

LORENZ K. AYERS, APPELLANT
W. O. PETTIT, JR., APPELLEE

IBLA 80-395

Decided September 30, 1980

Appeal from the January 16, 1980, decision of the Colorado State Office of the Bureau of Land Management, rejecting oil and gas lease offer C-28760.

Affirmed as modified.

1. Oil and Gas Leases: Applications: Generally--Oil and Gas Lease Applications: Drawings

Where a BLM office is not satisfied that an oil and gas lease offer drawn with first priority is in full compliance with the regulations, it should require the offeror to provide such information in support of his offer as will resolve the question, and should the offeror fail to respond fully within a reasonably prescribed time it is appropriate to reject that offer and consider the offer which has been drawn with next priority.

APPEARANCES: William M. King, Esq., Austin, Texas, for appellant; W. H. Layden, Esq., McAlester, Oklahoma, for appellee.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

By its decision of January 16, 1980, the Colorado State Office of the Bureau of Land Management (BLM) rejected the first drawn simultaneous oil and gas lease offer (C-28760) of Lorenz K. Ayers for parcel CO 421 in the July 1979 drawing. The decision afforded the usual right of appeal to this Board, and named the offeror whose offer was drawn with second priority for that parcel, W. O. Pettit, Jr., as the adverse party to be served in the event Ayers appealed.

It appears that by its earlier decision dated September 26, 1979, BLM required that Ayers submit certain additional evidence concerning

his offer within 30 days of his receipt of the decision, which provided, "[u]nless the requirements of this decision are met within the time allowed, this offer will be considered finally rejected and closed without further notice." The deadline was November 2, 1979. Prior to the deadline Ayers ostensibly responded by submitting a completed copy of the questionnaire (Form CSO-3112-1A) supplied by BLM. However, BLM found that this response was inadequate because it was not accompanied by a copy of Ayers' written agreement with his leasing service, Leland Capital Corporation.

Both the BLM decision of September 26, 1979, and the questionnaire which accompanied it state clearly and emphatically that if such written agreement existed, a copy must be supplied to BLM. The decision stated, "The information we require must be furnished * * * along with legible copies of any contracts or agreements, and any other pertinent material as specified under Item 5 [of the questionnaire]."

The questionnaire, in part, together with Ayers' responses, is reproduced below:

3. Who selected the parcel within the offer?

I have full discretion of any parcels offered.

4. Is the address on this Entry Card your personal mailing address? If your answer is YES_ no, state the name of the individual, association NO X or corporation whose address appears on this Entry Card.

Leland Capital Corporation

5. Is there a written or oral agreement YES WRITTEN X between you and the individual, association YES ORAL _ or corporation who has in any way supplied NEITHER _ you with oil and gas leasing information or assisted you in any manner in executing or filing this Entry Card?

a. If your agreement is written, you must submit a legible copy. If the agreement incorporates by reference a brochure, or other material it must also be furnished.

b. If your agreement is oral, you must state in writing the purpose and nature of the agreement. A separate sheet must be used for this purpose. [Emphasis in original.]

In the left margin by Item 5.a., above, there is a handwritten notation which reads: "Not received BLM. H[?]B-10-15-79," indicating that the written material alluded to was not included when the questionnaire arrived at BLM.

It now appears that BLM's decision calling on Ayers to submit additional evidence was sent to his address of record, which is the office of Leland Capital Corporation in Los Angeles, California, where it was received on October 2. On October 9 the president of Leland Capital forwarded the questionnaire to Ayers at his St. Louis, Missouri, address with a cover letter asking that Ayers telephone him immediately "so that I may go over this with you." On October 17 Ayers wrote to the president of Leland Capital, saying, in part, "As discussed over the phone, I am returning, herewith * * * a fully executed sheet giving additional information for simultaneous oil and gas lease offer * * * C-28760." On receipt of the questionnaire, Leland Capital immediately remailed it to the Colorado State Office, BLM, where it was noted to reflect that the written agreement between Leland Capital and Ayers was not received, as related above.

