

ROBERT A. CHENOWETH

IBLA 78-334      Decided December 13, 1978

Appeal from decision of the Utah State Office canceling oil and gas lease U-38819.

Affirmed as modified.

1. Evidence: Generally—Oil and Gas Leases: Applications: Generally—Oil and Gas Leases: Cancellation

Where the official record of an oil and gas lease contains nothing either showing that an oil and gas lease applicant's \$10 filing fee was included in a check which was dishonored by the drawee bank, or rebutting the applicant's assertion that his filing fee was instead included in another check processed by BLM without incident, BLM's decision to cancel a lease issued pursuant to this offer because no filing fee was paid as required by 43 CFR 3103.2-1(a) will not be sustained for that reason.

2. Oil and Gas Leases: Applications: Drawings—Oil and Gas Leases: Applications: Sole Party in Interest—Oil and Gas Leases: Cancellation

Where eight individuals enter into a single agreement with a leasing service whereby the service supplies parcel numbers, and the eight individuals file offers on two of these parcels and pay all their filing fees by a single check, there is a strong implication that each of the individuals has an interest in all of the offers filed on these parcels. Where one of these individuals,

whose offer has resulted in the issuance of a lease, fails to respond to an order by this Board directing him to submit details of the agreement between himself and the other individuals by which to determine whether the requirements of 43 CFR 3102.6-1 and 3112.5-2 have been violated, it will be presumed that the indicated violations have occurred, and the cancellation of the lease will be affirmed on that basis.

3. Oil and Gas Leases: Assignments or Transfers—Oil and Gas Leases: Bona Fide Purchaser—Oil and Gas Leases: Cancellation

Where a decision canceling an oil and gas lease has been issued by BLM and received at the lessee's address of record, any subsequent assignment of the lease will not be protected under the provisions of 30 U.S.C. § 184(i) (1976), and whether or not the purported assignee is a bona fide purchaser is a moot question.

APPEARANCES: Robert A. Chenoweth, pro se.

#### OPINION BY ADMINISTRATIVE JUDGE STUEBING

The noncompetitive simultaneous oil and gas drawing entry card lease offer of Robert A. Chenoweth was drawn with first priority in the October 1977 drawing held by the Utah State Office, Bureau of Land Management (BLM), for parcel number UT 44. On December 20, 1977, BLM issued lease number U-38819 to Chenoweth, effective January 1, 1978.

On March 1, 1978, BLM issued a decision canceling this lease for the stated reason that Chenoweth had not submitted a remittance covering the filing fee of \$10 with his offer card. BLM stated that the subject offer was included in a group of filings accompanied by a check drawn on the account of Key Energy, Inc. (Key Energy), and that this check was returned to BLM from the drawee bank as uncollectible. Therefore, BLM concluded that no filing fee had been paid as required by 43 CFR 3103.2-1(a), and that Chenoweth's offer was invalid from its inception, so that the lease issued pursuant to it was properly canceled. Chenoweth has appealed from this decision.

In his statement of reasons, appellant disputed BLM's assertion that his filing fee had been tendered via the dishonored check of Key Energy. Instead, according to appellant, his filing fee had been submitted via a personal check for \$160 in the name of George A. Hall, along with filing fees for Hall and six other people, each for the

same two parcels in the October 1977 drawing. In support of this assertion, appellant included with his statement of reasons a photocopy of a check drawn on Hall's account in the amount of \$160. Hall's check bears the following notation "Utah -- 23, 44, (8 filings each)." It is dated October 18, 1977. It bears a stamp apparently from BLM's receipting and validating machine, indicating that BLM processed the check on October 27, 1977.

On July 31, 1978, this Board issued an order to produce additional evidence concerning the checks submitted by Key Energy and Hall, so that we might determine whether or not appellant had submitted valid payment of his filing fee. Appellant was requested to submit a clearer photocopy of Hall's check. In this order, we also advised the parties that we perceived a strong possibility that, even if appellant did submit his filing fee in Hall's check, appellant was not the sole party in interest in the offer. Appellant was expressly directed to submit evidence establishing the exact nature of the agreement between himself, Hall, and the other six members of his group.

