Appeal from decision of the Wyoming State Office, Bureau of Land Management, disqualifying oil and gas lease offer for Parcel WY 2438.

Affirmed as modified.

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

Under the Departmental regulations an offeror in a simultaneous oil and gas lease drawing must sign a statement that he is the sole party in interest, or, if not, submit the statement required by 43 CFR 3102.7. Failure to comply with the regulation requires rejection of the lease offer.

2. Administrative Practice -- Administrative Procedure: Adjudication -- Oil and Gas Leases: Applications: Sole Party in Interest -- Oil and Gas Leases: First Qualified Applicant -- Rules of Practice: Protests

Where a protest, with accompanying supporting evidence, alleges that the oil and gas lease offer drawn first in a simultaneous-filing-drawing procedure violated the regulations because a party in interest was
not disclosed and there was a multiple filing, the Bureau of Land Management should first afford the drawee an opportunity to respond to the protest before rejecting the offer based on facts alleged in the protest. The error, however, is rendered harmless where on appeal the offeror has full opportunity to make factual submissions and respond to the allegations.

3. Contracts: Generally -- Oil and Gas Leases: Applications: Drawings -- Oil and Gas Leases: Applications: Sole Party in Interest -- Words and Phrases

"Interest in an oil and gas lease or offer." If an oil and gas lease offeror in an oral agreement gives another person "a claim or any prospective or future claim to an advantage or benefit from a lease," there would be an interest in the lease or lease offer which must be disclosed under 43 CFR 3102.7. That an offeror might raise a technical legal defense against enforcement of such an agreement in a court does not militate against there being a claim or avoid the consequence of the disclosure regulation or 43 CFR 3112.5-2 prohibiting multiple filing in drawing procedures.

4. Contracts: Generally -- Oil and Gas Leases: Applications: Drawings -- Oil and Gas Leases: Applications: Sole Party in Interest -- Words and Phrases

"Interest in an oil and gas lease or offer." Where affidavits submitted on appeal by an oil and gas lease offeror disclose that prior to the filing of an oil and gas lease offer the offeror orally agreed to give the person filing the offer for him either the opportunity to refuse to purchase the lease under terms and conditions that a third party would make (right of first refusal), or the opportunity to make the first offer before any other offer would be accepted (first right to buy), the offeror has given the person an interest in the offer as defined in the regulations to include a prospective claim to an advantage or benefit from a lease.
H. J. Enevoldsen, of Potter, Nebraska, appeals from the letter decision dated March 7, 1979, by the Wyoming State Office, Bureau of Land Management (BLM), disqualifying his offer to lease Parcel WY 2438. Enevoldsen's offer won first priority in the Wyoming State Office's December 1978 simultaneous oil and gas lease offer drawing. Appellant's offer was disqualified based on evidence submitted by Shackelford Reeder, the number two drawee, protestant, which BLM found to show that appellant was not the sole party in interest for the parcel and that he failed to comply with the disclosure requirements of 43 CFR 3102.7. 1/

1/ 43 CFR 3102.7 provides:
"§ 3102.7 Showing as to sole party in interest.
A signed statement by the offeror that he is the sole party in interest in the offer and the lease, if issued; if not he shall set forth the names of the other interested parties. If there are other parties interested in the offer a separate statement must be signed by them and by the offeror, setting forth the nature and extent of the interest of each in the offer, the nature of the agreement between them if oral, and a copy of such agreement if written. All interested parties must furnish evidence of their qualifications to hold such
In his letter of protest protestant charged that there was an agreement or understanding between appellant and a Joseph Sprinkle of Denver, Colorado, which gave Sprinkle "an interest or a claim or prospective claim to an advantage or benefit from any lease to be issued to Enevoldsen," in violation of 43 CFR 3102.7 and 3112.5-2. Protestant based this charge on a considerable amount of evidence, including three affidavits to support the charges.

Without allowing appellant an opportunity to rebut the evidence submitted with the protest, BLM issued its decision disqualifying appellant's offer. On appeal, appellant asserts this failure as error. Appellant further asserts that he was and is the sole party in interest in his lease offer and that protestant's evidence, which BLM accepted, is circumstantial and irrelevant. He submitted numerous affidavits which challenge and deny the veracity of protestant's evidence.

