

ARJAY OIL CO.

IBLA 79-316

Decided September 20, 1979

Appeal from decision of Idaho State Office, Bureau of Land Management, rejecting noncompetitive oil and gas lease offer I-12937.

Affirmed.

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

A protest by a junior offeror against an oil and gas lease offer which charges that fraudulent statements were made on the offer and implies other wrongdoing that violates the regulation requiring disclosure of all parties in interest is properly dismissed where the protestant fails to establish these charges or that the successful offer was in fact defective. A suggestion of the possibility of a violation of a regulation is not sufficient; a protestant must present competent proof of such violation, absent which a protest is properly rejected.

APPEARANCES: R. Dennis Ickes, Esq., Stringham, Larsen, Mazuran & Sabin, Salt Lake City, Utah, Steven D. Luster, Esq., Salt Lake City, Utah, for appellant; Carl P. Burke, Esq., Elam, Burke, Jeppesen, Evans, and Boyd, Boise, Idaho, for respondent Bloom; John W. Coughlin, Esq., Kutak, Rock & Huie, Denver, Colorado, for respondent Conoco, Inc.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Arjay Oil Company (Arjay) appeals from the Idaho State Office, Bureau of Land Management (BLM), decision of March 7, 1979, which rejected its noncompetitive oil and gas lease offer I-12937 because the land sought had been included in oil and gas lease I-9257 issued

effective March 1, 1979, to a prior-filed offer by J. W. Bloom, and assigned effective March 1, 1979, to Conoco, Inc. <sup>1/</sup>

Appellant contends that J. W. Bloom was not the sole party in interest in offer I-9257 at the time it was filed, hypothesizing that Conoco must have provided the funds for payment of the filing fee and first year's rental and, therefore, had to have an interest in the offer. Inasmuch as the interest was not declared, Bloom was not the first qualified offeror for the subject land.

Offer I-9257 was filed February 27, 1975, by J. W. Bloom, who indicated on the offer form that he was the sole party in interest. An assignment of the offer, and subsequent lease, from Bloom to Conoco, Inc., was filed for approval on May 13, 1976, within the 90-day period following its execution. In January 1977 Arjay protested some 201 oil and gas lease offers filed with BLM by Bloom or one Rosita Trujillo which offers, Arjay alleged, had been filed at the request of Conoco or American Quasar Petroleum Company, and which companies paid the advance rentals. BLM dismissed the protest and this Board affirmed that decision in Arjay Oil Company, 31 IBLA 300 (1977), on the ground that no competent proof of any violations of the Mineral Leasing Act, 30 U.S.C. §§ 181-287 (1976), or the regulations governing oil and gas leasing had been given by Arjay. Thereafter Arjay brought suit against the Secretary of the Interior, certain officials of BLM, Bloom and his wife, and American Quasar Petroleum Co., under the styling Arjay Oil Co. v. Andrus, Civ. No. 77-1167 (D. Idaho), seeking annulment of the Board's decision and mandamus to the Secretary to issue leases to Arjay, or in the alternative, a finding of antitrust violations between Bloom and American Quasar under section 4 of the Clayton Act. Upon defendant's motion, the action was dismissed without prejudice, January 19, 1978. (Conoco was not a party to this litigation.)

In due course, following a reaffirmation by Bloom that he was the sole party in interest in offer I-9257 when it was first filed, oil and gas lease I-9257 issued to Bloom, and an assignment of the lease to Conoco was approved, both effective March 1, 1979. Arjay's junior offer I-12937 was then rejected and this appeal followed.

As to the allegation that Bloom was not the sole party in interest in offer I-9257, Bloom, by affidavit, stated that he had been hired by Conoco to obtain leases of fee lands for Conoco in Idaho, but had received no instructions to obtain state or Federal leases, and that he had filed offer I-9257 on his own initiative, subsequently offering an assignment to Conoco at his cost plus expenses, and that he had paid the filing fee and first year's rental for the offer from funds obtained by a personal bank loan, and that none of the funds

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<sup>1/</sup> Conoco, Inc., is the present name of Continental Oil Co., under which name these proceedings were considered.

were advanced by Conoco. He again asseverated that he was the sole party in interest in the offer when it was first filed. In another affidavit, John Norman, a landman for Conoco, stated that he had hired Bloom to obtain leases of fee lands in Idaho and had not given Bloom any instructions relative to Federal leases, that Bloom had not requested the advancement of any funds from Conoco for the acquisition of lease I-9257, and that Conoco had no legal interest in I-9257 when it was first filed in 1975.

As with its earlier appeal, appellant has not submitted any competent proof of any violation of the statute or regulations by Bloom or Conoco in the filing of offer I-9257. At best, appellant attempts to draw conclusions to suit its thesis from testimony given by Bloom in connection with the litigation styled Arjay Oil Co. v. Andrus, *supra*. It appears that appellant has merely made essentially the same allegations that earlier were considered by this Board in Arjay Oil Company, *supra*. Appellant has again failed to provide any substantive evidence to prove its charges. From our review of the record we can find no basis to vacate oil and gas lease I-9257 issued in response to Bloom's offer, or the approval of the assignment of that lease to Conoco.

[1] We adhere to the holding of this Board in Arjay Oil Company:

In the final analysis, appellant has not shown where the State Office decision was in error. The burden is on the protestant to show justification for the disqualification of the successful drawee in a simultaneous filing drawing procedure and that the offer is in fact defective. Mere suggestion of the possibility of violation of a regulation is not sufficient; a protestant must present competent proof of such violation. Absent an adequate showing of disqualification, the Board has repeatedly held that a protest alleging disqualification is properly rejected. D. E. Pack, 30 IBLA 230 (1977); Harry L. Mathews, 29 IBLA 240 (1977); Georgette B. Lee, 3 IBLA 171 (1971).

31 IBLA at 302-3

Appellant has requested a hearing pursuant to 43 CFR 4.415, asserting that such a proceeding is the only way to determine if Bloom in truth and in fact was the first qualified offeror for the subject land. As discussed above, appellant has apparently drawn conclusions different from those drawn by BLM in its review of the record, but appellant has not made any offer of proof to support its conclusions. The situation in this case appears distinguishable from that presented in Lee S. Bielski, 39 IBLA 211 (1979). In Bielski, the protestant presented sufficient evidence to warrant further investigation by BLM before issuance of any lease. In this case, the protestant offers conjecture only, and that only after BLM had considered the record fully before issuing the lease. Conduct of a hearing is not an

inexpensive undertaking. We are not disposed to order a hearing based on mere conjecture, which appellant's request seems to be. The motion is denied.

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.

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Douglas E. Henriques  
Administrative Judge

We concur:

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Frederick Fishman  
Administrative Judge

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Joan B. Thompson  
Administrative Judge

