

Editor's note: Reconsideration denied by order dated Aug. 16, 1979; Appealed – dismissed, Civ. No. C79-350K (D.Wyo. Aug. 8, 1980), 494 F.Supp. 987

GEOSEARCH, INC.

IBLA 79-185

Decided May 14, 1979

Appeal from decision of the Wyoming State Office, Bureau of Land Management, dismissing protest against the issuance of oil and gas lease W 65184.

Affirmed.

1. Oil and Gas Leases: Applications: Sole Party in Interest--Words and Phrases

"Interest." Where an oil and gas leasing service selects lands, files offers, and advances funds on behalf of its clients for leases which the service is willing to sell on behalf of any successful client, strictly at the client's option, in return for a percentage commission on the sale, the service has no enforceable right to any portion of the lease, if issued. In such circumstances, the service does not have an "interest" in the lease, so that the client/offoror is not precluded from stating that he is the sole party in interest to the offer, and the filing of offers for the same parcel by other clients of the service is not disqualifying.

APPEARANCES: Melvin E. Leslie, Esq., Salt Lake City, Utah, for appellant; William R. Hamm, Esq., Milwaukee, Wisconsin, for protestee/offoror and Resource Service Company.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

The simultaneous noncompetitive oil and gas lease offer drawing entry card of Peter V. Gallo was drawn with first priority in the September 1978 drawing for parcel WY-1422 by the Wyoming State Office, Bureau of Land Management (BLM), and assigned serial number W 65184.

On December 8, 1978, Geosearch, Inc. (Geosearch), the assignee of the interests of the offeror whose card was drawn with second priority in this drawing, filed a protest against Gallo's offer. This protest alleged that Gallo's offer violated 43 CFR 3102.7 and 3112.5-2 in that an undisclosed agency relationship existed between him and Fred Engle, d/b/a Resource Service Company (RSC), at the time the offer was filed and requested that any interests in the lease in the hands of persons who are not bona fide purchasers be assigned to it as the next qualified offeror.

On December 14, 1978, BLM advised Geosearch that it was suspending consideration of its protest pending judicial review of a similar matter (Coyer v. Andrus, C 78-104 (D. Wyo.)). On December 18, 1978, Geosearch requested that BLM dismiss its protest in lieu of suspending consideration thereof, and, on December 27, 1978, BLM issued a decision so doing, from which decision Geosearch appealed.

[1] The record as developed by BLM provides an inadequate basis to determine whether Geosearch's protest has merit. Ordinarily, we would remand the matter to BLM to develop the record. However, Gallo has augmented this record by submitting information which establishes that Geosearch's protest is without merit, and it will therefore be unnecessary to delay ruling on this protest.

Gallo has provided a copy of a service agreement between himself and Engle, which provides in part as follows:

SALES AGENCY AVAILABLE

When I win a drawing, R.S.C. provides at my option, the service to sell the rights I have won. This agency contract for sale is available only after the drawing is completed. Any final negotiated price is subject to my approval. If I utilize R.S.C.'s agency contract for sale and they or I obtain a buyer during the 5-year term of the contract, I understand the service fee to R.S.C. is as follows:

OUTRIGHT SALE OF OIL & GAS RIGHTS

\$1 to \$100,000.00 ----- Service fee to R.S.C. 16%
Over \$100,000.00 ----- Service fee to R.S.C. 12%

IN EVENT OF ROYALTY PAYMENTS

\$1 to \$100,000.00 annually -- Service fee to R.S.C. 16%
Over \$100,000.00 annually -- Service fee to R.S.C. 12%
If I do not receive at least \$10,000 gross in aggregate from a sale negotiated by R.S.C., they will process up to 300 additional applications which I may choose to make free of their service charge.
[Emphasis supplied.]

This memorandum bears Gallo's signature and the notation that he authorized it on May 20, 1978, prior to the submission of his offer card by RSC. A marginal note on the memorandum indicates that it replaces the agreement currently in effect.

This agreement is identical to that considered by this Board in Geosearch, Inc., 40 IBLA 267 (1979) and Geosearch, Inc., 39 IBLA 49 (1979). We adhere to and reconfirm our holdings there, to wit:

The agreement between [the offeror] and RSC which was in effect at the time the offer was filed here created no "interest" in RSC which [the offeror] was required to disclose under 43 CFR 3102.7, or which might have resulted in RSC's having filed multiple offers for parcel WY 52 in violation of 43 CFR 3112.5-2. Where an oil and gas leasing service selects lands, files offers, and advances funds on behalf of its clients for leases which the service is willing to sell on behalf of any successful client strictly at the client's option in return for a percentage commission on the sale, the service has no enforceable right to any portion of the lease, if issued. 43 CFR 3100.0-5(b); Virginia L. Jones, 34 IBLA 188, 193 (1978); Harry L. Matthews, 29 IBLA 240, 242 (1977); R. M. Barton, 4 IBLA 229, 232 (1972); John V. Steffens, 74 I.D. 46, 53 (1967). Thus, in such circumstances, the service does not have an "interest" in the lease, so that the client/offeror is not precluded from stating that he is the sole party in interest to the offer, and the filing of offers for the same parcel by other clients of the service is not disqualifying. 43 CFR 3102.7, 3112.5-2; Virginia L. Jones, *supra*; Harry L. Matthews, *supra*; R. M. Barton, *supra*; John V. Steffens, *supra*.

Here, the agreement between RSC and [the offeror] gave [him] the option, after he won the lease, of having RSC arrange a sale for him in return for a specific percentage of the proceeds of the sale. As it happened, he accepted an offer presented to him by RSC. However, as the language of the agreement expressly contemplates his declining to exercise this option, he could have declined to accept this or any other offer arranged by RSC without violating the terms of the agreement, and by so doing, have prevented RSC from gaining any financial benefit from the lease. [Footnote omitted.]

Thus, at the time the lease offer was filed, RSC had merely a hope or expectancy that [the offeror] would choose to accept an offer arranged by it, and that it would share in the proceeds of the lease through commission. This does not constitute an "interest." Therefore, the lease was

properly issued to [the offeror] as there was no violation of 43 CFR 3102.7 or 3112.5-2.

Geosearch's arguments on appeal were answered in Geosearch, Inc., supra, (both cases). We conclude that BLM properly dismissed Geosearch's protest and that neither this protest, nor Geosearch's presentation on appeal, establishes that Gallo's offer is defective.

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.

Edward W. Stuebing
Administrative Judge

We concur.

James L. Burski
Administrative Judge

Douglas E. Henriques
Administrative Judge

