

GERTRUDE H. D'AMICO

IBLA 77-402

Decided January 17, 1979

Appeal from decision of the New Mexico State Office, Bureau of Land Management, rejecting oil and gas lease offer NM 29597.

Affirmed.

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

Where a drawing entry card form of offer to lease a parcel of land for oil and gas is prepared by a person or corporation having discretionary authority to act on behalf of the named offeror, and the offer is signed by such agent or attorney-in-fact on behalf of the offeror, the requirements of 43 CFR 3102.6-1 apply, so that separate statements of interest by both the offeror and the agent must be filed, regardless of whether he signed his principal's name or his own name as his principal's agent or attorney-in-fact, and regardless of whether the signature was applied manually or mechanically.

2. Administrative Practice—Appeals—Oil and Gas Leases: Applications: Generally—Regulations: Applicability

A final Departmental appellate decision construing a regulation will be given immediate effect, and will not be applied with prospective effect only, unless the decision alters materially the interpretation given the regulation by earlier Departmental decisions or official published opinions, and unless the equitable benefit of the decision is not outweighed by ill effects of allowing a benefit in derogation of the regulation.

APPEARANCES: Louis P. Iannini, Esq., DeMaria and Iannini, Rochester, N.Y., for appellant.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Gertrude H. D'Amico appeals from an April 15, 1977 decision of the New Mexico State Office, Bureau of Land Management (BLM), rejecting her offer to lease NM 29597 drawn with first priority for parcel NM 273 for oil and gas. Appellant's offer, filed by drawing entry card (DEC) pursuant to the simultaneous oil and gas lease filing procedure of 43 CFR 3110 *et seq.*, was rejected for failure to comply with the requirement set forth in 43 CFR 3112.2-1(a) that such entry cards be "signed and fully executed by the applicant or his duly authorized agent on his behalf." More specifically, the State Office rejected appellant's offer after she stated that she did not, herself, imprint the signature on the drawing entry card (DEC) and stated further that she did not personally select the parcel described by the DEC but that the selection was made and the application submitted by Eastern Investors Geological Services, Inc. On appeal, however, appellant's attorney contends that her statements to BLM regarding the drawing entry card were made "through inadvertence and as a result of her inexperience relative to such matters." Appellant now states that the signature on the DEC was made in her presence by Briddon Press Inc. and that Eastern Investors Geological Services Inc. acted in a merely advisory capacity while she herself formulated the offer in question.

In support of this allegation, counsel submitted a copy of an "Advisory Service Agreement" between Gertrude H. D'Amico and Eastern Investors Geological Services, and a copy of the brochure adverted to in the Agreement. The brochure states, in part:

C. PREPARATION OF FILING FORMS:

After you determine which program you wish to enter during a one-year period, Eastern Investors will prepare and file applications for you each month, for the number of filings called for in the program. We submit the entry cards with checks attached to the respective land office in time to meet the filing deadlines.

In her initial response to BLM, appellant clearly and literately stated that she was not present when her signature was imprinted on the drawing entry card, that she had authorized Eastern Investors to use her facsimile signature in her behalf, and that she had purchased services from Eastern Investors which included the selection of parcels for filing, preparation of applications on parcels selected, and delivery of applications to the proper land office, and that she did not select the parcel or imprint her signature on the card in issue.

This statement comports with the services set forth in the brochure, and we believe it to be an accurate representation of the events which led to the submission of the DEC at issue. The self-serving statements subsequently made through her attorney strain our credulity.

We believe the facts in this case are similar in every respect to those which the Board considered in D. E. Pack, 30 IBLA 166, 84 I.D. 192 (1977); D. E. Pack (On Reconsideration), 38 IBLA 23, 85 I.D. ___ (November 19, 1978). In Pack, drawing entry cards were prepared by a corporation having discretionary authority to act on behalf of the named offeror and to sign the offer by means of a facsimile signature, even as this appellant stated her DEC was prepared.

[1] It was held in Pack (On Reconsideration):

Where a drawing entry card form of offer to lease a parcel of land for oil and gas is prepared by a person or corporation having discretionary authority to act on behalf of the named offeror, and the offer is signed by such agent or attorney-in-fact on behalf of the offeror, the requirements of 43 CFR 3102.6-1 apply, so that separate statements of interest by both the offeror and the agent must be filed, regardless of whether he signed his principal's name or his own name as his principal's agent or attorney-in-fact, and regardless of whether the signature was applied manually or mechanically.

We adhere to that position. Inasmuch as the subject DEC was signed and prepared by an agency, similar to that considered in Pack, we hold that the DEC of D'Amico should have been accompanied by the separate statements set forth in 43 CFR 3102.6-1. As these statements were not submitted with the DEC, the State Office properly rejected this offer.

[2] The Board in Pack (On Reconsideration) also made this determination:

A final Departmental appellate decision construing a regulation will be given immediate effect, and will not be applied with prospective effect only, unless the decision alters materially the interpretation given the regulation by earlier Departmental decisions or official published opinions, and unless the equitable benefit of the decision is not outweighed by ill effects of allowing a benefit in derogation of the regulation.

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

Joseph W. Goss
Administrative Judge

