

GEOSEARCH, INC.

IBLA 80-304

Decided April 11, 1980

Appeal from decision of the Wyoming State Office, Bureau of Land Management, dismissing protest against issuance of oil and gas lease W 63057.

Affirmed.

1. Oil and Gas Leases: Bona Fide Purchaser -- Oil and Gas Leases: Cancellation

Under 30 U.S.C. § 184(h)(2) (1970) and 43 CFR 3102.1-2(a) BLM properly dismissed a protest and refused to cancel an oil and gas lease which had been assigned to a bona fide purchaser, even though the lease might have been subject to cancellation prior to the assignment if the offeror/assignor's original offer was defective under 43 CFR 3102.7 and 3112.5-2.

APPEARANCES: Melvin E. Leslie, Esq., Salt Lake City, Utah, for appellant; Hugh C. Garner, Esq., Salt Lake City, Utah, for respondent, Banner Oil & Gas, Ltd.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

Geosearch, Inc., appeals from a letter decision dated December 11, 1979, by the Wyoming State Office, Bureau of Land Management (BLM), dismissing what BLM termed Geosearch's "private contest" against issuance of oil and gas lease W 63057.

This lease was issued effective May 1, 1978, to one Warren R. Haas, the first priority drawee for Parcel No. WY-86. Haas assigned the lease to Banner Oil and Gas, Ltd. (Banner), which assignment was approved effective August 1, 1978. By letter agreement dated June 19, 1979, appellant acquired the interest of the second priority drawee in the simultaneous drawing.

On October 9, 1979, some 15 months after the issuance of the lease, appellant filed a protest against the issuance of the lease to Haas contending that Haas' entry card was filed for him by an agent, and that the filing was in violation of several regulations, including, inter alia, 43 CFR 3102.7. 1/

By letter dated October 17, 1979, BLM requested Haas to furnish a copy of his service agreement so that it could determine whether the lease had been properly issued.

By show cause order dated December 11, 1979, BLM joined Banner in appellant's protest ordering it to show that it acquired the subject lease as a bona fide purchaser. Banner responded by submitting an affidavit attesting to its good faith.

The decision appealed from disposed of appellant's protest as follows:

First of all, Geosearch, Inc. lacks standing to protest this lease issuance since it issued over one and one-half years ago and such is therefore not an "action proposed to be taken in any proceeding before the Bureau," 43 CFR 4.450-2 (1978). [Emphasis added.]

Secondly, where Geosearch, Inc.'s action is considered a private contest, it must comply with 43 CFR 4.450-3, 4.450-4, and 4.450-5 (1978); requiring: service on the contestee within thirty days of filing a complaint,

1/ That regulation reads as follows:

"§ 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 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."

Although not clearly articulated, it appears to be appellant's position that Federal Energy Corp. had an interest in the lease offer, which was sufficient to trigger the need to make the showing provided for by the regulation.

a specified format of complaint under oath, and proof of service upon every contestee. Since none of the above cited regulations were complied with Geosearch, Inc.'s attempted private contest also fails.

Thirdly, leases cancelled by the Bureau under 43 CFR 3108.2-3 (1978) shall be listed under 43 CFR 3112.1-1 (1978) and can not be awarded to a #2 or #3 drawee once the lease has actually issued. Since this lease has issued, if it is cancelled it can therefore not be awarded to Geosearch, Inc., but must be relisted for simultaneous bids.

Therefore, your attempted private contest on the above numbered oil and gas lease is hereby dismissed.

Appellant argues that BLM erred in construing and dismissing its action as a private contest. Appellant contends that the lease was issued to Haas in violation of 43 CFR 3102.7 and 3112.5-2. 2/ Finally, appellant alleges that Banner cannot qualify as a bona fide purchaser.

[1] The disposition of this appeal does not turn on the procedural elements of a contest or protest but on the consequences of the issuance of the lease to Haas and the assignment to Banner. If Banner is a bona fide purchaser, then appellant, succeeding to the interest of the second drawee could not obtain the lease, even if Haas' offer were defective. Geosearch, Inc., 41 IBLA 291 (1979); Robert G. Race, 37 IBLA 162 (1978). The pertinent regulation provides as follows:

43 CFR 3102.1-2 Bona fide purchasers.

(a) Provisions of statute. The Act of September 21, 1959 (73 Stat. 571), as amended by the Act of September 2, 1960 (74 Stat. 781; Pub. L. 86-705), provides that the right to cancel or forfeit for violation of any of the provisions of this Act shall not apply so as to affect adversely the title or interest of a bona fide purchaser of any lease, option to acquire a lease or an interest therein, or permit which lease, interest, option or permit was acquired is held by a qualified person, association, or corporation in conformity with those provisions, even though the holdings of the person, association, or corporation from which the lease, interest, option, or permit was acquired, or of his predecessor in title (including the original lessee of the United States) may have been cancelled or forfeited or may be or may have been subject to cancellation or forfeiture for any such violation.

2/ Pertaining to multiple filings.

As we observed in Race, supra, this provision prevents the Department from canceling a lease where it has been assigned to a bona fide purchaser, even though the original lease offer was clearly defective. Southwest Petroleum Corp. v. Udall, 361 F.2d 650, 655-6 (10th Cir. 1966). There is nothing in the record before us to indicate that Banner was not a bona fide purchaser. Banner's affidavit attests to its good faith in negotiating the purchase of the lease from Haas. Appellant, who has the burden of persuasion, has cited only legal authorities on the principle of good faith purchase. He has presented no prima facie evidence to the contrary. ^{3/} The affidavit of appellant's counsel does not afford any facts to challenge successfully appellee's claimed status as a bona fide purchaser.

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. ^{4/}

Frederick Fishman
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Anne Poindexter Lewis
Administrative Judge

^{3/} 30 U.S.C. § 184(i) (1976), provides:

"(i) Effective September 21, 1959, any person, association, or corporation who is a party to any proceeding with respect to a violation of any provision of this chapter, whether initiated prior to said date or thereafter, shall have the right to be dismissed promptly as such a party upon showing that he holds and acquired as a bona fide purchaser the interest involving him as such a party without violating any provisions of this chapter. No hearing upon any such showing shall be required unless the Secretary presents prima facie evidence indicating a possible violation of this chapter on the part of the alleged bona fide purchaser." (Emphasis supplied.)

^{4/} We have not discussed the questions whether a contest or protest could lie in the case at bar. However, we note that 43 CFR 4.450.2 permits protests to be filed "by any person to any action proposed to be taken in any proceeding before the Bureau." (Emphasis supplied.)

