

GEOSEARCH, INC.

IBLA 80-316, 80-358

Decided October 24, 1980

Appeals from decisions of the Wyoming State Office, Bureau of Land Management, dismissing protests against the issuance of oil and gas leases W 69701 and W 69700.

Set aside and remanded.

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

Where it appears that there may have been a violation of the disclosure and/or interest regulations (43 CFR 3102.7 and 3112.5-2) asserted by a protest, the adjudication of the appeal stemming from the dismissal of the protest is properly suspended pending appropriate action by BLM to determine whether there has been a violation of those regulations.

APPEARANCES: Melvin E. Leslie, Esq., Salt Lake City, Utah, for appellant; William R. Hamm, Esq., Quarles and Brady, Milwaukee, Wisconsin, for appellees.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

These appeals are taken from decisions dated December 18 and 27, 1979, by the Wyoming State Office, Bureau of Land Management (BLM), dismissing appellant's protests against issuance of the above-listed oil and gas leases. Appellant's position as protestant is based upon its acquisition, by letter agreements, of the interest of the second priority drawees in the simultaneous drawings.

The protest alleged essentially that the leases were issued in violation of filing regulation 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.

The two cases at bar involve agreements between Resource Service Company, Inc. (RSC), and the first priority drawees. Appellant asserts primarily that the successful offerors' use of RSC gave RSC an interest in the leases in violation of 43 CFR 3102.7 and 43 CFR 3112.5-2. Appellant claims that this interest arose from use of RSC's address on the drawing entry cards (DEC's), from the agreement between RSC and the offerors, and from the leasing service's pattern of operation.

With the information available to it at the time of making its decision, the BLM decision was proper. The basic agreement between RSC and its client which was reviewed by BLM has been held not to create an interest in the filing service company because its client has the option to avail itself, as it chooses, of the company's offer to sell the lease for him at a commission. Ervin J. Powers, 45 IBLA 186 (1980); Geosearch, Inc., 40 IBLA 267 (1979); Geosearch, Inc., 39 IBLA 49 (1979). Likewise, mere use of the filing service company's address on a DEC does not disqualify the offer, nor can a filing service company be inferred to have an interest in the lease from use of its address where the offer is filed under regulations which do not require a different address. Id. In Ervin J. Powers, supra, a majority of the board answered another contention raised by appellant here, namely, an assertion that there were violations of the regulations because Fred L. Engle, President of RSC, and one other member of his family filed offers competing with those of the priority drawees. In Powers the majority ruled that Engle's competition with RSC's clients did not constitute a violation of the regulations which should be charged against the client whose offer had drawn first priority. The majority implied that there might be a violation if Engle had won.

[1] The above-cited Board decisions would be dispositive of this appeal if it were not for an additional arrangement between the leasing service company and its clients which was considered for the first time in Lloyd Chemical Sales, Inc., 1/ 49 IBLA 392 (1980). This concerns a referral program whereby RSC agrees to pay a client, A, up to \$2,000 per sale if another client, B, referred to RSC by client A, wins in the drawing, and uses RSC's sales agency agreement under which

1/ Judge Fishman is constrained to follow Lloyd, despite his dissent therein. Lloyd represents the position of the Board on the referral program.

RSC negotiates sales with oil companies or other buyers with a commission to RSC. 2/ The referral arrangement raises possibilities for violations of the regulations which would not be present in the absence of such an arrangement. For example, client A, the person making the referrals to RSC could very well have undisclosed agreements or understandings with the persons it refers to RSC, clients B, C, et al., that they will use RSC's agency sales service. The referral client A would have an interest in up to \$2,000 of the proceeds from each lease sale based upon his agreement with RSC and its agreement with the referred person. As defined in 43 CFR 3100.0-5(b), an "interest" in the lease includes, but is not limited to

record title interest, 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.