The record reveals the following facts and circumstances. Protestant first became suspicious when a Philip Donaldson of Grand Blanc, Michigan, contacted him. Donaldson told protestant, as set

fn. 1 (continued)

lease interest. Such separate statement and written agreement, if any, must be filed not later than 15 days after the filing of the lease offer. Failure to file the statement and written agreement within the time allowed will result in the cancellation of any lease that may have been issued pursuant to the offer. Upon execution of the lease the first year's rental will be earned and deposited in the U.S. Treasury and will not be returnable even though the lease is canceled."
forth in his affidavit, that when he tried to contact appellant to discuss buying the lease, he was referred to appellant's father who said the lease was not for sale and refused to give him appellant's address. Appellant's sister-in-law referred Donaldson to Sprinkle, stating, "[T]he last time they won a Lease, he got it" (Affidavit of Donaldson). Donaldson checked the Rocky Mountain Petroleum Directory for Sprinkle, and found "Joseph S. Sprinkle Oil Leases," in Denver, Colorado. He then contacted the second drawee, protestant.

Protestant's check of BLM records indicated that in the past other residents of Potter, Nebraska, had assigned leases in very active leasing areas to Sprinkle, retaining unusually low overriding royalty interests. Protestant hired a private investigator, James D. Visser, to contact appellant personally and to determine if any agreement existed between appellant and Sprinkle.

In his affidavit, Visser states that appellant "agreed that he had filed the entry card on behalf of Mr. Sprinkle, and stated that he had been entering the lottery for the last four years for Mr. Joe Sprinkle." According to Visser, appellant told him, "I think we get 50% or something" when questioned about the financial arrangements, and did not know if his father or Sprinkle paid the filing fee. Visser also contacted appellant's father, Don Enevoldsen. He states the father told him, "We have all signed cards for years for Joe Sprinkle." Protestant states that Don Enevoldsen refused to divulge the financial arrangements he had with Sprinkle.
Protestant also hired Esther R. Evans of Laramie County, Wyoming, to search the BLM records relating to oil and gas leases in Wyoming. She found that five applicants who filed on Parcel WY-2438 had won leases in the past and assigned them to Sprinkle, retaining overriding royalty interests of 1/2 to 1 percent. Based on this evidence submitted by protestant, BLM disqualified appellant's offer.

On appeal, appellant asserts no other person had an interest in the lease. He submitted affidavits from himself, his father, Joe and Mary Sprinkle, and nine persons who have assigned leases to Sprinkle. These affidavits are discussed, infra. For our purposes here, it is sufficient to say that the affiants (other than the Sprinkles) generally state they give Sprinkle a right of first refusal to purchase the lease, but that he has no interest in the lease and they do not have to sell to him.

Protestant filed an answer to appellant's statement of reasons, asserting that appellant's affidavits support a finding of a scheme to allow Sprinkle a better chance to obtain leases. He states that Sprinkle's "'sponsored applicants' do not appear to pay filing fees; do not select the parcels filed upon; do not pay rentals; immediately sell any lease won by them to Sprinkle; and retain a noncustomary, nominal overriding royalty interest." He suggests the offerors "understand they must sell to Mr. Sprinkle for that is the `quid pro quo' for his all-encompassing assistance in placing the applicants in filings." Protestant argues that this right of first refusal contains
all the essentials for a contract, is akin to an option, and gives rise to legal and equitable remedies for breach. Protestant submitted affidavits from an independent consulting geologist and two other disinterested parties, all familiar with oil and gas leasing practices in Wyoming. All three agree the 1/2 to 1-1/2 percent overriding royalty paid by Sprinkle is abnormally low. Two or three percent is generally expected in highly speculative areas, while 5 percent is considered standard.

The attorney for BLM submitted a motion for expeditious review of the case and also, submitted a brief in support of the State Office's position. First, she asserts that even if BLM should have given appellant an opportunity to be heard prior to issuing its decision, the error was harmless because appellant and Sprinkle both admit Sprinkle had a right of first refusal. Second, she argues this right is an "option" and thus explicitly violates 43 CFR 3100.0-5(b). The fact that "Sprinkle's interest is contingent upon the sale of the lease interest by Appellant which is controlled by Appellant, * * * does not preclude Mr. Sprinkle from holding an 'interest' within the meaning of 43 CFR 3100.0-5(b)."

