

GEOSEARCH, INC.

IBLA 80-138

Decided June 9, 1980

Appeal from decision of the Wyoming State Office, Bureau of Land Management, dismissing protest with respect to oil and gas leases. W 60432, W 63070, W 64236, W 64584, W 64783.

Affirmed.

1. Oil and Gas Leases: Applications: Generally--Oil and Gas Leases: Applications: Attorneys-in-Fact or Agents--Oil and Gas Leases: Applications: Sole Party in Interest--Words and Phrases

"Interest." Where there is an agreement giving an offeror the option of selling part of an oil and gas lease to his agent leasing service, exercisable solely at the offeror's discretion, the agent has a mere hope or expectancy and not an "interest" in the offer, as defined in 43 CFR 3100.0-5(b).

2. 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: Sole Party in Interest

Where there is no evidence in the administrative record that the offeror with first priority in a drawing of simultaneous non-competitive oil and gas lease offers is not the sole party in interest, as stated by both the offeror and his agent, the burden is on a protestant attacking the validity

of the offer to prove an accusation that the offeror/agent agreement gives the agent an enforceable interest in the lease to be issued.

APPEARANCES: Melvin E. Leslie, Esq., Salt Lake City, Utah, for appellant; Jason R. Warran, Esq., McDade and Lee, Washington, D.C., and Craig R. Carver, Esq., Head, Moye, Carver & Ray, Denver, Colorado, for appellees.

#### OPINION BY ADMINISTRATIVE JUDGE FISHMAN

Geosearch, Inc., appeals from a decision dated October 16, 1979, by the Wyoming State Office, Bureau of Land Management (BLM), dismissing its protest with respect to issuance of the above-mentioned oil and gas leases.

By letter agreements appellant purchased the interests of the individuals whose drawing entry cards were drawn with second priority in the simultaneous drawings. Appellant's standing as second priority drawee forms the basis for its protest herein. In that protest, appellant alleged that these leases were issued in violation of filing regulations 43 CFR 3102.7 and 3112.5-2. The decision appealed from dismissed the protest, stating as follows:

Except for W 60432, all of the drawing entry cards for the above-numbered leases were accompanied by a copy of the agreement between the offeror and Stewart Capital Corporation. Without exception, all of the above-numbered leases issued only after a copy of the aforementioned agreement had been submitted and determined not to be in violation of either 43 CFR 3102.7 or 43 CFR 3112.5-2. No prima facie evidence to the contrary has been presented.

Appellant's theory, on appeal, is that the statements filed with the applications "do not set forth the extent of the agreements between the respective 1st drawees and Stewart." Appellant vaguely suggests that Stewart may have an undisclosed interest in the leases and that the leases were therefore issued in violation of 43 CFR 3102.7 and 3112.5-2. Appellant reasons further that if the leases were issued in contravention of these regulations they should be cancelled and awarded to Geosearch, Inc.

[1] The statement challenged by appellant has been before this Board in previous cases. In Virginia L. Jones, 34 IBLA 188 (1978), we stated with respect thereto:

In any event, an agreement giving an offeror the option of selling part of an oil and gas lease to a leasing service, exercisable only at his discretion, creates in the leasing

service a mere hope or expectancy and not an "interest." 43 CFR 3100.0-5(b); D. E. Pack, 30 IBLA 230 (1977); Harry L. Matthews, 29 IBLA 240 (1977); R. M. Barton, 4 IBLA 229 (1972); and John V. Steffens, 74 I.D. 46 (1967); see Sidney H. Schreter, 32 IBLA 148 (1977); see Lola I. Doe, 31 IBLA 394 (1977).

In the case at bar, as in Jones, there is no evidence of any violation in the administrative record and appellant has failed to submit competent proof that there is an agreement giving the filing service an enforceable interest in the leases or that the regulations were otherwise violated. Consequently, BLM properly dismissed the protest. 1/ Arjay Oil Company, 33 IBLA 102 (1977); Harry L. Matthews, *supra*.

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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Frederick Fishman  
Administrative Judge

We concur:

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Douglas E. Henriques  
Administrative Judge

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Anne Poindexter Lewis  
Administrative Judge

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1/ The record indicates the existence of bona fide purchasers for value of the leases in issue. Even assuming arguendo, deficiencies in the application process, which might have rendered the leases subject to cancellation prior to the assignments, it appears that 30 U.S.C. § 184(h)(2) (1976), is preclusive of such cancellation. Geosearch, Inc., 47 IBLA 39 (1980). In view of our disposition of the appeal, it is unnecessary to decide the other issues raised by appellees.