On August 16, 1978, appellant filed a partial response to this order including only a clearer copy of Hall's check, along with notification that he had assigned his interest in this lease to the Ambra Oil Company. Appellant did not respond to our directive concerning the agreement with Hall and six other associates. BLM filed no response whatever to the order.

[1] Where the official record of an oil and gas lease offer contains no information supporting a conclusion by BLM that the offer is defective, BLM's decision rejecting the offer because of this defect will be reversed. Willis L. Lawton, 36 IBLA 178 (1978). In the present case, the official record submitted to this Board indicates only that Key Energy's checks numbers 965, 966, 967, and 969, dated October 22, 1977, were returned to BLM by the Pacific National Bank as uncollectible. There is nothing in the record showing that appellant's filing fee was included in the uncollectible checks. Moreover, BLM failed to submit to this Board any evidence either so indicating or rebutting appellant's assertion that his filing fee was not paid by Key Energy but was instead included in Hall's check, although this Board afforded it the opportunity to do so. In the absence of any evidence establishing a connection between appellant's filing fee and Key Energy's checks, or disproving appellant's assertion that his filing fee was included in Hall's check, we cannot sustain BLM's decision canceling appellant's lease on the ground that he did not pay his lease offer filing fee as required by 43 CFR 3103.201(a).

[2] However, assuming the truth of appellant's allegations on appeal, the filing fee for this offer was submitted in a check by G. A. Hall, in the amount of \$160, representing \$10 filing fees for eight individuals on parcels numbers UT 23 and UT 44 in the October

1977 drawing. In his statement of reasons, appellant stated as follows:

Mr. G. A. Hall, myself and six other people have a contract with Key Energy Corp. whereby we receive only the parcel numbers and then we ourselves file the cards and pay the \$10.00 per card entry fee. We do use the address of Key Energy Corporation on the entry card as an address where our mail can be received. Key Energy Corporation does not pay our entry fees and the above check was used to pay the entry fee on U-38819.

The fact that eight associated individuals filed offers on the same two parcels and paid filing fees for all these offers by a single check, drawn on the account of one of them, coupled with appellant's use of the collective pronouns "we," "ourselves" and "us" to describe their common practice, raises a strong implication that these eight individuals have an interest in all of the offers filed on these two parcels, including, of course, the offer and lease at issue in this appeal. <sup>1/</sup> As a consequence, this Board's Order of July 31, 1978, required appellant to elucidate further the terms of this agreement as follows:

Finally, the parties are advised that we perceive that there is a strong possibility that, even if appellant did submit his filing fee in G. A. Hall's check, appellant was not the sole party in interest in the offer. Appellant noted in his statement of reasons that he, G. A. Hall, and six other unnamed persons have a single contract with Key Energy, under which they receive parcel numbers from Key and then they, themselves, file entry cards and pay the \$10 per card filing fee. The fact that G. A. Hall undertakes to pay these filing fees on behalf of the other seven persons in this contract strongly implies that there is an agreement in violation of the express provisions of 43 CFR 3102.7 and/or 3112.5-2. Accordingly, appellant is further directed to submit evidence establishing the exact nature of the agreement between himself, Hall, and the other six members of his group.

The parties shall have until September 5, 1978, to comply with this order.

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<sup>1/</sup> The record includes a variety of letterheads and addresses used by appellant, including "Bob Chenoweth and Associates-Oil Leases," "Bob Chenoweth-Oil Leases," both at the same post office box number in Lafayette, La.; "Mr. Robert Chenoweth, Professional Petroleum Consultants, Inc.," at a different post office box number in Lafayette, La.; and simply "Robert A. Chenoweth" at a street address in Dallas, Texas. The latter is the address of record for the lease at issue.

The purpose of this inquiry was to determine whether any or all of the other seven individuals involved in the agreement with appellant had an interest in the offer which should have been disclosed as required by 43 CFR 3102.7, or if the eight individuals in this group who filed on Parcels UT 23 and UT 44 in this drawing had violated the prohibition against multiple filings expressed in 43 CFR 3112.5-2.

