

**Editor's note: Reconsideration denied by order dated Dec. 15, 1979; Appealed – reversed, Civ.No. C-78-257 (D.Wyo. Aug. 20, 1979)**

CHRISTIANSSEN OIL, INC.

IBLA 78-330

September 18, 1978

Appeal from decision of the Wyoming State Office, Bureau of Land Management, canceling oil and gas lease W-61797.

Affirmed.

1. Oil and Gas Leases: Applications: Generally—Oil and Gas Leases: Cancellation—Oil and Gas Leases: First Qualified Applicant

An oil and gas lease offer filed in the name of a corporation is properly rejected where it is not accompanied by corporate qualification papers nor by any reference to a serial number where such information is to be found, as required by 43 CFR 3102.4-1.

Where a simultaneous drawing entry card culminates in lease issuance and it is subsequently ascertained that the serial number represented by the offeror to contain the corporate qualification papers, relates to "Christiansen Oil and Gas, Inc.," rather than to the offeror-lessee, Christiansen Oil, Inc., the lease is properly canceled, since the offeror was not the first-qualified offeror.

APPEARANCES: Ted J. Gengler, Esq., Fishman, Gengler, and Geman, P. C., Denver, Colorado, for appellant.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

Christiansen Oil, Inc., 1/ appeals from a letter decision dated February 21, 1978, by the Wyoming State Office, Bureau of Land Management (BLM) canceling its oil and gas lease W-61797.

---

1/ The appellant filed its notice of appeal under this name but has since notified the Board that its correct corporate name is Christiansen Oil and Gas, Inc.

Appellant's drawing entry card was first drawn on the October 1977 simultaneous filing, and the above-designated lease was issued effective February 1, 1978. The drawing entry card was signed by appellant's president and appellant's corporate name was entered as Christiansen Oil, Inc. The card indicated that qualifications of corporation had been previously filed under serial record C-24801.

The Wyoming State Office was advised by the Colorado State Office that appellant's corporate qualifications had been accepted on January 25, 1977. Based on this information the Wyoming State Office issued appellant the lease. However, on February 9, 1978, the Colorado State Office notified the Wyoming State Office that the previous information was in error; that it had not received qualifications for Christiansen Oil, Inc., that qualifications were on file for Christiansen Oil and Gas, Inc., but that it had not been notified of a name change. The Wyoming State Office thereupon determined that no BLM office had accepted qualifications for the entity "Christiansen Oil Inc.," and since no qualifications were attached to the entry card it canceled the lease pursuant to 43 CFR 3102.4-1. That regulation provides:

Statements.

If the offeror is a corporation, the offer must be accompanied by a statement showing (a) the State in which it is incorporated, (b) that it is authorized to hold oil and gas leases and that the officer executing the lease is authorized to act on behalf of the corporation in such matters, (c) the percentage of voting stock and of all the stock owned by aliens or those having addresses outside of the United States, and (d) the names and addresses of the stockholders holding more than 10 percent of the stock of the corporation. Where the stock owned by aliens is over 10 percent, additional information may be required by the Bureau before the lease is issued or production is obtained. A separate statement from each stockholder owning or controlling more than 10 percent of the stock of the corporation setting forth his citizenship and holdings must also be furnished. Where such material has previously been filed a reference by serial number to the record in which it has been filed, together with a statement as to any amendments will be accepted.

With its statement of reasons, appellant has submitted its Statement of Corporate Qualifications on file with the Colorado State Office under C-24801. Therein, the corporate name is listed as "Christiansen Oil and Gas, Inc." Appellant has submitted an affidavit stating that "through some inadvertence, the name of Christiansen Oil and Gas, Inc., was misstated on the face of the

[entry] card as Christiansen Oil, Inc. \* \* \*." Appellant further submitted a certificate from the Department of State, State of Colorado, stating that no record exists in its office of a corporation foreign or domestic, named Christiansen Oil, Inc.

Appellant contends that the misnomer on the face of the entry card violates no regulation dealing with qualifications to hold oil and gas lease, that its identity was readily apparent and that the lease was therefore improperly canceled.

In support of the proposition that the misnomer of a corporation is without legal significance, appellant cites 18 Am. Jur. 2d Corporations § 144 (1965), 19 C.J.S. Corporations § 1136 (1940), County of Moultrie v. Fairfield, 105 U.S. 370, 376 (1881); North Point Consolidated Ins. Co. v. Utah & S. L. Canal Co., 16 Utah 246, 52 P. 168 (1898); St. Matthews Evangelical Lutheran Church v. United States Fidelity Guaranty Co., 222 Mich. 256, 192 N.W. 784 (1923); General Motors Acceptance Corp. v. Haley, 329 Mass. 559, 109 N.E.2d 143 (1952), Admiral Corp. v. Trio Television Safe & Service, 138 Colo. 157, 330 P.2d 1106 (1958).

