

GERALDINE M. McCARTHY

IBLA 78-442

Decided October 25, 1978

Appeal from a decision of the Montana State Office, Bureau of Land Management, rejecting simultaneous oil and gas lease offer M 48496.

Reversed.

1. Oil and Gas Leases: Applications: Generally--Oil and Gas Leases: Applications: Drawings--Regulations: Interpretation

When a married woman signs her name, "Mrs. Hal McCarthy," as offeror on a drawing entry card oil and gas lease offer, and prints her full name "Geraldine M. McCarthy" on the face of the card, the card may not be rejected because she violated no regulation by signing the offer in that manner, and she followed the instructions on the face of the card by giving her first name and initial.

APPEARANCES: Geraldine M. McCarthy, pro se.

OPINION BY ADMINISTRATIVE JUDGE GOSS

Geraldine M. McCarthy, appellant, was the first drawn offeror in a drawing of simultaneous oil and gas lease offers conducted by the Montana State Office, Bureau of Land Management (BLM), for parcel 724 in the April 1978 drawing. On May 8, 1978, the State Office rejected her offer because on the face of the drawing entry card was printed the name "Geraldine M. McCarthy," while the signature under the offer on the reverse side of the card read "Mrs. Hal McCarthy." The decision stated:

No evidence was submitted to indicate Geraldine M. McCarthy and Mrs. Hal McCarthy are one and the same person. If they are not one and the same person, no evidence was filed to indicate Mrs. Hal McCarthy was with authority to act for an on behalf of Geraldine M. McCarthy. Accordingly, the filing is rejected.

On May 24, 1978, appellant filed her appeal, submitting various documents to prove that "Geraldine M." and "Mrs. Hal" McCarthy are the same person, and that her customary form of signing legal documents is as "Mrs. Hal McCarthy."

[1] Appellant's drawing entry card shows clearly that the offeror is Mrs. Hal McCarthy. The operative portion of the card reads in part:

NONCOMPETITIVE OFFER TO LEASE FOR OIL & GAS

Undersigned offers to lease for oil and gas all or any portion of the identified parcel of land which may be available for noncompetitive leasing, and certifies: (1) applicant is a citizen of the United States \* \* \*; (2) applicant's interests in oil and gas offers to lease, leases, and options do not exceed the limitation provided by 43 CFR 3101.1-5; (3) applicant has not filed any other entry card for the parcel involved; and (4) applicant is the sole party in interest in this offer and the lease if issued, or if not the sole party in interest, that the names and addresses of all other interested parties are set forth below. <sup>1/</sup> The undersigned agrees that the successful drawing of this card will bind him to a lease, on Forms 3110-2 or 3110-3, and the appropriate stipulations as provided in 43 CFR 3109.4-2 and the posted notice.

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Signature of Applicant	Date
/s/Mrs. Hal McCarthy	4-18-78

On the other side of the card, the offeror was required to print in her first name and middle initial. This she did. She should not be penalized for furnishing this required information, rather than incorrectly reciting that her first name is "Mrs. Hal" and omitting her middle initial.

No other applicants or other parties in interest are listed, although space is provided therefor. There is no ambiguity; Mrs. Hal McCarthy and Geraldine M. McCarthy are thus stated to be the same person. It is common practice for a married woman to transact Departmental business in such a manner. See, e.g., Mary Adele Monson, 71 I.D. 269, 271 (1964).

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<sup>1/</sup> Emphasis added.

This approach is in accord with common sense and Departmental precedent. In Mary Adele Monson, supra, at 271, the Assistant Solicitor held:

The Department's regulations provide only that the offer must be signed in ink by the offeror. \* \* \* In the absence of a specific regulation to the contrary, there is no basis for departing from the generally accepted standard as to what constitutes a signature. Thus, there appears to be no question as to the acceptability of Mrs. Monson's signature of either her maiden name or her married name on the lease offer if, in fact, she signed the forms as she has certified that she did. 2/

No regulation has been cited which requires a contrary result.

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 reversed.

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Joseph W. Goss  
Administrative Judge

I concur.