2/ 43 CFR 3100.0-5(b) provides:

"(b) Sole party in interest. A sole party in interest in a lease or offer to lease is a party who is and will be vested with all legal and equitable rights under the lease. No one is, or shall be deemed to be, a sole party in interest with respect to a lease in which any other party has any of the interests described in this section. The requirement of disclosure in an offer to lease of an offeror's or other parties' interest in a lease, if issued, is predicated on the departmental policy that all offerors and other parties having an interest in simultaneously filed offers to lease shall have an
Appellant submitted a reply brief to protestant's and the Government's arguments. Both protestant and the Government stated that the facts here show a violation of both the sole party in interest requirement, 43 CFR 3102.7, and the prohibition against multiple filing, 43 CFR 3112.5-2. Appellant initially points out that the decision appealed from did not decide the multiple filing issue; therefore, that issue is not involved here. Appellant argues that his use as a layman of the phrase "right of first refusal" has significance only in terms of the intent of the parties, there being no written agreement involved. Appellant, his father, Sprinkle, and the other affiants all assert that Sprinkle has no rights whatsoever in the leases he helps them win. Appellant asserts the statements in their affidavits negate the existence of any contract, agreement or scheme.

Finally, protestant submitted a response to appellant's reply stating that Sprinkle's interest need not be called, or even defined as, an option for it to violate the regulations. He states: "It does

---

fn. 2 (continued)

... equal opportunity for success in the drawings to determine priorities. Additionally, such disclosures provide the means for maintaining adequate records of acreage holdings of all such parties where such interests constitute chargeable acreage holdings. An 'interest' in the lease includes, but is not limited to, record title interests, overriding royalty interests, working interests, operating rights or options, or any agreements covering such 'interests.' Any claim or any prospective or future claim to an advantage or benefit from a lease, and any participation or any defined or undefined share in any increments, issues, or profits which may be derived from or which may accrue in any manner from the lease based upon or pursuant to any agreement or understanding existing at the time when the offer is filed, is deemed to constitute an 'interest' in such lease.'"
not matter that Enevoldsen might not have sold the lease, or might have attempted to refuse to honor Sprinkle's claim, for 43 CFR 3100.0-5(b) requires disclosure of the existence of an agreement giving another party an interest in the lease." Protestant last notes that he has contended that the Sprinkle applicants pay neither the $10 filing fee nor any service fees to Sprinkle; do not reimburse Sprinkle for filing fees paid by him; do not select the parcels; do not pay the rentals when leases are won; and immediately sell leases they win to Sprinkle, retaining unusually low overriding royalty interests. Appellant has not responded to these contentions, nor has he disclosed the amount of the bonus paid for the lease. Viewing all the facts, protestant concludes that the existence of a "scheme to give Sprinkle an advantage in the drawing is quite clear, and both 43 CFR 3102.7 and 43 CFR 3112.5-2 have been violated."

[1] Under the Departmental regulations, an offeror in a simultaneous oil and gas lease drawing must sign a statement that he is the sole party in interest, or submit the statement required by 43 CFR 3102.7 if there are other parties in interest. Failure to comply with this regulation requires rejection of the lease offer. Alfred L. Easterday, 34 IBLA 195 (1978).

[2] The BLM decision rested on a finding that this regulation was violated because Sprinkle held an interest in appellant's offer which was not disclosed on the offer. This finding was made solely from the information in the protest filed with the BLM office March 6,
1979. The BLM decision issued the next day, on March 7, 1979. We agree with appellant to the extent of stating that this action by BLM was premature and procedurally improper in this case. BLM's decision was based upon alleged statements of the appellant and others not made in writing to BLM, but made to another person and reported by that person. The facts alleged were in charges made by a protestant not reflected in the record except in the protest materials.

Although it has been recognized that there is no vested right in an oil and gas lease offeror to a lease if the United States decides not to lease the land within the offer (e.g., Udall v. Tallman, 380 U.S. 1 (1965); Duesing v. Udall 350 F.2d 748 (D.C. Cir. 1965), cert. denied, 383 U.S. 912 (1966)), it is also clear that if the United States does lease land, the first qualified applicant has a preference right to a lease which cannot be abused by leasing the land to another in violation of the statute and regulations. E.g., McKay v. Wahlenmaier, 226 F.2d 35 (D.C. Cir. 1955).