Appellant's response totally ignored the directive to supply information concerning the agreement. Where an oil and gas lease offeror fails to respond within a prescribed period of time to an order directing him to submit information necessary to determine whether his offer is valid, it is appropriate to reject the offer. Ricky L. Gifford, 34 IBLA 160, 163 (1978). Here, appellant had the opportunity to protect the validity of his lease by submitting the required information. His failure, or refusal, to do so affords a sufficient basis for administrative cancellation of the lease without further proceedings. Where an appellant has never requested a hearing and has been given every opportunity to submit whatever evidence on his behalf he desired, he cannot rightfully complain that he has been denied an opportunity to be heard. W. H. Bird, 72 I.D. 287 (1965). Even after a lease has been issued, it may still be canceled by the Secretary if it has been granted in violation of the Mineral Leasing Act, or the regulations issued under it. Boesche v. Udall, 373 U.S. 472 (1963); W. H. Bird, *supra*. This Board is the authorized representative of the Secretary for the purpose of considering and determining, as fully and finally as might the Secretary, matters within the jurisdiction of the Department and this Board involving hearings and appeals and other review functions of the Secretary. 43 CFR 4.1. Where a lease has been awarded in response to one of a number of offers filed simultaneously with the view of obtaining an unfair advantage over other offerors in a drawing, it is subject to cancellation under the doctrine of McKay v. Wahlenmaier, 226 F.2d 35 (D.C. Cir. 1955). W. H. Bird, *supra*, at 289.

[3] Nor can this lease be preserved under the provisions of 30 U.S.C. § 184(i) (1976), which protects the interests of bona fide purchasers of oil and gas leases issued in violation of the regulations. Appellant assigned this lease to Ambra Oil, Inc., reserving to himself a 5 percent overriding royalty interest. However, the record shows that the BLM decision canceling the lease was delivered and received at appellant's address of record on March 6, 1978, and that he executed the assignment to Ambra Oil, Inc., on the following day. It thus appears that he conveyed the canceled lease on the day after he received notice that it had been canceled on March 1, 1978. Therefore, the lease was not a viable instrument at the time of the purported conveyance, and Ambra Oil, Inc., took nothing thereby, notwithstanding that it may have been acting in good faith. We have held that a terminated oil and gas lease is unassignable, and that whether or not a purported assignee of such a lease is a bona fide purchaser is a moot question. Tenneco Oil Company, 7 IBLA 151 (1972). The purchaser of an assignment is presumed to have knowledge of the status of

the lease at the time of the assignment, and if he does not, he is put on inquiry. Tenneco Oil Company, supra. As the Court of Appeals stated in Southwestern Petroleum Corp. v. Udall, 361 F.2d 650, 656 (10th Cir. 1966):

There is no specific statute providing for constructive notice of land office records, which are maintained primarily for Departmental use. The bona fide purchaser amendment necessarily contemplates some inquiry be made into the records pertaining to title. Otherwise a premium would be put on negligence and studied ignorance. \* \* \* The use of land office records for title search must be recognized. [Emphasis added.]

The decision canceling the lease was issued by the BLM's Salt Lake City office on March 1, a week prior to the purported assignment. It is noteworthy that the address of Ambra Oil, Inc., is also Salt Lake City. Thus it would have been an easy matter for Ambra Oil, Inc., to have ascertained the status of the lease prior to consummation of the assignment.

Had the assignment of the lease been executed before the lease was canceled, we would stay the effect of the cancellation until it could be determined whether the assignee could qualify for the protection afforded bona fide purchasers. Cf. Gus Panos, 21 IBLA 163 (1975); Tiffany Trust, 21 IBLA 160 (1975); Dale A. Spiegel, 19 IBLA 235 (1975). But that protection cannot be extended to cover a situation where, as in this case, the assignment was executed after the lease was canceled.

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 as modified.

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Edward W. Stuebing  
Administrative Judge

We concur:

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Joan B. Thompson  
Administrative Judge

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Douglas E. Henriques  
Administrative Judge

