

CHARLES J. KING

IBLA 78-433

Decided April 18, 1979

Appeal from a decision of the Colorado State Office, Bureau of Land Management, rejecting appellant's simultaneous filings for a noncompetitive oil and gas lease C 26565.

Affirmed as modified.

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

A first-drawn simultaneous drawing entry card which is defective because of noncompliance with a mandatory regulation must be rejected and may not be "cured" by submission of further information.

2. Oil and Gas Leases: Applications: Generally

A simultaneously filed oil and gas lease offer by a guardian is properly rejected where the offer is neither accompanied by the statements required by 43 CFR 3102.5-1, nor makes reference to the serial number of a record in which such statements have previously been filed.

APPEARANCES: Joseph J. Titone, Esq., Olds and Titone, Fort Lauderdale, Florida

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Charles J. King, as father and natural guardian of Elaine H. King, a minor, appeals from a decision of the Colorado State Office, Bureau of Land Management, rejecting his drawing entry card offer for a noncompetitive oil and gas lease, C 26565.

In the March 1978 simultaneous oil and gas lease drawing, the offer of Charles J. King, as father and natural guardian of Elaine H. King, was selected first and thereby accorded first priority of consideration for an oil and gas lease of Parcel CO-246. The signature block on the reverse side of the drawing entry card (Form 3112.1) indicates that Elaine H. King is a minor.

In this same March 1978 drawing for an oil and gas lease of Parcel CO-246, Charles J. King submitted a drawing entry card in his name alone, but this card was not selected in the drawing.

Thereafter, BLM rejected the drawing entry card submitted by Charles J. King, as father and natural guardian of Elaine H. King, on two grounds:

(1) Mr. King failed to file with this offer a certified copy of the court order authorizing him to act as guardian and to fulfill in behalf of the minor all obligations of the lease or arising thereunder.

(2) The filing by Mr. King of an offer in his own name alone and of a second offer in his name as father and natural guardian of Elaine H. King constituted a multiple filing which is prohibited by 43 CFR 3112.5-2.

On the second ground, BLM reasoned that any benefits which might inure to Elaine H. King under the lease would serve to reduce the obligations of her father to support her. The father was therefore regarded as having an interest in two offers for the same parcel.

Regulation 43 CFR 3102.5-1 requires the filing of the following documents with an offer made by a guardian or trustee:

[A] certified copy of the court order authorizing him to act as such and to fulfill in behalf of the minor or minors all obligations of the lease or arising thereunder; his statements as to the citizenship and holdings of each of the minors; and a similar statement as to his own citizenship and holdings under the leasing act, including his holdings for the benefit of other minors.

Appellant argues that this regulation and succeeding regulations set forth in 43 CFR 3112.2-1 are ambiguous and unclear inasmuch as they do not state whether a natural guardian is subject to the same requirements.

By regulation 43 CFR 3102.1-1(b), a minor is not qualified to hold a mineral lease. That regulation provides: "A mineral lease will not be issued to a minor, but oil and gas leases may be issued to legal guardians or trustees of minors in their behalf."

When the above-quoted regulation is read in conjunction with 43 CFR 3102.5-1, it is clear that the regulation contemplates, by the very use of the term "legal," that the guardianship arises out of a court order, and is not derived from the natural result of parenthood.

[1, 2] In any event, 43 CFR 3102.5-1 does explicitly require certain statements from any guardian or trustee relative to citizenship and holdings of both the guardian or trustee and of all the minors under his guardianship or trusteeship. King did not submit any such statements with the drawing entry card which he filed as natural guardian and father of Elaine H. King. For that reason alone, the card was subject to rejection. A first-drawn drawing entry card which is defective because of noncompliance with a mandatory regulation, must be rejected and may not be "cured" by submission of further information. Ballard E. Spencer Trust, Inc., 18 IBLA 25 (1974); aff'd, B.E.S.T. v. Morton, 544 F.2d 1067 (10th Cir. 1976). A simultaneously filed drawing entry card lease offer filed by a "guardian" is properly rejected where the offer is neither accompanied by the statements required by 43 CFR 3102.5-1, nor makes reference to the serial number of a record in which such statements had previously been filed. See Spencer, supra.

Having thus determined that the drawing entry card filed by Charles J. King, as natural guardian for Elaine H. King, was properly rejected because of noncompliance with the regulations, it is not necessary to rule on the second ground in the BLM decision (the question of multiple filings by a person who submits one drawing entry card individually, and one as a guardian of a minor child, each for the same parcel).

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.

Douglas E. Henriques
Administrative Judge

I concur:

James L. Burski
Administrative Judge

ADMINISTRATIVE JUDGE THOMPSON CONCURRING IN THE RESULT:

I agree the offer filed by Charles J. King as father and natural guardian of Elaine H. King must be rejected here. I also agree we need not decide here whether the grounds given by the Colorado State Office were correct because the offer must be rejected for a different reason. Oil and gas leases for minors may only be issued to legal guardians or trustees of minors in their behalf. 43 CFR 3102.1-1(b).

In rejecting the offer the BLM State Office rested on the first phrases of 43 CFR 3102.5-1 requiring that a guardian or trustee file with an offer "a certified copy of the court order authorizing him to act as such and to fulfill in behalf of the minor or minors all obligations of the lease or arising thereunder * * *." Appellant contends that to require a natural guardian - a parent - of a minor child to go to court and obtain a court order would discriminate against those who do not have large estates and assets unsupervised by a court or who do not have an inheritance which might require court supervision. He also contends that the regulation is ambiguous because it is unnecessary for natural guardians to obtain a court order, thus, the regulation should be read only as pertaining to guardians or trustees who are under court supervision.

I disassociate myself from the remarks in the majority suggesting or implying that the use of the term "legal" in the regulation contemplates a guardianship arising out of a court order, and that only a guardian or a trustee having a court order can file in behalf of a minor. As previously mentioned, however, it is unnecessary to resolve the issue pertaining to the court order or the alleged ambiguity of the regulation requiring a copy of the court order. Even assuming, arguendo, that the first phrase of 43 CFR 3102.5-1 is ambiguous as applied to a natural guardian, the remainder of the regulation is clear and unambiguous. It requires that a guardian or trustee file with the offer "his statements as to the citizenship and holding under the leasing act, including his holdings for the benefit of other minors." This requirement was not met here. Therefore, I would reject the offer for this reason.

Joan B. Thompson
Administrative Judge