If this interest is not disclosed on the DEC there would be a violation of 43 CFR 3102.7, requiring the disclosure of persons who have an interest in the offer or lease if issued. The commission or referral fee which client A would receive if its referred person, B, wins at a drawing, falls within the meaning of "interest" as defined in the regulation, as it would constitute a "claim or any prospective or future

2/ The terms of RSC's sales agency option provide:

"When I win a drawing, R.S.C. provides, at my option, the service to sell the rights I have won. This agency contract for sale is available only after the drawing is completed. Any final negotiated price is subject to my approval. If I utilize R.S.C.'s agency contract for sale and they or I obtain a buyer during the 5-year term of the contract, I understand the service fee to R.S.C. is as follows:

OUTRIGHT SALE OF OIL & GAS RIGHTS

\$1 to \$200,000.00-----Service fee to R.S.C. 16%
Over \$200,000.00-----Service fee to R.S.C. 12%

IN EVENT OF ROYALTY PAYMENTS

\$1 TO \$200,000.00 Annually-----Service fee to R.S.C. 16%
Over \$200,000.00 Annually-----Service fee to R.S.C. 12%

"If I do not receive at least \$10,000 gross in aggregate from a sale negotiated by R.S.C., they will process up to 300 additional applications which I may choose to make free of their service charge."

claim to an advantage or benefit from a lease." The fact that this claim would be asserted against RSC makes no difference since it is based upon RSC's agreement with the other client, B, as well as the agreement between the two clients, A and B, and the benefit is derived from a share of the lease sale proceeds.

Furthermore, the possibility of undisclosed agreements or understandings between clients and prospective clients of RSC might create a situation where offers are filed in their behalf by RSC at one drawing. Thus, a client or clients might have interests in many offers submitted at a drawing of persons referred to RSC by them. RSC may also be deemed a third party beneficiary to such agreements since it would reap the benefit of the clients' understandings that only RSC would negotiate the sale of a lease and receive its commission. It appears there may very well be violations of the regulation prohibiting multiple filings, 43 CFR 3112.5-2, which provides in part:

When any person, association, corporation, or other entity or business enterprise files an offer to lease for inclusion in a drawing, and an offer (or offers) to lease is filed for the same lands in the same drawing by any person or party acting for, on behalf of, or in collusion with the other person, association, corporation, entity or business enterprise, under any agreement, scheme, or plan which would give either, or both a greater probability of successfully obtaining a lease, or interest therein, in any public drawing, held pursuant to § 3110.1-6(b), all offers filed by either party will be rejected. Similarly, where an agent or broker files an offer to lease for the same lands in behalf of more than one offeror under any agreement that if a lease issues to any of such offerors, the agent or broker will participate in any proceeds derived from such lease, the agent or broker obtains thereby a greater probability of success in obtaining a share in the proceeds of the lease and all such offers filed by such agent or broker will also be rejected. Should any such offer be given a priority as a result of such a drawing, it will be similarly rejected.

The Secretary of the Interior, by his temporary suspension of onshore oil and gas leasing for an investigation into fraud and abuse of the regulations, has made it very clear that this Department will not countenance schemes or arrangements by leasing services or others which might constitute a fraud or abuse of the regulations. The Secretary, as the guardian of the public lands and resources, must assure their disposal is made in accordance with the law and regulations. And, specifically, with reference to the simultaneous leasing process, we have said: "[T]his Board has a concomitant obligation to preserve the integrity of the process." Lee S. Bielski, 39 IBLA 211, 228, 86 I.D. 80, 89 (1979).

The facts are not as clear here as in Bielski to show fraud and a violation of the regulations. However, there have been additional facts shown to those considered in the Geosearch cases cited, supra. The issue here is identical to that in Lloyd Chemical, supra, where the client referral program of the leasing service was first brought to the attention of this Board. In the circumstances, we believe BLM in the first instance should consider the issues raised concerning the referral program and take appropriate action to determine if there has been a violation of the regulations prohibiting multiple filings and requiring disclosure of interests in the lease on the offer forms. It would be important to know if and to what extent RSC clients who made referrals participated in the filing in which the persons referred to RSC also participated, and whether the clients have any agreements, understanding, or arrangements with other persons participating in these drawings using RSC's services.

Actions on the priority offers and appellant's protests should be suspended while BLM considers the matters and takes appropriate action. Thereafter, BLM shall issue further decisions with the right of appeal to this Board by any party adversely affected thereby.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are set aside and the cases remanded for appropriate action consistent with this decision.

Frederick Fishman
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Anne Poindexter Lewis
Administrative Judge