Subsequently, on or about November 30, 1979, an employee of Leland Capital telephoned BLM to inquire about the status of Ayers' offer and was informed that no copy of the written agreement between Leland Capital and Ayers had been received. Leland Capital contended that the written agreement (hereinafter "the service contract") had been included in the envelope by which the questionnaire was transmitted, and that the only explanation for its absence was that it was mishandled and lost in the BLM office after it was received there timely. Accordingly, by letter dated November 30, 1979, Leland Capital declared that it was "re-mailing" the "second copy of the Service Agreement" to BLM. This was received on December 3, 1979, long after the deadline imposed for the original submission.

BLM took the position that the missing service agreement was not included with the questionnaire and had not been received at any time within the prescribed period. Therefore, by its decision of January 6, 1980, BLM held that the service contract was not received within the prescribed period, and it rejected the Ayers' offer, holding also that the offer of W. O. Pettit, Jr., "must now be considered for lease issuance." BLM cited 43 CFR 1821.2-2 as the basis for its decision. 1/

1/ 43 CFR 1821.2-2(g) provides:

"(g) When the regulations of this chapter provide that a document must be filed or a payment made within a specified period of time, the filing of the document or the making of the payment after the expiration of that period will not prevent the authorized officer from considering the document as being timely filed or the payment as being timely made except where:

Ayers appealed, serving Pettit, and Pettit has responded.

Ayers argues that Leland Capital's contention that it delivered the service contract to BLM with the original submission of the questionnaire is supported by the following evidence. Leland Capital Corporation's office manager has stated in her affidavit, duly notarized, that she included the service contract with the questionnaire which was received by BLM in October 1979. Her affidavit also states that in a telephone call to BLM on November 30, 1979, she was told by Mr. Bill Norton of that office "that there were three other pending 'situations' in which other documents were 'missing.'" The receipt stamp applied to the questionnaire and to the copy of BLM's decision which was enclosed therewith, as well as the handwritten notation in the margin were all in error, as in each instance the date written in by the BLM personnel was "October 15, 1979," whereas these materials were not received by BLM until October 18, 1979, as proven by the certified return receipt card and other probative evidence. Finally, the affidavit of the Leland Capital office manager states that she spoke again on the telephone with Bill Norton on December 3, and December 5, 1979, inquiring whether the "second" submission had been received by BLM and was told by him on each occasion that it had not yet arrived despite the fact that it had indeed arrived and been date stamped in his office on December 3, 1979, at 10 a.m.

Appellant argues that the irregular and erroneous record keeping by the Colorado State Office, BLM, as indicated by the evidence summarized above, warrants the logical inference that the service contract was in fact received by BLM with the other material on October 18, 1979, and was lost by BLM personnel.

Incident to the formulation of appellee Pettit's answer, he procured the affidavit of William J. Norton II, paralegal specialist, Branch of Adjudication in the Colorado State Office, BLM. In it, Norton states that he first learned of "problems with the offer" in late October or early November, when "Helen Bruss," the adjudicator handling the case, informed Norton of "the failure, at the time of her receipt thereof, of the CSO 3112-1A (Jun. 1979) executed by Lorenz K. Ayers to have attached a copy of the contract between Mr. Ayers and Leland Capital Corporation." Norton states also, "If I did mention missing documents [in his telephone conversation with Leland's office manager], it was not meant to convey that I felt that any documents had been misplaced in the internal processing in this office." He then states that he is "unaware of any instance where the internal processing of mail in the Colorado State Office has resulted in the

fn. 1 (continued)

* * * * *

(2) The rights of a third party or parties have intervened. Presumably, BLM held that it was barred from receiving the late-filed submission as timely because of the intervention of Pettit's rights at the close of the deadline period.

loss of a document attached to a CSO Form 3112-1A." Norton's affidavit also describes the office procedure for handling incoming mail to avoid the separation of associated documents, and expresses his own opinion that the service contract at issue here was not received by BLM prior to December 3, 1979.

Appellee's answer to appellant's statement of reasons argues that the misdating of the BLM receipt of appellant's October submission does not logically lead to a conclusion that the service contract was included therewith and lost by BLM, nor does the affidavit of Leland's office manager, made long after BLM's decision, establish that the service contract was included. Appellee points out that there was no listing of the contents of the October submission in a cover letter by Leland Capital.