[1] We cannot agree with appellant that its offer was in compliance with 43 CFR 3102.4-1. A corporation making an offer for an oil and gas lease is required by that regulation to file a statement providing certain information by which BLM may determine its qualifications to hold such a lease. Anchors and Holes, Inc., 33 IBLA 339 (1978).

A first-drawn simultaneous drawing entry card which is defective because of noncompliance with the foregoing mandatory regulation must be rejected and may not be cured by the submission of further information after the drawing is held. Id. The cases cited by appellant suggesting that the difference in the name is of no legal consequence are inapposite. Where, as here, there are junior applicants (drawee Nos. 2 and 3), the Department has consistently canceled the lease issued to the initial offeror where it appeared that there was a failure to comply with applicable regulations. See R. S. Prows, 66 I.D. 19, 22 (1959), in which the Department stated:

The Department has interpreted the statutory preference right granted by section 17 of the act to be mandatory, and, therefore, that if a lease is to be issued to anyone it must be issued to the first qualified applicant therefor. Consequently, a lease issued in violation of this statutory preference right must be canceled. Iola Morrow, A-27177 (October 10, 1955); Charles D. Edmondson et al., supra; Transco Gas and Oil Corporation, 61 I.D. 85 (1952); Russell Hunter Reay v. Gertrude H. Lackie, 60 I.D. 29 (1947). See also: McKay v. Wahlenmaier, 226 F. 2d 35 (C.A.D.C. 1955), wherein the court held that

the Secretary must cancel an oil and gas lease issued in violation of a regulation of the Department. Cf. McKenna v. Seaton, 259 F. 2d 780 (C.A.D.C. 1958).

Oil and gas offers involving relatively minor deficiencies have consistently been rejected by the Department, e.g., failure to date card, Thomas V. Gullo, 29 IBLA 126 (1977); Cissie A. Reinauer, 29 IBLA 295 (1977); and Thomas C. Moran, 32 IBLA 168 (1977); omission of State in which parcel is located, Eleanor R. Neuberger, 29 IBLA 168 (1977); omission of a State prefix in parcel number, Etta D. Harris, 29 IBLA 259 (1977), and John P. Levycky, 30 IBLA 127 (1977); using the wrong abbreviation for the State prefix, Marcia P. Lane, 33 IBLA 68 (1977). Even omission of the zip code of offeror's address triggers rejection of the offer. E.g., Raymond F. Kaiser, 27 IBLA 373 (1976).

We held in Gerald L. Christensen, 30 IBLA 303 (1977), that improper issuance of a noncompetitive oil and gas lease in response to a defective drawing entry card does not foreclose the right of the second drawn applicant who filed a qualified offer. The erroneously issued lease must be canceled, and after cancellation, the second drawee must be awarded a lease to the parcel, all else being regular.

Christensen recited as follows:

Omission of the state prefix mandates rejection of the Christensen DEC because the parcel number is incomplete and the drawing entry card is not fully executed. Where an applicant fails to include the state prefix of the parcel number on an oil and gas drawing entry card, he has not complied with 43 CFR 3112.2-1(a) which requires that the card be "fully executed" and such offer must be rejected without priority, whether the defect is discovered before or after the drawing. Etta D. Harris, *supra* [29 IBLA 259 (1977)].

Inasmuch as the DEC of Christensen was incomplete and not entitled to any priority against the other cards for parcel NM 1005, it was patently in error for BLM to have purported to issue lease NM 28877 in response to the DEC of Christensen. The Secretary has the authority to cancel any lease issued whether the error resulted from inadvertence by his subordinate employees in BLM and whether or not there is a timely proceeding instituted by a competing applicant. W. H. Bird, 72 I.D. 287 (1965). Similarly, the Mineral Leasing Act provides that if the Secretary decides to lease a parcel of federal land, he must issue the lease to the first qualified applicant therefor. 30 U.S.C. § 226(c). It is well established

that an incomplete application does not make the applicant thereof "qualified" to receive a lease where third party rights are outstanding. It is clear that the Secretary has authority to administratively cancel a lease for invalidity at its inception. Boesche v. Udall, 373 U.S. 472 (1963). So, in this case, cancellation of the lease NM 28877 to Christensen was correct.

McKay v. Wahlenmaier, 226 F.2d 35, 39, 43 (D.C. Cir. 1955), effectively contravenes the dissent's posture that a lease is free of the sanction of cancellation, even though the offer should have been rejected.

