

Editor's note: Overruled -- See Maurice W. Coburn (On Reconsideration), 82 IBLA 112 (July 24, 1984)

BLANCHE CHOMICKI

IBLA 80-466

Decided November 20, 1980

Appeal from the decision of the New Mexico State Office, Bureau of Land Management, rejecting noncompetitive oil and gas lease offer, NM 39023.

Reversed and remanded.

1. Oil and Gas Leases: Applications: Sole Party in Interest

Where an applicant is neither trustee nor guardian of her minor grandsons, she has not violated 43 CFR 3102.7 requiring disclosure of other parties in interest even though she intends to transfer part of her interest in any lease obtained to the grandsons when they reach legal age and makes an indirect reference to them on the face of the drawing entry card. Minors are not qualified applicants under 43 CFR 3102.1-1(b) and under the facts of this case, the grandsons have no "interest" in the prospective lease as defined by 43 CFR 3100.0-5(b). At most, they have a hope or expectation of future benefit from the lease.

APPEARANCES: Blanche Chomicki, pro se.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

Blanche Chomicki appeals the decision of the New Mexico State Office, Bureau of Land Management (BLM), dated February 26, 1980, rejecting noncompetitive oil and gas lease offer, NM 39023, for Parcel No. NM-23 for failure to comply with the provisions of 43 CFR 3102.7 requiring disclosure of other parties in interest to the offer.

Appellant's drawing entry card (DEC) was drawn with first priority for Parcel No. NM-23 at the November 14, 1979, simultaneous drawing. On the face of the DEC in the spaces for the offeror's name, appellant had printed "CHOMICKI BLANCHE ET. AL." Appellant signed and dated the DEC on the reverse side but did not list any other parties in interest.

Following the drawing, BLM issued a decision dated January 4, 1980, requiring appellant to submit additional information concerning the execution of her DEC. Appellant timely responded. Question No. 9 asked by BLM reads: "Are you the sole party in interest in this offer? If your answer is no, state the name and address of the other party or parties in interest." To this question, appellant responded by checking the blank marked "Yes."

BLM thereafter issued its decision rejecting appellant's lease offer.

In her statement of reasons, appellant explains:

When I stated that I was the only party in interest on the entry card, I was and still am. The referral to ET AL on that card was in reference to my two grandsons (Henry T. and Michael) who are Minors and will remain so for many years to come. Since I am not their guardian and they are not of legal age to sign the entry cards, I also assumed that they should not have been included on the evidence form I completed for you. I had wished to transfer part of the lease to them when they reached legal age and had qualified under your regulations. The term ET AL was used by me to only infer my eventual possible transfer of part of my "good fortune" to these children.

[1] Departmental regulations at 43 CFR 3100.0-5(b) define a sole party in interest in an offer to lease as:

[A] party who is and will be vested with all legal and equitable rights under the lease. No one is, or shall be deemed to be, a sole party in interest with respect to a lease in which any other party has any of the interests described in this section. The requirement of disclosure in an offer to lease of an offeror's or other parties' interest in a lease, if issued, is predicated on the departmental policy that all offerors and other parties having an interest in simultaneously filed offers to lease shall have an equal opportunity for success in the drawings to determine priorities. * * * An "interest" in the lease includes, but is not limited to, record title interests, 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.

In executing a DEC, an offeror must make a showing as to whether or not he or she is the sole party in interest by setting forth the names of other interested parties, if any, on the back of the DEC. Thereafter, such parties must file evidence of the nature of their interest and their qualifications to hold a lease interest. 43 CFR 3102.7.

Although examination of the back of appellant's DEC shows that she represents herself as the sole party in interest, the reference to "ET. AL." on the front of the card suggests that in fact that may not have been the case. When BLM requested additional evidence about the execution of the DEC, appellant again indicated that she was the sole party in interest. BLM never asked appellant specifically for an explanation of the "ET. AL." reference.

The explanation provided by appellant to this Board on appeal indicates that she is the only party with any interest, as defined by the above regulation, in the offer at issue. The reference to "ET. AL." though unnecessary does not violate the regulations since the DEC is otherwise fully executed under the circumstances. Appellant indicates that she was referring to her two grandsons to whom she wants to transfer an interest in the lease when they reach legal age. The grandsons were minors at the time the DEC was executed and therefore ineligible to presently file an offer or hold a lease. 43 CFR 3102.1-1(b). It is clear that the grandsons would have no present interest in any lease won by their grandmother. Additionally, there is no evidence that appellant is trustee or guardian of her grandsons or that any agreement or understanding giving rise to a claim to future benefit from such a lease exists. Thus we conclude that the grandsons hold no interest as defined in 43 CFR 3100.0-5(b) and appellant did not violate 43 CFR 3102.7. Appellant's explanation indicates that although she had a present intention to transfer some of her rights in a lease to her grandsons in the future, no such transfer had been formally or informally agreed to. If the grandsons were even aware of the lease offer, they had at most a hope or expectation in sharing in the benefit from their grandmother's lease sometime in the future. Cf. D. E. Pack, 30 IBLA 230 (1977); R. M. Barton, 4 IBLA 229, 232 (1972); John V. Steffans, 74 I.D. 46 (1967).

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 reversed and the case remanded for appropriate action not inconsistent herewith.

James L. Burski
Administrative Judge

We concur:

Frederick Fishman
Administrative Judge

Anne Poindexter Lewis
Administrative Judge