Usually, problems in determining whether an offeror was the first qualified offeror for a parcel of land can be resolved on facts shown by the official records, particularly the showings of the applicant. Thus, where an offer is not accompanied with essential showings under the regulations it is apparent from the record that the offer must be rejected. There is no factual dispute involved, only a legal conclusion to be drawn from the facts in the record. The case before us, however, is different from the usual case because the BLM decision

44 IBLA 79
rested upon asserted facts stated in a protest. Basic due process concepts of fairness should have been followed by BLM here. At the very minimum, appellant should first have been afforded the opportunity to respond to such allegations and to rebut the facts stated in the protest before BLM rejected the offer. 

Cf. Stickelman v. United States, 563 F.2d 413 (9th Cir. 1977).

BLM's error in this case is now rendered harmless because it is true, as BLM's counsel has indicated, that this appeal process has afforded appellant an opportunity to present information to rebut the facts alleged in the protest, and he has attempted to do so by submitting affidavits. It is also true, as appellant contends, that the protestant and Government's counsel have raised issues in addition to that decided by the decision below. These go to the viability of appellant's offer, however, and appellant has had opportunity to address those issues in the briefs filed with this Board and has done so. Were there a clear dispute on basic facts determinative of the legal issues posed therefrom, we would order a fact-finding hearing in this case before an Administrative Law Judge pursuant to 43 CFR 4.415. However, in view of the sworn statements submitted by appellant and others concerning the arrangement with Sprinkle, we see no basic fundamental factual dispute, only minor factual discrepancies. The main dispute is over the legal significance of the stated arrangement. Thus, we believe the present record affords an adequate
predicate for our determination of the crucial issues raised by the appeal. 3/

[3] The fundamental question, upon which the other issues rest, is whether Sprinkle had an interest in the offer and lease to be issued as prescribed in regulation 43 CFR 3100.0-5(b). As defined therein, an "interest" covers a broad range of rights in an offer or lease, including "[a]ny claim or any prospective or future claim to an advantage or benefit from a lease." See n.2. It is the protestant's and BLM's position that the affidavits submitted by appellant on appeal referring to Sprinkle's "right of first refusal" establish that Sprinkle did have such an interest in the lease. Appellant has attempted to explain away the use of this language in the affidavits by referring to other language therein to show there was no enforceable agreement with Sprinkle whereby the offer had to be assigned by appellant to Sprinkle.

Appellant contends no enforceable contract existed between Sprinkle and appellant which would give Sprinkle any right or interest.

3/ We note that appellant has not submitted anything that would indicate that a hearing in this case might be productive of a different result. As will be indicated infra, he has not endeavored to show what was intended by the language used in the affidavits of "right of first refusal." Furthermore, he has not denied that Sprinkle paid the filing fees for himself and others. This fact, unrefuted, strongly supports an inference that Sprinkle had more than a mere hope or expectation to purchase a winning lease since the normal expectation is that a person would not pay filing fees as a gratuity, but would as a consideration for a benefit to be obtained.
in the lease. He contends that many Departmental decisions require that there be an enforceable contractual right before a third person is deemed to have an interest in a lease offer. The cases cited involve relationships between oil and gas lease services and offerors where the written agreements between them permitted the offeror to sell the lease to the service at the offeror's option. The question was whether the services had an interest. It has been held that unless the contract provided that the offeror must sell to the service, the service did not have an interest. See, e.g., Kelley Everette, 41 IBLA 155 (1979); Jack Mask, 41 IBLA 147 (1979), and cases cited therein. In those cases there was no asserted "right of first refusal" in the service company. There were definite written agreements specifying the various rights of the parties between themselves. There was a clear option in the offeror, but not in the filing service company. These cases are clearly distinguishable from the instant case. Here, apparently, we have no specific written contract. Appellant has asserted that there existed only an oral understanding.