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Joan B. Thompson  
Administrative Judge

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2/ In Monson, at 271-72, the Department ruled that while there was no problem concerning appellant's signature, she had filed copies which were not the same as the original. It was this defect which appellant corrected, with priority dating only from the date of the correction.

ADMINISTRATIVE JUDGE STUEBING DISSENTING:

Respectfully, I would affirm the decision rejecting this lease offer.

Because the lease in a simultaneous drawing must be awarded to the first qualified applicant, the program has been strictly administered to insure that the interests of those applicants having the next successive priority of consideration are not prejudiced by lenient, tolerant or forgiving adjudication of higher priority offers. Any liberalization of attitude in the adjudication of a simultaneous offer which results in the acceptance of an irregular offer must inevitably redound to the disadvantage of those who have offers of second and/or third priority. Our recognition that fairness and impartiality can only be achieved by strict, unyielding insistence that the drawing entry card be complete in every detail, accurate, and free from ambiguity, has led this Board to consistently reject offers for errors, omissions or ambiguities which were truly insignificant or inconsequential in nature. These strict, even harsh, results could only be justified on the basis that true and absolute impartiality in the administration of this program would be lost if we began making subjective judgments about the nature and importance of each irregularity, forgiving this one and condemning that one.

The omission of the zip code, an admittedly trivial matter, has invariably resulted in rejection of the offer. See, e.g., Raymond F. Kaiser, 27 IBLA 373 (1976); Amy H. Hanthorn, 27 IBLA 369 (1976); Beverly J. Steinbeck, 27 IBLA 249 (1976). The omission of the name of the State where the land was situated, or the prefix to the parcel number, or even one letter from the prefix to the parcel number, have been held to be causes for rejection, notwithstanding that the omissions in those instances created no ambiguity whatever. Marcia P. Lane, 33 IBLA 68 (1977); Etta D. Harris, 29 IBLA 259 (1977); Gerald C. Calhoun, 27 IBLA 362 (1976).

We have held that where two offerors sign the drawing entry card (DEC), but enter only one date, the offer must be rejected, despite their subsequent affidavits that they both signed on the same date and the date which they stamped on the card was applicable to both signatures. Thomas V. Gullo, 29 IBLA 196 (1977). The offer in the case of Helen E. Ferris, 26 IBLA 382 (1976), was rejected merely because it was dated "Mar. '76," omitting the day of the month, although it was apparent that the card had been executed between March 1 and March 15, when it was filed. In my separate concurrence in the latter case I wrote:

Accordingly, despite my inclination to regard the omission as mere harmless error, I must concur in the result reached by the majority. That result at least assures uniform administration of the law and equality

of treatment of offers, a matter of special concern where, as here, the rights of the offerors holding second and third priorities are also at issue.

The method of entering the name or address on the offer card has been held by this Board to be of critical importance in other cases. In the most recent example, George E. Mattison, 37 IBLA 193 (1978), the offeror listed his own name and the name of a corporation. His later explanation that the corporation was not a party in interest but was only listed as part of the business address where he was employed did not serve to resuscitate his rejected offer. He had carelessly created an ambiguity, and no subsequent explanation could erase it. In Irving B. Brick, 36 IBLA 235 (1978), this Board held that the offer must be rejected because the offeror had not entered his name on the face of the card in the manner indicated, i.e., last name, first name, middle initial, although this had created no ambiguity, and BLM had raised no objection to the offer on this basis. In Christiansen Oil, Inc., 37 IBLA 52 (1978), this Board affirmed the cancellation of an issued lease after BLM discovered that the true name of the company was "Christiansen Oil & Gas, Inc.," but the drawing entry card had listed the name "Christiansen Oil, Inc." It was obvious that the omission of the "& Gas" had caused no confusion, as the company had been readily identified and a lease had issued, but the error had fatal consequences nonetheless. In that case, the majority noted, "Oil and gas offers involving miniscule deficiencies have consistently been rejected by the Department \* \* \*."

