

Appeal from a decision of the Colorado State Office, Bureau of Land Management, dismissing protest against oil and gas lease offer C 25815.

Affirmed.

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

Where separate statements of interest are required pursuant to 43 CFR 3102.6-1(a)(2) (1977), this Board must affirm the dismissal of a protest against the issuance of an oil and gas lease which is premised on the protestant's contention that the statement of the offeror must bear his original, holographic signature.

2. Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases: Applications: Attorney-in-Fact or Agents -- Oil and Gas Leases: Applications: Drawings -- Oil and Gas Leases: Applications: Filing

Although a lease offer may not be rejected solely because an agent affixed the offeror's facsimile signature to the offeror's separate statement, this does not prevent BLM from requiring that the offeror personally verify the information contained therein and provide whatever supplemental information may reasonably be required. A private agent

may not interpose himself between a lease applicant and the Government so as to mask the identity of the applicant and prevent direct contact by Federal officials who are properly concerned.

APPEARANCES: Conrad E. Coffield, Esq., Hinkle, Cox, Eaton, Coffield & Hensley, Midland, Texas, for appellant; James W. McDade, Esq., McDade and Lee, Washington, D.C., for appellees.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

W. H. Gilmore appeals from a decision of the Colorado State Office, Bureau of Land Management (BLM), dated October 3, 1977, dismissing his protest of the issuance of an oil and gas lease C 25815 for parcel CO-642.

In the August 1977 drawing of simultaneous oil and gas lease offers conducted by the Colorado State Office, the drawing entry card (DEC) of Raymond J. Persia was drawn with first priority for parcel CO-642. Second priority for this same parcel was awarded to W. H. Gilmore. By a letter dated September 21, 1977, Gilmore protested the issuance of a lease for this parcel alleging violation by Persia of 43 CFR 3102.6-1 (1977).^{1/}

^{1/} The relevant portion of this regulation reads as follows: § 3102.6-1 Statements.

(a) Evidence required. (1) Except in the case where a member or a partner signs an offer on behalf of an association (as to which, see § 3102.3-1) or where an officer of a corporation signs an offer on behalf of the corporation (as to which, see § 3102.4-1) evidence of the authority of the attorney-in-fact or agent to sign the offer and lease, if the offer is signed by such attorney or agent on behalf of the offeror. Where such evidence has previously been filed in the same proper office where the offer is filed, together with a statement by the attorney-in-fact or agent that such authority, is still in effect will be accepted.

(2) If the offer is signed by an attorney-in-fact or agent, it shall be accompanied by separate statements over the signatures of the attorney-in-fact or agent and the offeror stating whether or not there is any agreement or understanding between them or with any other person, either oral or written, by which the attorney-in-fact or agent or such other person has received or is to receive any interest in the lease when issued, including royalty interest or interest in any operating agreement under the lease, giving full details of the agreement or understanding if it is a verbal one. The statement must be accompanied by a copy of any such written agreement or understanding."

Specifically, Gilmore alleges that the language of 43 CFR 3102.6-1 (1977) does not authorize a facsimile signature to be affixed to the separate statements of interest required of the offeror and his agent by subsection (a)(2). According to Gilmore, the regulation should not be construed to permit a filing service such as Stewart Capital Corporation involved herein, to circumvent the requirements of this section by filing a statement of interest over a second facsimile signature of the offeror.

BLM dismissed Gilmore's protest in a letter of October 3, 1977, citing the holding of this Board in Mary I. Arata, 4 IBLA 201, 78 I.D. 397 (1971). This appeal followed.

The facts are not in controversy. The DEC of Persia was formulated and prepared by Stewart Capital Corporation (Stewart) which also affixed the offeror's signature to the card by means of a facsimile signature. Stewart's address, rather than that of the offeror, was entered on the card. Accompanying the DEC were separate statements of interest of Persia and Stewart, ostensibly to comply with the requirements of 43 CFR 3102.6-1 (1977). Persia's statement bore a facsimile signature affixed thereto by Stewart, and Stewart's statement bore a facsimile signature of an officer of the corporation.^{2/}

The issue to be determined on appeal is whether an offer bearing no original signature either on the DEC itself or on an accompanying statement of interest pursuant to 43 CFR 3102.6-1 (1977), can be considered a qualified offer upon which an oil and gas lease may issue.

Appellant Gilmore argues that the State Office erred in citing Arata, supra, as authority for the validity of a facsimile signature.