In Wahlenmaier, the court at 226 F.2d 39 disposed of that contention as follows:

Section 17 is mandatory in directing that a lease be issued to the person (a) who first makes application and (b) who is qualified under certain other sections of the Act to hold a lease. Culbertson was qualified as a leaseholder under other pertinent provisions of the statute, so the question whether he was qualified under § 17 to hold a lease is reduced to the inquiry whether he was the person who first made application.

This remaining issue may be clarified by restatement. It is whether Culbertson's application was in such form and was filed in such circumstances that he was entitled to have it entered in the drawing. In other words, was he properly qualified as an applicant? If he was not, the fact that his written request for the lease was the first one drawn did not make him "the person first making application" therefor. If he was not such "person," the lease was wrongfully issued to him and should have been cancelled, even though he was otherwise "qualified" under the Act to hold a lease.

Wahlenmaier also is dispositive of the argument that the Department may ignore relatively minor deviations from requirements for a valid offer by stating at 226 F.2d 43 as follows:

It is argued that, since the Secretary devised the regulation, he alone has the right to say what the consequences of violating it shall be. Whether that is so, we need not decide. The Secretary is bound by his own regulation so long as it remains in effect. He is also bound, we think, to treat alike all violators of his regulation. He may not justify, simply by saying the violation is unimportant, his departure in a single case from an otherwise

consistent policy of rejecting applications which do not conform to the regulation. [Footnote omitted.]

See also Boesche v. Udall, *supra* at 476-483.

In the circumstances cancellation of the lease was proper. BLM is requested to issue a lease to the No. 2 drawee, Marilyn Meinhart, if all else be regular.

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 and the case is remanded for appropriate action consistent with this decision.

---

Frederick Fishman  
Administrative Judge

I concur:

---

Douglas E. Henriques  
Administrative Judge

## ADMINISTRATIVE JUDGE STUEBING, DISSENTING:

Those who serve appellant seem incapable of remembering their corporate employer's name for long periods of time. Not only did they drop two words ("& Gas") from the offer to lease, and ignore the omission when the lease actually issued, but when the BLM punished their mistake by canceling the lease, the appeal to this Board was again filed in the name of "Christiansen Oil, Inc." Subsequently, however, they awoke to the realization that they had re-enacted the very same faux pas which gave rise to this difficulty, and now all concerned are fully aware that the true name of the corporation is Christiansen Oil & Gas, Inc.; unless, of course, appellant's personnel have again allowed the name to elude them during the pendency of this appeal. 1/ Blackboard drill may be in order.

The majority opinion correctly states that first-drawn simultaneous drawing entry cards which are defective because of even miniscule deficiencies have been consistently rejected by the Department. There is no doubt that if the omission of the words "& Gas" from the corporate name had been discovered while the offer was pending, rejection of the offer would have been mandatory, and I would have no reluctance to affirm such a decision.

But I view the cancellation of an issued lease for trivial and inconsequential discrepancies as a far different matter from the rejection of a mere offer to lease. An oil and gas lease is, after all, a vested estate in real property.

A lease is subject to administrative cancellation 2/ where there is a breach of a statutory requirement, as where the lessee acquires leases in excess of the statutory acreage limitation, or lacks the requisite citizenship. 3/ Likewise, a lease is subject to cancellation for failure on the part of the lessee to comply with the regulations, or where it defaults in the performance or observance of the lease terms, but only if such default or failure shall continue for a

---

1/ However, I note with some consternation that the pleadings and certain correspondence from appellant employ an ampersand in place of the word "and" in the corporate name, which word is written out in certain other documents. In light of the majority's holding, this has grave implications for the security of any other leases appellant may hold.

2/ This presumes that the lease is not known to contain valuable deposits of oil or gas. Otherwise the lease could be canceled only by judicial proceedings. 43 CFR 3108.3.

3/ The stock of the appellant corporation is reported to be held by a Dane. Denmark is listed as a nation which grants reciprocal rights within the meaning of 30 U.S.C. § 181.

period of 30 days after service of written notice thereof by the lessor. 30 U.S.C. § 188(b); see Section 7, Lease Terms; 43 CFR 3108.2-3. Finally, a lease is subject to administrative cancellation where it was issued in error for lands which were not available for the granting of such a lease as a matter of law. See, e.g., Oil Resources, Inc., 14 IBLA 333 (1974).