The fact that an agreement or understanding between the parties is oral makes no difference in considering whether there has been a violation of the regulations. Under 43 CFR 3102.7, if there are other parties interested in the offer separate statements must be signed by them and the offeror "setting forth the nature and extent of the interest of each in the offer, the nature of the agreement between them if oral, and a copy of such agreement if written." If the oral agreement would give a person "a claim or any prospective or future
claim to an advantage or benefit from a lease," there would be an "interest" in the lease as defined by 43 CFR 3100.0-5(b). The regulation uses the word "claim." This connotes something less than a right which may be successfully enforced in the courts. For example, if a party to an agreement asserts there is no enforceable contract because he could raise a statute of frauds defense in the courts, this does not change his status under this regulation nor under 43 CFR 3112.5-2, which pertains to multiple filings. The party still has a "claim" to an advantage or benefit from a lease, and cannot by a "bootstrap" argument of a possible technical legal defense avoid the consequence of the clear purpose of the regulations to have such interests disclosed and to forbid multiple filings by parties in the same drawings who have such interests. Compare Foote Mineral Co., 34 IBLA 285, 85 I.D. 171 (1978) (presently on appeal in the courts), where it was held, inter alia, that the United States may assert a claim and determine the underlying obligation for royalties, even though a defense (in that case, the statute of limitations) against collection of some of the royalties could be asserted in court proceedings. 4/

4/ In a different context, in a case involving a conspiracy to acquire patents of desert land under laws limiting the acreage an individual could acquire, it was argued that an oral, undisclosed understanding between desert land entrymen and others would not be a legally enforceable contract. Reed v. Morton, 480 F.2d 634, 641 (9th Cir. 1973), cert. denied, 414 U.S. 1064. It was held that there was, nevertheless, sufficient proof of a scheme or conspiracy which year violated the laws. In specifically addressing the argument, the court stated:

"But secret 'arrangements' and 'understandings,' like more formal contracts to pass title to desert land grants after patents, undermine the Interior Department's power and duty to enforce the restrictions on the recipients of the government's bounty." Id.
Thus, the important determination to be made is whether Sprinkle had a "claim" to an advantage or benefit from a lease, and not whether he could successfully enforce the agreement in a court.

[4] Appellant has requested that we consider all of the statements in the affidavits submitted to support his position and not take one statement out of context. We have examined all of the affidavits in connection with appellant's contentions and have carefully considered the statements therein in their entire context. Despite appellant's shifting position in trying to explain away the use of the term "right of first refusal," all the information submitted tends to show that Sprinkle and appellant had an oral understanding or agreement which could come within the definition of an "interest" in the lease.

In Sprinkle's affidavit he states he handles the filing of the entry cards for appellant as well as other members of his family and other friends and members of "our family." He then states:

I do not have with them nor do they have with me any prior arrangements as to the sale of any oil and gas leases that they may win.

I have verbally committed to make an offer and I have been assured that my offer would receive early consideration as to its adequacy. My wife, Mary, has authority to act in my behalf.

The latter statement takes away much of the import of the first statement above quoted. Sprinkle has promised to make an offer.
Clearly it was appellant's and Sprinkle's understanding that Sprinkle would offer to buy any lease in the drawing which appellant would win, and that "early consideration as to its adequacy" would be given by the offeror.

In appellant's affidavit he states that his father explained to him that Sprinkle would handle the "mechanics of the filing" if appellant desired to participate in the oil and gas lease drawings as other family members had done with Sprinkle's help. Appellant states further:

He explained that I could do so by signing entry cards and giving them to Mr. Sprinkle. Mr. Sprinkle asked for the right of first refusal to purchase the lease. I could sell it to him if I wanted to, but I did not have to. I was perfectly free to sell it to whomever I wanted.

Later in the affidavit he states that he in no way intended to give the private investigator the impression that he was filing on behalf of Sprinkle or that he has been "entering the lottery for Mr. Joe Sprinkle."

The affidavit by appellant's father, D. W. Enevoldsen is basically of the same import. The most relevant portions of his affidavit read:

For many years I have made applications for oil and gas leases in the Federal Simultaneous Filings. I first became aware of the filings through relatives of mine who
are relatives of Joe and Mary Sprinkle. I and other members of my family contacted them to determine if we were eligible to participate in the filings. We were informed that if we would execute the entry cards, the other details would be handled for us by Joe and Mary Sprinkle. The only request that they made of us was that if any of us won, we would let them make an offer and give them the right of first refusal.