Appellant contends that the essence of 43 CFR 3102.6-1 (1977) is the requirement that there be an affirmative representation by the offeror as to the authority of the agent and the extent and nature of the interests of the parties. He maintains that the statement of Raymond J. Persia which accompanied his offer, bearing only a facsimile signature, is not such an affirmative representation.

Essentially, it is appellant's argument that Stewart Capital corporation, by using agency authority on behalf of its client and its own authority to act in its own behalf, has "bootstrapped" itself into a position to take unilateral action in an effort to satisfy a regulation which was obviously intended to evoke a bilateral response.

^{2/} The DEC submitted by Gilmore bears an original, handwritten signature.

He asserts that this circumvents the plain requirements of the regulation for the submission of reliable evidence of the authority of the agent and disclosure of interests.

Appellee Persia responds to these allegations by asserting that no agency relationship exists between himself and Stewart to make the requirements of 43 CFR 3102.6-1(a)(2) applicable to the present case. As to this argument, we point out that the operation of Stewart on behalf of its clients in the simultaneous filing program conducted by BLM was reviewed intimately in D. E. Pack (On Reconsideration), 38 IBLA 23, 85 I.D. 408 (1978). Therein, this Board determined that where an entity such as Stewart has discretionary authority to act on behalf of a named offeror in the preparation of a DEC and to affix the offeror's signature by mechanical means to the DEC, an agency relationship exists and the statement required by 43 CFR 3102.6-1 must be filed.

Appellee also contends that the requirement of subsection (a)(2) that the statement of interest be "over the signature" of the agent and offeror does not preclude the use of facsimile signatures on these statements and does not preclude these facsimile signatures from being affixed by a third party with the offeror's consent.

Moreover, he argues, use of a facsimile signature is consistent with the purpose of the regulations which is to require separate statements by which the offeror and agent are each bound regarding the existence and nature of the agent's interests. The role of Stewart, appellee suggests, is that of amanuensis, and hence the facsimile signature in the statement was legally the offeror's.

Although the issue posed by this case was alluded to in the dissent of D. E. Pack (On Reconsideration), supra, the case before us is one of first impression.

In preface to our discussion of the majority's holding, we wish to acknowledge that we are not without appreciation of the position of the appellant and that taken by the minority of this Board, as reflected in the dissenting opinions. In D. E. Pack, (On Reconsideration), supra, we noted that the purpose of the regulation was to obtain the assurance of the named offeror and the agent that the person in whose name the offer is filed is the actual offeror, and that any outstanding interest of the agent is fully disclosed. We stated that this purpose would be frustrated were we to allow avoidance of the need to file the separate offeror/agent statements where the agent, listing only his own address, signed his "client's" name as the offeror, certifying that the nominal offeror was the sole party in interest and was otherwise qualified. Id. at 38 IBLA 43. We fully recognize that our holding in the instant case exposes the

Department to another method by which the reasonable efforts of the Department to insure fair play and compliance with the law can be made more difficult, and we deplore the proclivity of some leasing services to exploit every conceivable loophole in the letter of the regulations without any discernible regard for their spirit and intent.

[1] Nevertheless, although we readily acknowledge the logic of appellant's arguments and the rationale of the minority's opinion, as well as the administrative desirability of the result they espouse, we must affirm the dismissal of appellant's protest.

First, we note that the regulation itself does not specifically require an original signature of the offeror and agent on the statements of interest. As this regulation was promulgated long before our holding in Arata, supra, it is most unlikely that those who drafted the regulation ever contemplated the possibility that an agent would use a facsimile of the offeror's signature to sign not only the offer, but also the offeror's separate statement (necessitated by the agent's signing of the offer), let alone the possibility that the agent would then use a facsimile of his own signature to execute his separate statement. Even so, the fact remains that the regulation only requires "separate statements over the signatures of the attorney-in-fact or agent and the offeror."

In Arata, supra, we held that the requirement of a regulation 3/ that a simultaneous oil and gas drawing entry card be "signed and fully executed by the applicant or his duly authorized agent in his behalf" could be satisfied by a facsimile signature if it were the applicant's intention that the facsimile serve as her signature. Although in that case Mrs. Arata declared that she had personally applied the facsimile signature stamp to her offer, it was subsequently the holding of this Board that in light of the language of the regulation, a facsimile signature would be just as efficacious if it were applied, not by the applicant, but by "his duly authorized agent in his behalf," so long as there was the requisite manifestation of the applicant's intent to be bound thereby. Robert C. Leary, 27 IBLA 296 (1976). However, we said, if the application (or drawing entry card) was signed by the applicant's agent or attorney in fact, this would trigger the need for the submission of the separate statements over the signatures of the attorney in fact or agent, and the offeror, as required by 43 CFR 3102.6-1. D. E. Pack (On Reconsideration), supra, and cases cited therein.