The resolution of the question of whether the service contract was omitted from the October submission by Leland Capital Corporation or was received and lost by BLM is not susceptible to definitive resolution on the basis of the record before us. Certainly, there was an error by one or the other. The affidavit of Leland Capital's office manager that she did include the service contract with the other material in that particular mailing, while of probative effect, cannot be accorded great weight. The affidavit was made on March 7, 1980, and concerns a routine event (an envelope stuffing) ^{2/} which transpired on October 17, 1979. The very nature of an inadvertent mistake is that the person who makes it is unaware of it, and thus would not recall it. Moreover, the affidavit is essentially self-serving in that it is intended to protect the interest of her employer's client by establishing that she was without fault in the matter. Finally, we take official notice of the character of a previous notarized submission submitted by Leland Capital Corporation in Lee S. Bielski, 39 IBLA 211, 224, 86 I.D. 81, 87 (1979), where this Board made the following findings, among others:

There can be no gainsaying that the machine copy of the notarized service contract between Philip H. Dohn, Jr., Lucy Allen Dohn, and Leland Capital Corporation was manufactured for the purpose of submitting it to BLM after receipt of BLM's demand for a certified copy of the contract between them at the time the Dohn offer was filed. This spurious document was then submitted to BLM by LCC, in response to that order, in such a way that it appeared to be a copy of the original one in force when Dohn's offer was filed.

Likewise, there can be no doubt that the spurious contract was falsely notarized.

^{2/} The record includes a letter from the president of Leland Capital Corporation, dated January 9, 1980, in which he alludes to having made "quite a few" such submissions on behalf of other clients.

The contentions of Leland Capital Corporation in the Bielski case were that (1) it had lost its own copy of its contract with the Dohns, (2) that by clerical inadvertence, Leland Capital employees had misdated several times the contract which was intended to replace the one which had been lost in its own office, and (3) that "due to a clerical error" by Leland Capital personnel, the word "Duplicate" was omitted from the replacement contract (which in fact was not a "duplicate").

Thus in arguing that misdating a document, being unable to locate a document, and other evidence of clerical ineptitude and poor records management inferentially fixes the blame for the missing contract on the office guilty of such errors, appellant is hoist by his own petard, as Leland Capital Corporation affirmatively insisted in the Bielski case that its internal procedures and personnel were responsible for all these and other errors.

There is a legal presumption of regularity which supports the official acts of public officers, and in the absence of clear evidence to the contrary it will be presumed that they have properly discharged their official duties. United States v. Chemical Foundation, 272 U.S. 1, 14, 15 (1977); Legille v. Dan, 544 F.2d 1 (D.C. Cir. 1976); W. J. Langley, 32 IBLA 118 (1977).

There is no "clear evidence" that a copy of the service contract was submitted timely and properly to BLM by Leland Capital Corporation and was then lost in the Colorado State Office.

Moreover, there is another reason for rejecting Ayers' offer. Question number 3 of the questionnaire completed by Ayers, supra, reads, "Who selected the parcel within the offer?" Ayers' answer was, "I have full discretion of any parcels offered." This answer is totally unresponsive to the question. An examination of Ayers' drawing entry card shows that it was completely filled out by hand except for the parcel number, "CO 421," which was mechanically printed on the form in large-face type. This suggests that the entry of the parcel number was done by Leland Capital. But whether that parcel was selected by Ayers or by Leland Capital is still unknown, because Ayers simply did not answer the question in any meaningful way. His answer is no more enlightening than if he had made no response at all, which clearly would have been a ground for disqualifying his offer. Ayers' answers to the other questions indicate that the entire card was completed for him, including his facsimile signature, by Leland Capital "as a clerical service." We note further that, as related above, the president of Leland Capital conferred with Ayers by telephone concerning his answers to these questions. It would appear, therefore, that the vague and unresponsive answer was deliberately formulated, rather than being the product of the casual carelessness of Ayers. In any case the question "Who selected the parcel within the offer," remains unanswered to this day.

Where an oil and gas lease offeror fails to respond within the prescribed period of time to an order directing the prescribed period

of time to an order directing him to submit specific information necessary to determine whether his offer is qualified, it is appropriate to reject the offer. Lee S. Bielski, *supra*; W. H. Gilmore, 41 IBLA 25, 31 (1979). BLM had full authority to require appellant to submit the additional information if deemed necessary to determine the offeror's qualifications, Lee S. Bielski, *supra*; Ricky L. Gifford, 34 IBLA 160 (1978); Evelyn Chambers, 31 IBLA 381 (1977); D. E. Pack, 30 IBLA 166 (1977).

