

FRED S. GHELARDUCCI

IBLA 79-82

79-103

79-112

Decided June 28, 1979

Appeals from decisions of the Colorado State Office, Bureau of Land Management, declaring bid deposits forfeited.

Affirmed.

1. Notice: Generally -- Regulations: Generally -- Regulations: Binding on the Secretary -- Regulations: Force and Effect as Law

All persons dealing with the Government are presumed to have knowledge of duly promulgated regulations. Such regulations have the force and effect of law and are binding on the Department.

2. Administrative Authority: Generally -- Administrative Authority: Estoppel -- Estoppel -- Federal Employees and Officers: Authority to Bind Government

Reliance on incomplete information supplied by Bureau of Land Management employees cannot estop the United States or excuse compliance with a regulation.

3. Oil and Gas Leases: Generally -- Oil and Gas Leases: Competitive Leases

The requirement of forfeiture of the bid deposit if the qualified high bidder fails to enter a lease must be enforced to prevent those bidders with greater capital resources from gaining an unfair advantage.

APPEARANCES: Fred S. Ghelarducci, pro se.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

Fred S. Ghelarducci appeals from three decisions by the Colorado State Office, Bureau of Land Management (BLM), declaring the bonus bid deposits submitted with competitive oil and gas lease bids forfeited without further notice where the high bidder did not meet certain specified requirements for issuance of the lease within the time prescribed.

Because the issue is the same in each case, all three appeals have been consolidated in this decision. Serial No. C-27212-Acq. was assigned Parcel No. 2, Battle Canyon Field, Parcel No. 7 in the Moffat Field was assigned Serial No. C-27224, and Parcel No. 10 in the Moffat Field was assigned Serial No. C-27227. The competitive oil and gas lease sale was held on September 15, 1978. Pursuant to 43 CFR 3120.1-4(b), each bidder must submit one-fifth of the total amount bid with the bid. Appellant submitted \$1,064, \$631.54, and \$800.17, respectively, on the parcels listed above.

On November 6, and November 17, 1978, BLM issued the decisions appealed from, informing appellant that he must pay the balance of the bonus bid, the first year's rental and the publication costs, and execute the lease forms and stipulations within 15 days after receipt of the decision or the lease would not issue and the bid deposits would be forfeited.

Appellant asserts as the reason for his appeal that the notice and instructions "for the September 15, 1978 sale did not clearly state that the one-fifth bid amount would be forfeited if the balance was not paid." He requests the return of the deposits.

Competitive oil and gas leases are issued under authority of the Mineral Leasing Act for Acquired Lands of August 7, 1947, as amended, 30 U.S.C. § 532 (1976), the Mineral Leasing Act of February 25, 1920, as amended, 30 U.S.C. § 226 (1976), and the regulations found at 43 CFR Subpart 3120.

[1] Regulation 43 CFR 3120.4-1, entitled "Failure to comply with award notice," provides: "If a bidder, after being awarded a lease, fails to execute it or otherwise comply with the applicable regulations, his deposit will be forfeited and disposed of as other receipts under this act." This regulation codifies the conclusion reached by this Department in a similar case in 1968, Midwest Oil Corporation, LA-615 (Supp.) April 1, 1968. In Midwest a request for refund was denied on general principles of contract law, even though the appellant had based its bid on an erroneous Geological Survey map. While it is unfortunate that the notice of the sale was not as clear as the regulation, all persons dealing with the Government are presumed to

have knowledge of duly promulgated regulations. 44 U.S.C. §§ 1507, 1510 (1976); Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947); Juan Munoz, 39 IBLA 72 (1979); Verner F. Sorenson, 32 IBLA 341 (1977). The regulation was duly promulgated June 13, 1970, 35 FR 9692, and has the force and effect of law. It is binding on the Department as well as appellant. Arizona Public Service Company, 20 IBLA 120 (1975).

[2] The notice of the sale itself provided: "Bids may not be modified or withdrawn unless the modification or withdrawals are received prior to the time fixed for opening the bids. The deposits of the unsuccessful bidders will be returned upon acceptance of the successful bidder." This should have put appellant on notice that he would be unable to reject a lease without penalty. In any event, reliance on erroneous or incomplete information supplied by BLM employees cannot estop the United States or excuse compliance with a regulation. 43 CFR 1810.3(c); Juan Munoz, supra.

[3] The rationale behind strict enforcement of the bid deposit requirements is set forth in North American Coal Corporation, 74 I.D. 209 (1967). Just as it would be unfair to other bidders to overlook a failure to submit the bid deposit, it would give wealthy bidders an advantage over those with less capital if the high bidders were permitted to bid on many parcels and later, at no cost, decide which leases to enter. See also Sarkey's, Inc., 26 IBLA 141 (1976). Appellant has given no explanation for his failure to enter the leases.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are affirmed.

Joan B. Thompson
Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

Newton Frishberg
Chief Administrative Judge