The courts and this Department have held that an offer to lease for oil and gas does not create a property right in the offeror, but is merely a hope or an expectation. It is not a "vested right," a present legal or equitable "title," "interest" or "ownership" or "perfected right." McTieman v. Franklin, 508 F.2d 885, 888 (10th Cir. 1975); Schraier v. Hickel, 419 F.2d 663, 666-7 (D.C. Cir. 1969); Miller v. Udall, 317 F.2d 573 (D.C. Cir. 1963); D. R. Gaither, 32 IBLA 106 (1977), aff'd, sub nom. Rowell v. Andrus, Cir. No. 77-0106 (D. Utah, filed April 3, 1978). Thus, the rejection of an oil and gas lease offer properly can be sustained even for trivial reasons relating solely to administrative convenience and the orderly conduct of the Department's leasing program. The rules of the game require strict adherence to the prescribed procedures, and are strictly enforced. But where a minor discrepancy escapes detection, and a winner is declared, and a lease is issued, there should be some recognition that the situation has been altered. The granting of an oil and gas lease—unless it is void from its inception—creates an estate in real property. The lessee, unlike the offeror, does have a vested interest, and legal and equitable rights which are administratively defeasible under the statutory authority of the Secretary for only good and substantial cause.

To cancel this lease because an inconsequential error went unnoticed at the offer stage is a little like revising the result of the 1977 World Series because video-tape now reveals that an umpire made a bad call.

I should acknowledge that the Department has been in the habit of canceling leases for reasons which would have justified the rejection of the offer prior to the issuance of the lease, but I have never been comfortable with this practice. Moreover, it has not always been so. See, e.g., McKenna v. Seaton, 259 F. 2d 780 (D.C. Cir. 1958), where the Court upheld the Secretary's refusal to cancel a lease in order to issue it to a competing offeror who had actually perfected his offer ahead of that filed by the person who ultimately was awarded the lease.

As noted in the majority opinion, appellant has supplied abundant authority for the proposition that the misnomer of a corporation does not invalidate an instrument or a contract if the identity of the corporation is apparent from the name employed. I am satisfied that this is the rule. Without meaning to belabor the point, I suggest, hypothetically, that if the terminal word in a corporate name

was "Incorporated," and was mis-stated in a document as "Corp.," or "Co.," the instrument would nonetheless retain its efficacy. The use of corporate acronyms, particularly among oil companies, is so common ("Conoco," "Sunoco," "Amoco") that if one of these crept into a lease or other instrument it is unlikely that it would even be noticed. Moreover, the precedent set by the majority opinion with reference to corporate names has its implications with respect to the proper names of individuals. Will the omission of a middle name or initial henceforth be a cause for cancellation of an issued lease? One would hope not. However, we are spared that worry, because, oddly enough, the Department has already set the precedent that:

[W]ithout fraudulent intent and if there is no doubt as to the identity of the individual, and an oil and gas lease offer in which the signed name of the individual differs from the typed name of the offeror in the first block of the lease form is acceptable if, in fact, the signature is that of the offeror and the offer is, in all other respects, acceptable.

Mary Adele Monson, 71 I.D. 269 (1964) (syllabus).

It thus appears that the majority's concern for precision in the employment of corporate names is at variance with the established Departmental position with respect to individual names.

The cancellation of an oil and gas lease which is prima facie valid constitutes the imposition of a forfeiture. Here, again, the distinction between the legal status of a mere offeror and that of a lessee is significant. In order for there to be a forfeiture there must be some right or vested interest involved. St. Regis Paper Co. v. Aultman, 280 F. Supp. 500, 509 (Ga. D. 1967); Grant v. Utah State Land Board, 485 P.2d 1035 (Sup. Ct. Utah 1971). Forfeiture, of course, is not favored in the law, and the provisions upon which it is based must be strictly construed, since a forfeiture implies the taking away of some pre-existing right. Hogg v. Forsythe, 248 S.W. 1008, 1011 (Ky. Ct. App. 1923). It is a penalty by which one loses his rights and interests in his property. Stockton v. Ford Motor Co., 61 F. Supp. 261, 264 (Idaho D. 1945). Equity will not actively lend its aid to enforce forfeiture. Lehigh Valley R. Co. v. Chapman, 171 A.2d 653, 660 (N.J. Sup. Ct. 1961).

Finally, I am concerned with the propriety of BLM's summary cancellation of this lease on a procedural basis. Had the lessee violated some provision of the statute, or the regulations, or the lease terms, BLM would have been obliged to serve notice of such violation, and only if the lessee continued in violation or default for a period of 30 days thereafter could BLM act to cancel the lease. See statute, regulation and lease term, supra. Thus, even a serious, flagrant, and willful violation cannot be punished by cancellation of the lease

unless and until the lessee is afforded the opportunity to bring himself into compliance. But here appellant, guilty only of a trifling, inadvertent discrepancy which easily could be remedied, is not accorded the benefit of the prescribed procedure.

I would simply order that the lease be reformed to note the correct name of the lessee, and that appropriate notation be made in the administrative records.

---

Edward W. Stuebing  
Administrative Judge

