

J. A. MASEK

IBLA 79-168

Decided March 27, 1979

Appeal from decision of the Wyoming State Office, Bureau of Land Management, rejecting oil and gas lease offer W-66477.

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. Federal Employees and Officers: Authority to Bind Government

Reliance upon erroneous or incomplete information provided by employees of the Bureau of Land Management cannot create any rights not authorized by law.

APPEARANCES: W. F. Drew, Esq., Brown, Drew, Apostolos, Massey & Sullivan, Casper, Wyoming, for appellant.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

J. A. Masek appeals from a decision dated December 29, 1978, by the Wyoming State Office, Bureau of Land Management (BLM), rejecting

his oil and gas lease offer W-66477, which was drawn number one on the November 1978, simultaneous oil and gas filing list.

The offer was rejected for lack of compliance with 43 CFR 3102.6-1 which states that if the offer is signed by an agent or attorney-in-fact on behalf of the offeror, separate statements of interest by both the offeror and the agent must be filed with the offer or 15 days after the date of filing the offer.

In an affidavit previously filed with BLM appellant stated:

I, John A. Masek, (aka J. A. Masek), do hereby authorize Ann M. Brown of Casper, Wyoming to choose simultaneous filings, enter them on drawing cards and rubber stamp my signature facsimile thereto before forwarding them for the monthly drawing. This authorization will be in effect until I notify the Bureau of Land Management otherwise.

Signed J. A. Masek

Appellant's drawing entry card contains his rubber-stamped facsimile signature affixed thereon by Ms. Brown.

Appellant asserts in his statement of reasons that "Ms. Brown * * * would select the parcels to be filed upon and that she would affix [his] signature to each drawing card." Appellant alleges that BLM advised Ms. Brown "that this was an acceptable practice because she was clearly an amanuensis and * * * not the agent or attorney in fact * * *." Appellant thus argues that Ms. Brown was merely an amanuensis and that therefore the requirements of 43 CFR 3102.6-1(a)(2) did not come into play.

[1] The distinction between an "amanuensis" and an agent was discussed at some length in Evelyn Chambers, 27 IBLA 317 (1976). We quote from that decision:

The requirements and purposes of the regulation [43 CFR 3102.6-1] suggest an agency relationship akin to many business and commercial transactions where generally the terms "principal" and "agent" denote a fiduciary relationship with the agent possessing certain authority to act for the principal. See 2A C.J.S. Agency § 4 (1972). An "agent" may be distinguished from an "employee" in such contexts on the basis of the agent having authority to exercise discretion with respect to the transactions whereas a mere employee is allowed no discretion. See 53 AM. JUR. 2d, Master and Servant, § 3 (1970); 2A C.J.S. Agency § 16 (1972). Thus, an employee, or servant, while being an agent in the broadest sense of that term, may generally be understood to

have no authority to act with discretion – only to perform manual or mechanical acts. Id.

This distinction is clearly demonstrated in cases where an employee affixed his employer's signature to a document. In such circumstances where the employee is only performing a mechanical act at the direction of the employer, the employee is considered merely to be the "instrumentality" or "amanuensis" by which the employer is exercising the discretion in the transaction. The action is deemed that of the employer acting for himself. * * *

Appellant's argument that his employee, Ms. Brown, was an amanuensis is clearly without merit, since Ms. Brown had authority to exercise discretion in choosing the parcels to be filed upon. She was therefore an agent under the above test, and the requirements of 43 CFR 3102.6-1 apply. See D. E. Pack (On Reconsideration), 38 IBLA 23 (1978).

[2] Appellant's suggestion that BLM advised that Ms. Brown was an amanuensis rather than agent is of no avail, since reliance upon erroneous or incomplete information provided by BLM employees cannot create any rights not authorized by law.

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.

Frederick Fishman
Administrative Judge

We concur.

Douglas E. Henriques
Administrative Judge

Edward W. Stuebing
Administrative Judge