In light of this Board's holdings in the foregoing cases, when read in context with 43 CFR 3102.6-1, we conclude that a lease

3/ 43 CFR 3112.2-1(a)

applicant would be warranted in his understanding that a facsimile signature would suffice to validate his separate statement as well as the lease offer which it accompanied. There is nothing in the law of agency to indicate that an agent may execute the one document on behalf of his principal, but not the other. Nor is there anything in the regulations which would preclude the agent from affixing his principal's signature to the separate statement of the offeror.

As noted above, it is unlikely that those who drafted the regulation foresaw that anyone would attempt compliance in this manner. We have no doubt it was intended to require that the agent and the offeror each submit a statement personally signed by the respective individuals. But this requirement is not expressed. If, notwithstanding our own case precedent, the general law relating to principal/agent relationships, and the language of the regulation, we were to hold that the offeror is obliged to personally sign his separate statement with his own holographic signature, we would have to depart from the adjudicatory function and engage in rulemaking. We cannot go so far. A revision of the regulation would be necessary to accomplish the result urged by appellant.

[2] However, although it is our holding that a lease offer cannot be rejected solely because the agent applied the offeror's facsimile signature to the offeror's separate statement, if BLM has any questions concerning the agent's interest and authority or offeror's identity or qualifications, it has not only the right to resolve those questions, but the duty to do so, before issuing the lease. No private agent has the right to forbid the Government direct contact with the lessee or would-be lessee of Government land and still assert his principal's right to receive or maintain his lease. Certainly the agent may not conceal from the Government the identity of the lessee or applicant, including his residence and/or business address. While an offeror or lessee may request that his address of record be that of his agent as a business convenience, neither he nor his agent may employ this as a device to conceal his identity or prevent properly concerned Government personnel from contacting him directly on matters relating to the Federal lease(s) which he holds or has applied for.

The fact that a lease agent in Chicago with a nation-wide clientele submits an offer and separate statement over the facsimile signature of "William Smith" does not preclude BLM from further inquiry to establish to its own satisfaction that William Smith is a living person, of contractual capacity, of requisite citizenship, that he has no interest in any other offers for the same parcel of land, that he is not chargeable with acreage holdings in excess of the statutory limitations, that he has duly empowered his agent to act for him and any limitations which may be imposed on such agent's authority, and a

description of any other interests in the lease or offer which may be outstanding; and BLM may require that this information may be provided personally by the offeror. The offeror may be said to have certified to some of this information by reason of the fact that his agent has made such declarations in his behalf and signed the offeror's name, thereby making the offeror responsible for their veracity. But the fact that the offeror is bound by such declarations made by his agent does not interdict the Government from inquiring further to supplement or verify the information by direct responses from the offeror.

We have frequently held that where a BLM State Office is not satisfied as to compliance with the regulations, it should require the offeror to provide such information in support of his offer as will resolve the questions. Ray H. Thames, 31 IBLA 167 (1977); Charlotte Thornton, 31 IBLA 3 (1977); D. E. Pack, 30 IBLA 166, 84 I.D. 192 (1977); Mary E. Niland, 28 IBLA 300 (1977); Arthur S. Watkins, 28 IBLA 79 (1976); William J. Sparks, 27 IBLA 330 (1976); Robert C. Leary, *supra*. Under these cases BLM may demand of the offeror whatever relevant information it requires.

Moreover, where an oil and gas offeror fails or refuses to respond within a prescribed time to an order directing him to submit specific information necessary to determine whether his offer is valid, it is appropriate to reject the offer. Lee S. Bielski, 39 IBLA 211 (1979); Ricky L. Gifford, 34 IBLA 160 (1978). If the lease has already issued, it may be canceled upon the lessee's failure to submit additional information which BLM properly required. Robert A. Chenoweth, 38 IBLA 285 (1978).

Thus, the concept that a leasing service can insinuate itself between its clients who seek to enjoy the benefits of the Mineral Leasing Act and the Federal officers who administer that Act so as to mask the applicants' identities and prevent direct contact is patently specious. Not only is the Government entitled to ascertain the identity of lessees and offerors, including their residence and/or business addresses, we perceive no reason why any such information obtained should not be available to the general public under the Freedom of Information Act, 5 U.S.C. § 552 (1976).

In sum, we conclude that BLM properly dismissed appellant's protest that Persia's lease offer was disqualified because his separate statement was signed with his facsimile signature by his agent. But the fact that this kind of submission must be regarded as acceptable under the regulations does not foreclose BLM's right to seek further information or verification directly from the offeror personally.