Perhaps the most closely analogous case is Joseph A. Winkler, 24 IBLA 380 (1976), *aff'd*, Winkler v. Kleppe, Civ. No. 76-176 (D. Wyo., May 19, 1977). There the offeror stamped the face of the card "J. A. WINKLER AGENCY" and signed the reverse side "Joseph A. Winkler," thereby creating an obvious ambiguity. Although Winkler subsequently explained that he was applying for a lease as an individual, and that the use of his office stamp was merely inadvertent, this Board upheld the rejection of his offer. In affirming the decision of the Board, the District Court said:

[T]he IBLA observed that since it was plaintiff's own inadvertence that created the ambiguity, the BLM was under no duty to resolve the ambiguity in plaintiff's favor.

Having reviewed the administrative record and having heard oral argument of counsel, the Court concludes the Secretary neither acted in an arbitrary or capricious fashion, nor did he abuse his discretion in rejecting plaintiff's offer \* \* \*. To the contrary, the Secretary's failure to abide by his own mandatory regulations would have been arbitrary and capricious; \* \* \*.

In the case before us now two names appeared on the card. The name of the offeror was printed on the face of the card as "McCARTHY GERALDINE M." The reverse side was signed "Mrs. Hal McCarthy." It was unclear from the card, and nothing accompanied it to explain, who Mrs. Hal McCarthy was and what connection she had with Geraldine M. McCarthy. Her failure to make it known to BLM at the time of the filing of the offer that they were one and the same person created an obvious ambiguity. It is true that BLM personnel might easily have assumed that they were one and the same, but they could not know that fact. The condition of the card, created by appellant, left the adjudicator to wonder if perhaps they were mother and daughter, aunt and niece, sisters-in-law, or otherwise related, or even unrelated associates who happen to share the same surname. The adjudicator had the duty and the obligation not to issue a lease unless reasonably certain that the offer was in compliance with the regulations. If another party was involved, it was clear that the regulations concerning disclosure had not been fully met. The adjudicator had no duty, as we have often held, to pursue the matter further, or to resolve the doubt in the applicant's favor.

The majority makes much of the fact that no other applicants or parties in interest are listed in the spaces provided therefor. This in no way dispels the uncertainty, or compels the conclusion that the two names identify the same person. Indeed, the absence of any entries in those spaces was part of the problem, the question being, "Should there be?" In the appeal of George E. Mattison, *supra*, where it appeared that Mattison and a corporation were both applicants, Mattison argued that he had entered "NONE" in the space provided for listing other parties in interest, but the Board held that did not resolve the ambiguity.

Finally, the majority's reliance on Mary Adele Monson, 71 I.D. 269 (1964), is badly misplaced. That case is far more supportive of my position. In Monson the applicant, on July 23, 1962, filed an over-the-counter oil and gas lease offer on which the typed name of the offeror appeared as "Mary Adele Monson," but was signed "Mary Adele Gibbs." On August 7, 1962, she filed additional copies of the same offer signed "Mary Adele Monson," and on September 4, 1962, still more copies bearing the signature "Mary Adele Gibbs." Upon appeal from the rejection of the offer Mrs. Monson submitted an affidavit that Mary Adele Gibbs and Mary Adele Monson were one and the same, Gibbs being her maiden name. The Department held, in essence, that her last filing of the offer on September 4, "apparently, was to correct the discrepancy in the signatures and to cure a possible defect in the offer as it then stood." The decision concludes:

Accordingly, I find that the discrepancies in the signature[,] having been corrected prior to action on the offer, did not require the rejection of the offer but that the offer should be considered as a pending

offer with priority, at most, from September 4, 1962, until a lease is issued on an offer having higher priority. [Emphasis added.]

The point, of course, is that certain defects in an over-the-counter lease offer can be cured by later submissions, or may be subsequently amended and earn priority from the date of amendment or correction, but a simultaneous offer may not be. A simultaneous offer must be acceptable in all respects at the time it is filed or it must be rejected. Ballard E. Spencer Trust Inc., 18 IBLA 25, 28 (1974), aff'd, B.E.S.T., Inc. v. Morton, 344 F.2d 1067 (10th Cir. 1976). As appellant's offer was ambiguous when filed, and could not be "cured" by subsequent explanation, it was properly rejected.

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Edward W. Stuebing  
Administrative Judge