Finally, the record does not disclose the filing of separate statements by Ayers and Leland Capital Corporation pursuant to 43 CFR 3102.6-1(a)(2). That regulation, in part, requires that:

If the offer is signed by an attorney-in-fact or agent, it shall be accompanied by separate statements over the signatures of the attorney-in-fact or agent and the offeror stating whether or not there is any agreement or understanding between them or with any other person, either oral or written, by which the attorney-in-fact or agent or such other person has received or is to receive any interest in the lease when issued, including royalty interest or interest in any operating agreement, giving full details of the agreement or understanding if it is a verbal one.

Since Ayers declared in the questionnaire that a facsimile of his signature was affixed by Leland Capital to his simultaneously-filed oil and gas lease offer, the question arises whether in signing Ayers' name, Leland Capital Corporation was functioning as his agent or attorney-in-fact, or merely as his amanuensis. In answering question number 3 as he did, and by his addendum on the last page of the questionnaire, "[a]t my direction Leland Capital Corporation which has no interest in any of my applications, completed my drawing cards as a clerical service," Ayers seems to be asserting that Leland Capital Corporation was neither his agent nor attorney-in-fact.

This Board has repeatedly held that where the lease filing service exercises discretion in selecting the land and filing the offer on behalf of a client, it is acting as the client's agent, and the separate statements required by 43 CFR 3102.6-1(a)(2) must be filed, failing which the offer must be rejected. D. E. Pack (On Reconsideration), 38 IBLA 23, 85 I.D. 408 (1978), aff'd in part, rev'd in part 3/ sub nom Stewart Capital Corp. v. Andrus, Civ. No. C-79-123K (D. Wyo. Apr. 24, 1980) and Runnells v. Andrus, Civ. No. C 77-0268 (D. C.D. Utah, Feb. 19, 1980); Ray H. Thames, 31 IBLA 167 (1977), aff'd sub nom McDonald v. Andrus, Civ. No. S 77-0333(c) (D. S.D. Miss. Jan. 29,

^{3/} The Board's decision was affirmed by the district courts in Mississippi, Utah, and Wyoming as to its interpretation of what the regulation required, and reversed by the district courts in Wyoming and Utah only as to its retroactive application of that interpretation.

1980); Robert C. Leary, 27 IBLA 296 (1976). Whether Leland Capital Corporation exercised discretion in the selection of parcel CO 421 in this case would have been established by a direct, responsive answer to question number 3. By his evasive, nonresponsive answer to that question Ayers frustrated its purpose and deprived BLM of the information it needed in order to ascertain whether 43 CFR 3102.6-1(a)(2) was applicable in this instance.

By way of dictum we observe that if Leland Capital Corporation was empowered to sign Ayers' name to offers and file them for him on a regular basis, its function probably would be that of his agent or attorney-in-fact even if the parcels were personally selected by Ayers. Only in the event that the role of Leland Capital Corporation was limited to that of a mere scrivener, or amanuensis, would the necessity for compliance with the regulation be avoided. See Rebecca J. Waters, 28 IBLA 381 (1977).

In any event, the time for providing the requested information has long since passed, and the right of the holder of the number two priority to have his offer considered has attached.

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 as modified.

Edward W. Stuebing
Administrative Judge

I concur:

James L. Burski
Administrative Judge

ADMINISTRATIVE JUDGE GOSS CONCURRING:

I concur that the Ayers offer must be rejected for failure to fully answer the question, "Who selected the parcel within the offer." The response, "I have full discretion as to any parcels offered," appears to be evasive. An inference is drawn that Leland Capital acted as agent, hence the statements required by 43 CFR 3102.6-1(a)(2) were required and the offer must be rejected. See Betty J. Cramer, 49 IBLA 66, 68 (1980), and cases cited. It therefore is unnecessary to consider the veracity of appellant's assertions that copies of his contracts with Leland Capital were twice submitted to BLM and twice lost.
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Joseph W. Goss
Administrative Judge

1/ Appellant alleges that copies of the contract were furnished BLM with his original offer, and also on November 30, 1979.