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:

Newton Frishberg
Chief Administrative Judge

Joseph W. Goss
Administrative Judge

Anne Poindexter Lewis
Administrative Judge

I concur in the result:

Joan B. Thompson
Administrative Judge.

ADMINISTRATIVE JUDGE HENRIQUES DISSENTING:

My disagreement stems from the holding that the regulatory requirements are satisfied where the undated statement of interest bears only the facsimile signature of the offeror as applied by an agent, who then "verifies" the total action (offer and statement) by another undated statement bearing the agent's facsimile signature which may or may not have been impressed by the agent himself. The majority says that BLM may inquire further for additional information in such cases if it is deemed necessary. That is an optional action, at best, albeit one which I think would have to be applied or employed in every similar situation to eliminate any criticism that bias or favoritism was shown toward a particular agent or filing service. Indeed, it has been shown that the statements here in issue have been accepted blindly by some BLM offices and totally rejected in others.

Since the majority holds that the facsimile signature of the offeror is adequate for the DEC and for the statement of interest, I am bewildered and at a loss to guess how BLM can compel a holographic signature for anything relating to an oil and gas lease offer, or even an issued lease, including an assignment thereof. BLM can request the offeror to verify his signature which the majority has here declared is satisfied by another facsimile. It seems to follow, logically, that any number of requests from BLM could be answered by letters bearing the same facsimile signature, with no guarantee that a real person is, in truth, behind the offer. To permit the majority ruling to stand would open the door to much greater abuse of the simultaneous filing program than presently exists.

I am not unmindful that the problem involved in this case could be easily solved by a change in the regulations, a suggestion that this Board has made on many occasions during the past 5 years.

I would hold that where statements of interest are required with a DEC pursuant to 43 CFR 3102.6-1(a)(2) (1977), the statement of interest of the offeror must bear the offeror's original signature, i.e., the signature must be holographic and may not be affixed by facsimile or other mechanical device or process either by the offeror or any other person. To hold otherwise would be to allow an agent to bootstrap the very fact of agency which the statements seek to disclose. An original signature on a statement of interest will also enable BLM to verify that the facsimile signature on the DEC is truly that of the named offeror.

Specifically in this case I would hold that the first drawn DEC of Persia, bearing a facsimile signature impressed by an agent, and accompanied by an undated statement of interest similarly bearing Persia's facsimile signature and with an accompanying statement of an agent, also bearing a facsimile signature, is not a qualified offer because BLM must request additional information to verify the DEC.

I would hold that a first drawn DEC which is defective for noncompliance with a mandatory regulation or one which requires BLM to seek additional information to verify the qualifications of the offeror may not be "cured" by the submission of additional information. As the circuit court held in B.E.S.T., Inc., v. Morton, 544 F.2d 1067 (10th Cir. 1976), "allowing an unqualified first drawn entrant additional time to file the required statements would infringe upon the rights of the second drawn applicant."

I would reverse the BLM decision and reject the offer of Persia.

Douglas E. Henriques
Administrative Judge

ADMINISTRATIVE JUDGE BURSKI DISSENTING:

While I agree with the observations made by Judge Henriques concerning the logical ramifications of the majority decision, I wish to emphasize my basic disagreement with the majority on the question of the proper interpretation of the provision of the regulations found at 43 CFR 3102.6-1. Additionally, I strongly dissent from the majority view that an interpretation of 43 CFR 3102.6-1(a)(2) which would require the submission of holographic signatures would constitute rulemaking.

The majority apparently feels that, having determined in Mary Arata, 4 IBLA 201, 78 I.D. 397 (1971), that the signing of an entry card as required by 43 CFR 3112.2-1(a) could be accomplished by use of a facsimile signature, this Board must similarly interpret the provisions of 43 CFR 3102.6-1. There is, however, no logical basis for this conclusion. Moreover, I believe that this approach ignores the fundamental difference between these two regulations.

As this Board has held, on numerous occasions, the requirement of 43 CFR 3112.2-1(a) relates to the certification by the offeror of all other statements made on the card. See, e.g., Adobe Oil and Gas Corp., 34 IBLA 13 (1978); Frank DeJong, 27 IBLA 313 (1976); Thomas Buckmann, 23 IBLA 21 (1975). Thus, when Arata, supra, authorized the use of the facsimile signature within the confines of 43 CFR 3112.2-1(a), it was premised on a finding that the appellant was certifying all other statements made on the DEC.

