

PETROLEUM SHARES, INC.

IBLA 80-414

Decided December 15, 1980

Appeal from a decision of the New Mexico State Office, Bureau of Land Management, rejecting simultaneous oil and gas lease offer NM-39018.

Affirmed.

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

Where an officer of a business enterprise files oil and gas lease drawing entry cards for a parcel on behalf of both his company and himself, the business gains a greater probability of success than other entrants, owing to the officer's fiduciary duty to hold the lease for the company's exclusive use and benefit, thereby warranting rejection of the lease offers of both the company and the officer per 43 CFR 3112.5-2.

APPEARANCES: Prentice R. Hull, President, Petroleum Shares, Inc., for appellant.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

Petroleum Shares, Inc. (Petroleum), appeals from the January 29, 1980, decision of the New Mexico State Office, Bureau of Land Management (BLM), rejecting its noncompetitive oil and gas lease offer NM-39018. Prentice R. Hull signed a drawing entry card for parcel NM-18 on behalf of Petroleum Shares, Inc., as its treasurer, and submitted it in the simultaneous oil and gas lease offer drawing held November 14, 1979, in which the card was drawn with first priority. Hull also submitted a drawing entry card on his own behalf for the same parcel.

BLM rejected the drawing entry card for two reasons: (1) Hull signed the entry card as treasurer when the qualifications accepted by the Wyoming State Office show that Prentice R. Hull as president is authorized to sign on behalf of the company, and not as treasurer; (2) the filing of these two offers for the same parcel gave Hull a greater probability of successfully obtaining a lease or an interest therein in violation of 43 CFR 3112.5-2.

In its statement of reasons, appellant states that no agreement, scheme, or plan existed that would give either the company or Hull a greater probability of successfully obtaining a lease or interest therein. It contends that the affairs of Petroleum are held separate and apart from Hull's personal affairs. Appellant alleges that BLM's decision rejecting the lease is not substantiated by a statement of the existence of an illegal scheme in violation of 43 CFR 3112.5-2.

[1] The issue presented here was considered by the Board in Graybill Terminals Co., 33 IBLA 243 (1978), involving an appeal brought by William R. Boehm in his capacity as Graybill's president. In Graybill Terminals Co., BLM had rejected Graybill's first-drawn entry cards for two parcels in the July 1977 drawing because Boehm and Graybill's vice president had also filed drawing entry cards for these parcels on their own behalf. There, the Board said:

A similar situation was before the Board in Panra Corporation, 27 IBLA 220 (1976). In that case the corporation, as well as its vice-president and secretary, each filed an offer for the same parcel in the same drawing. The Board quoted the following statement from Alvest, Inc. v. Superior Oil Corp., 398 P.2d 213, 215 (Alaska, 1965), which is pertinent here:

A corporate officer or director stands in a fiduciary relationship to his corporation. Out of this relationship arises the duty of reasonably protecting the interests of the corporation. It is inconsistent with and a breach of such duty for an officer or director to take advantage of a business opportunity for his own personal profit when, applying ethical standards of what is fair and equitable in a particular situation, the opportunity should belong to the corporation. Where a business opportunity is one in which the corporation has a legitimate interest, the officer or director may not take the opportunity for himself. If he does, he will hold all resulting benefit and profit in his fiduciary capacity for the use and benefit of the corporation. [Citations omitted.]

It is of no avail to Appellant that its vice-president filed personally, using private funds. Had he been successful in the drawing he would have held the lease in a fiduciary capacity for Appellant's benefit, in the absence of certain factors not shown to be present here, which are discussed below. In effect, Appellant in W 60466 had two chances to win -- the corporate application filed on its behalf plus that filed by its vice-president. In W 60413, Appellant had three chances to win, its application and the individual ones of its president and vice president. Thus, 43 CFR 3112.5-2 was violated by these filings because the president and vice-president of Graybill Terminals Company had a fiduciary relationship with the Appellant and consequently increased its chances to succeed in the drawings. See Panra, supra at 222.

In the said Graybill case, the Board observed that in very special circumstances a corporate officer's offer would appear not to be affected by the corporate relationship. To so qualify, the Board noted that the a corporate officer would have to be authorized by the bylaws of the corporation to engage in the oil and gas business; he would not be a stockholder; and would have to have the consent of the stockholders to engage in the oil and gas business. We note that there is no evidence that any of these factors exist in the instant case.

In Graybill, supra, we affirmed BLM's holding that Boehm's filing of entry cards on behalf of both Graybill and himself required rejection of Graybill's offers. In the instant case, we affirm BLM's holding that Hull's filing entry cards for parcel NM-18 in November 1979 on behalf of both Petroleum and himself required rejection of Petroleum's offer.

Where an officer of a business enterprise files offers on behalf of both his company and himself, the business gains a greater probability of successfully obtaining the lease, creating an inherently unfair situation warranting rejection of the lease offer of the company or the officer. The company's increased probability of success arises from the officer's fiduciary duty to hold an opportunity which is sought by the company for its exclusive use and benefit, and not his own, where the officer knew when he filed his offer that the company was interested in the opportunity. 43 CFR 3112.5-2. Graybills Terminals Co., 33 IBLA 243 (1978). See also William R. Boehm, 34 IBLA 216, 217 (1978). Cf. D. M. Dowdle, 46 IBLA 83 (1980).

Hull, as appellant's president, clearly knew that Petroleum desired this lease, as he himself filed its offer. Since Petroleum

would have been entitled to the benefit of the offer if either its own or Hull's card were selected, it effectively had a double chance to win, as compared with the chances of other entrants. Thus 43 CFR 3112.5-2 was violated by these filings and the offer must be rejected. We note that in its decision, BLM rejected appellant's offer because filing of the two offers increased Hull's probability of successfully obtaining a lease. As explained above, the filing of the two offers increased Petroleum's chances of obtaining a lease.

We need not reach the question raised in BLM's first ground for rejecting the offer because the ruling above is dispositive of this appeal.

Appellant's request for oral argument was properly denied by letter of April 21, 1980, on the ground that a review of the record showed no basis warranting oral argument, and, further, that appellant was afforded adequate opportunity to present its reasons in writing to this Board showing why the decision by BLM was incorrect.

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.

Anne Poindexter Lewis
Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

Joseph W. Goss
Administrative Judge