With regard to his conversation with the private investigator he stated:

He [the investigator] said, "You are signing cards for Joe Sprinkle," and I said "No, you are putting words in my mouth." I asked him if this was the way that he talked to my son. He kept saying, "Is it true you and your son are signing for Joe Sprinkle?" I kept repeating, "We sign the entry cards for ourselves and we are the only people who have an interest in the leases and we can sell to whomever we want." He kept using phrases such as "But you do sign cards for Joe Sprinkle" and "You are doing this for Joe Sprinkle." I kept telling him that he was misinformed and finally I became rather irritated and told him if he wanted some more information, he could talk to Joe Sprinkle or anyone he wanted, but I did not want to talk to him anymore.

Nine other affidavits were submitted by relatives or friends. They are identical and state:

I was at no time nor am I now obligated to transfer any interest to anyone in any oil and gas lease that I have won or may win as a result of any simultaneous drawing conducted by the Bureau of Land Management.

Joseph Sprinkle advises me and handles the filing of my application. I have agreed verbally that in the event I am successful, he will have the right of first refusal to purchase the lease. He has agreed to assist me in selling the lease in the event he does not purchase it.
I, at all times, have and have had the sole right to sell to whomever and at whatever price I desire and no one has or has had any right to any portion of any lease I have applied for.

The arrangement or understanding of these nine affiants with Sprinkle appears to be similar to that of appellant.

Appellant contends that, at most, his arrangement with Sprinkle could give rise merely to a "hope or expectation" in Sprinkle and not an "interest" in the lease, and that by decisions of this Board in such circumstances the offeror is the sole party in interest and there is no violation of the regulations. E.g. Virginia L. Jones, 34 IBLA 188 (1978); D. E. Pack, 30 IBLA 230 (1977); Harry L. Matthews, 29 IBLA 240 (1977); R. M. Barton, 4 IBLA 229 (1972); John V. Steffens, 74 I.D. 46 (1967). In none of these cases, however, was there an agreement that the offeror gave the agent filing the cards a "right of first refusal." They are all distinguishable from the situation here.

Although the affiants used the term "right of first refusal," appellant now says there was no prior agreement of a "right of first refusal" vested in Sprinkle. He contends that appellant did not use the phrase in its legal or technical sense because qualifying language negates such an intent, specifically, his statement that "I could sell it to him if I wanted to, but I did not have to. I was perfectly free to sell it to whomever I wanted * * *." We do not agree that this statement coupled with all the information in the affidavits establishes that Sprinkle had no claim to an advantage or benefit from the
lease. Appellant's excuse that he is a lay person and would not understand technical terms is not persuasive here. Apparently the affidavits were prepared with the help of an attorney, or at least, they were reviewed by an attorney in submitting them as proof of the arrangement between the parties.

Appellant points to court cases which use "right of first refusal" in a technical sense to mean that the person having the right would have the right to meet any bona fide offer of a third party at the same price and on the same terms and conditions as those in the offer by the third person, if the person giving the right decided to sell. E.g., Turner v. Shirk, 364 N.E.2d 622 (Ill. App. 1977); Bennett Veneer Factors, Inc. v. Brewer, 441 P.2d 128, 134 (Wash. 1968); Brownies Creek Collieries, Inc. v. Asher Coal Min. Co., 417 S.W.2d 249 (Ky. 1967); Tamura v. De Iuliiis, 281 P.2d 469 (Ore. 1955). Appellant contends that the right of first refusal is not an "option," quoting from Coastal Bay Golf Club, Inc. v. Holbein, 231 So.2d 854 (Fla. 1970), at 857, wherein the court stated: "That right is clearly an executory right. It is therefore not an option because an option is an executed contract." Appellant has cited additional cases to the same effect pointing out that the right of first refusal is not a true option because a lessor has the right to retain the property and not to sell to anyone. However, as clearly pointed out in most of these cases cited above, and as expressly quoted by appellant from Bennett Veneer Factors, Inc. v. Brewer, supra at 132:

44 IBLA 88
In a preemptive right contract, sometimes called a "first refusal" right, there is an agreement containing all essential elements of a contract, the terms of which give to the prospective purchaser the right to buy upon terms established by the seller; but only if the seller decides to sell. [Emphasis by appellant.]