The purpose of 43 CFR 3102.6-1 is markedly different. The provisions of this section come into play only when an application has been signed by the applicant's agent or attorney-in-fact on his behalf. It is clearly a disclosure provision. When the three separate provisions of 43 CFR 3102.6-1 are examined together, I think it plain that the regulation contemplates a holographic signature on the separate statements which it requires.

Thus, 43 CFR 3102.6-1(a)(1) requires evidence of the authority of the agent or attorney-in-fact to sign the offer and lease. The next section, 43 CFR 3102.6-1(a)(2), requires "separate statements over the signatures of the attorney-in-fact or agent and the offeror." It is this provision which the majority interprets as permitting the use by the agent of the offeror's facsimile signature. Finally, 43 CFR 3102.6-1(a)(3) waives execution of the statement by the offeror if the power of attorney: (a) limits the authority of the agent or attorney-in-fact to file offers to lease "for the sole and exclusive benefit of the principal and not in behalf of any other person in whole or in part"; (b) grants specific authority to execute all statements of interests and all other such statements as may be required;

and (c) signifies the waiver by the offeror of all and any defenses which might be available to contest the actions of the agent or attorney-in-fact.

The majority interpretation of 43 CFR 3102.6-1(a)(2) completely ignores 43 CFR 3102.6-1(a)(3). The very purpose of 3102.6-1(a)(2) is to obtain "separate statements" from both the offeror and the attorney-in-fact or agent. This is made clear in 43 CFR 3102.6-1(a)(3) where the regulations provide, under the conditions set forth above, that "the requirement that statements must be executed by the offeror will be dispensed with and such statements executed by the attorney-in-fact or agent will be acceptable as compliance with the provisions of the regulations."

The system which the majority envisages is thus a two level system. If the power of attorney meets the requirements of 43 CFR 3102.6-1(a)(3), the attorney-in-fact or agent may individually execute the statements required by 43 CFR 3102.6-1(a)(2). If the requirements of 43 CFR 3102.6-1(a)(3) are not met the attorney-in-fact or agent may provide one statement under his own signature, and another statement to which the attorney-in-fact or agent has affixed the offeror's facsimile signature. Under such an analysis, the whole purpose of 43 CFR 3102.6-1(a)(3) is to save the attorney-in-fact or agent one piece of paper. Indeed, it creates a disclosure provision which discloses nothing.

Admittedly, the majority reaches this conclusion reluctantly, feeling that they are required to so hold because of the decision in Arata, supra, interpreting the word "signature" as including facsimile signatures. It is here, however, that I feel that the majority has made its crucial mistake. As Judge Learned Hand noted: "Words are chameleons, which reflect the color of their environment." Commissioner v. National Carbide Co., 167 F.2d 304, 306 (2d Cir. 1948). It is only when a word is examined in the context within which it appears that any meaning can fairly be ascribed to it. Regardless of any questions as to the correctness of the Arata interpretation of 43 CFR 3112.2-1(a), I feel it is demonstrable error to ritualistically apply that interpretation to the provisions of 43 CFR 3102.6-1.

More pernicious, because its effect is far greater in scope than the meaning of 43 CFR 3102.6-1, is that statement in the majority decision that "[i]f, notwithstanding our own case precedent, the general law relating to principal/agent relationships, and the language of the regulation, we were to hold that the offeror is obliged to personally sign his separate statement with his own holographic signature, we would have to depart from the adjudicatory function and engage in rulemaking." I emphatically reject this position.

It is, of course, axiomatic that the regulations could be amended to add the words "holographic" before the word "signatures" in 43 CFR

3102.6-1(a)(2), and thus meet the majority's requirement for clarity. From this obvious observation, however, the majority somehow reasons that were the Board to interpret "signatures" so as to require a personal holographic signature it would constitute rulemaking. The conclusion does not flow from the premise.

The question which this case presents is the meaning of 43 CFR 3102.6-1. This is the essence of adjudication as this Board has heretofore understood it. The majority decision must necessarily stand for the proposition that once a regulation has been interpreted in one fashion this Board is powerless to alter its view of the regulation no matter how compellingly the error of the first interpretation has been shown. Such a position must inevitably result in the concertizing of all Departmental interpretation, paralysis of the adjudicatory process, and the elevation of the principal of stare decisis to a status which this Board has previously rejected. See, e.g., United States v. Winegar, 16 IBLA 112, 81 I.D. 370 (1974); United States v. Maher, 5 IBLA 209, 79 I.D. 109 (1972).

I dissent.

James L. Burski
Administrative Judge

I concur:

Frederick Fishman
Administrative Judge

