGuilio, Jr., offerors on the second drawn DEC for Parcel MT 470.

[1] The applicability of the SEC v. Wilson judgment cited by appellant has been considered on several occasions by this Board. As we said in Virginia L. Jones, 34 IBLA 188 (1978).

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 affect the instant proceeding. Appellant has presented no indication that Stewart is under a similar injunction.

34 IBLA at 193. See also, Elias C. Bacil, 34 IBLA 322 (1978), 35 IBLA 198 (1978).

[2] Appellant's argument that use of the address of a filing service was illegal is without merit. There is no regulation barring the use of a common address on a drawing entry card. It is settled that an offeror's use of a common address does not disqualify the offer. Virginia L. Jones, *supra*; Nadine H. Sanford, 31 IBLA 184 (1977); D. E. Pack, 30 IBLA 230 (1977); Harry L. Matthews, 29 IBLA 240 (1977); R. M. Barton, 4 IBLA 229 (1972); John V. Steffens, 74 I.D. 46 (1967).

Our holding herein merely affirms the BLM decision rejecting the protest of Spalding. It does not rule on the charges made for the first time in the appeal; they may be considered by BLM. Nor does this decision purport to rule in any fashion on the acceptability of the Pittsford Oil Investors DEC offer to lease.

Accordingly, 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.

Douglas E. Henriques
Administrative Judge

We concur.

Edward W. Stuebing
Administrative Judge

Anne Poindexter Lewis
Administrative Judge