Appellant then contends that the terms of an oral contract must be "clear, satisfactory, and unequivocal." This requirement is stated in cases involving conflicts between the purported parties to the contract. In our situation it suffices if the evidence simply show an arrangement which violated the regulations.

We agree with appellant that the evidence here does not establish that Sprinkle had an option to purchase the lease, within the usual meaning of the word "option" to mean a definite contract whereby the prospective purchaser has a definite right to purchase, if he chooses to do so under agreed upon conditions, rather than the seller having the election to sell. We do not agree, however, that Sprinkle obtained no right under the oral agreement with appellant. As indicated, appellant contends his statement that he "was perfectly free to sell it to whomever [he] wanted" negates a right of first refusal. Also, appellant states we must look to the term "right of first refusal" in the entire context of the language in the affidavits. This must be true, also, of appellant's other statement. If we were to accept appellant's argument completely that Sprinkle had no rights at all, we would have to ignore the language of "right of first refusal" and say that it had no significance whatsoever. However, it appears that appellant and members of his family and Sprinkle had an
understanding that Sprinkle had some right or privilege because he filed the offers for them. It is clear from Sprinkle's affidavit that he was obligated to make an offer to purchase a winning lease from appellant, but that appellant could refuse Sprinkle's offer if he did not want to sell the lease. What is lacking in appellant's submissions is a specific and clear explanation of Sprinkle's right. We cannot accept appellant's assertion that Sprinkle had no right in view of the statement in his affidavit and in the other affidavits which show a pattern whereby Sprinkle would file the offers for appellant and others, if they would give him a right of first refusal.

The affiants' statements do not expressly state that Sprinkle would have the right to match any other offer made by a third person to appellant. However, the language in the affidavits does not clearly demonstrate that he would not have that right. Such a right is in keeping with the most common legal understanding of the term right of first refusal. The only other possible interpretation which would give some meaning at all to the use of the term is that Sprinkle would be afforded the first opportunity to make an offer to purchase the lease. This is usually called a "first right to buy." See 1A. Corbin, Contracts §§ 261, 261A (1963). In both circumstances, the person giving the right does not have to sell. However, if he decides to do so, the party to whom the right was given must be given either the opportunity to refuse to purchase under terms and conditions as a third party would make (right of first refusal), or the opportunity to
make the first offer before any other offer would be accepted (first right to buy).

While neither of these rights are the equivalent of an option, they are valuable rights which would preclude the lessor from assigning the lease without first giving Sprinkle either the opportunity to make a first offer to purchase, or to match any offer made to the lessor by a third party. 5/ The fact that the lessor could choose not to sell the lease does not diminish the right. We find that because Sprinkle had one of these rights he had, at the time the offer was filed, an "interest" in the lease offer within the meaning of that term as defined in the regulations to include a prospective claim to an advantage or benefit from a lease. This is far different from an option in the lessor to sell to the agent filing service. In that situation, there is no restraint on alienation of the lease. The lessee may sell to anyone and the agent has no claim against him if he chooses to sell to someone else, without exercising the option to sell to the agent. Under either a right of first refusal or first right to buy discussed above, however, the lessee is restricted in his rights to the lease because he cannot alienate any interest in the lease without complying first with his arrangement with Sprinkle.

5/ We appreciate the semantical problems here as the terms do not always have express technical meanings in all factual contexts. The discussion in Corbin, Contracts, supra, best explains this. We have used above the most common meanings in light of the factual context presented here. The fact that there may be some ambiguity is caused by appellant's failure to delineate more particularly the arrangement. This should not serve to help his position.

44 IBLA 91
Thus Sprinkle has an interest in the lease, as defined in the regulations.

In view of the above finding, it is apparent that there was a violation of 43 CFR 3102.7, pertaining to the disclosure of parties interested in the offer and, also, of 43 CFR 3112.5-2, prohibiting multiple filings in a drawing, as Sprinkle filed in the same drawing.

Accordingly, 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 to the rejection of appellant's offer with the modification made herein that appellant should have been given notice and an opportunity to respond prior to BLM's making the decision.

Joan B. Thompson
Administrative Judge

We concur:

Frederick Fishman
Administrative Judge

Douglas E. Henriques
Administrative Judge

44 IBLA 92