

GEOSEARCH, INC.

IBLA 80-248

Decided October 14, 1980

Appeal from decision of the Wyoming State Office, Bureau of Land Management, dismissing protest against the issuance of oil and gas lease W 55078.

Affirmed.

1. Oil and Gas Leases: Applications: Drawings

A protest against the issuance of an oil and gas lease is properly dismissed where it is based on vague allegations of noncompliance with leasing regulations and is unsupported by facts showing that the successful drawee should have been disqualified, or that the lease should be canceled.

2. Regulations: Binding on the Secretary--Regulations: Force and Effect of Law

The Secretary of the Interior is bound by his duly promulgated regulations and such regulations have the force and effect of law.

APPEARANCES: Melvin E. Leslie, Esq., Salt Lake City, Utah, for appellant; C. M. Peterson, Esq., Poulson, Odell & Peterson, Denver, Colorado, for appellee, Charles E. Pearce.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

This appeal is from a decision dated November 27, 1979, by the Wyoming State Office, Bureau of Land Management (BLM), dismissing appellant's protest against issuance of the above-listed oil and gas lease. Appellant's position as protestant is based upon its acquisition by letter-agreement of the interest of the second priority drawee, Roy D. Garner, in the simultaneous drawing.

The protest alleged essentially that the lease was issued to Charles E. Pearce in violation of filing regulations 43 CFR 3102.7 and 43 CFR 3112.5-2, which require, respectively, disclosure of all parties having an interest in a lease offer, and rejection of offers where there have been collusive, multiple filings.

In its decision dismissing the protest, BLM stated that it had returned the second and third priority drawing entry cards (DEC's) to the unsuccessful drawees, holding that appellant had neither an interest in, nor standing to protest or contest the issuance of lease W 55078. BLM also found that no evidence existed to support appellant's allegation that an agreement existed between the first priority drawee and a filing service, Energy Group of America, Inc., when the offer was filed in 1976.

Appellant contends that the return of the DEC's cannot deprive it of its interest in the lease. It is argued that BLM was less than diligent in returning the cards and suggested that 43 CFR 3112.2-1(a)(4) providing for return of the cards is unconstitutional. Appellant also contends that BLM erred in uncovering no violations and concludes that if violations existed, the lease should be canceled and awarded to Geosearch, Inc.

[1] The file contains the notarized statement of the priority drawee that at the time he filed the offer no agreement existed between himself and Energy Group of America. Thus, there is no indication in the record of any violation of the leasing regulations, which if established, would disqualify the successful drawee. Appellant's allegations to the contrary are entirely conjectural, and unsupported by any basis in demonstrated fact. Appellant has failed to meet its burden of showing by competent evidence of irregularities that the lease offer was improperly issued, or that the regulations were otherwise violated. Geosearch, Inc., 48 IBLA 20 (1980); Geosearch, Inc., 41 IBLA 291 (1979); Geosearch, Inc., 40 IBLA 267 (1979). Accordingly the protest was properly dismissed. 1/

1/ Charles E. Pearce, through counsel, has asserted, without contravention from appellant, that Garner's protest against the lease issuance was dismissed by decision of May 24, 1976, from the BLM Wyoming Office. This is substantiated by the record. No timely appeal therefrom was filed. Appellant has no greater right in the premises to challenge the lessee's validity than would Garner at this time.

Moreover, it appears that the bona fide purchase provisions of 30 U.S.C. § 184(h)(2) (1976) may preclude consideration of asserted prelease defects. See Robert G. Race, 37 IBLA 162 (1978).

[2] Appellant's allegation regarding the constitutionality of 43 CFR 3112.2-1(a)(4) is without merit. In any event, the Board of Land Appeals has no authority to declare invalid duly promulgated regulations which have the force and effect of law. John R. Anderson, 46 IBLA 123 (1980); Exxon Co., U.S.A., 45 IBLA 313 (1980).

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. 2/

Frederick Fishman
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Anne Poindexter Lewis
Administrative Judge

2/ 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.)

