

Appeal from decision of the New Mexico State Office, Bureau of Land Management rejecting oil and gas lease offer NM 27652.

Reversed.

1. Oil and Gas Leases: Applications: Attorneys-in-Fact or Agents--Oil and Gas Leases: Applications: Drawings

Where a drawing entry card offer is prepared by an agent, that is, a person or corporation having discretionary authority to act on behalf of the named offeror, and the offer is signed by such agent on behalf of the offeror, the requirements of 43 CFR 3102.6-1 apply, so that separate statements of interest by both the offeror and the agent must be filed, regardless of whether the latter signed his principal's name or his own name as his principal's agent, and regardless of whether the signature was applied manually or mechanically.

2. Administrative Practice--Appeals--Oil and Gas Leases: Applications: Generally--Regulations: Applicability

A final Departmental appellate decision construing a regulation will be applied with prospective effect only where it materially alters the interpretation given the regulation by earlier administrative decisions and where it would be unfair or prejudicial to apply such decision retroactively.

APPEARANCES: Edward B. Poitevent II, Esq., Jones, Walker, Waechter, Poitevent, Carrere & Denegre, New Orleans, Louisiana, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Killian L. Huger, Jr., appeals from a decision dated June 16, 1980, by the New Mexico State Office, Bureau of Land Management (BLM), rejecting his oil and gas lease offer NM 27652.

Appellant's offer for parcel No. NM 465 was first drawn in the public redrawing held on February 19, 1976. Appellant's drawing entry card (DEC) bears his facsimile signature.

By decision dated June 17, 1977, BLM informed appellant that no lease could be issued until he had executed and filed "a statement stating all the circumstances under which the imprint [of his signature] was made and the offer formulated." In appealing that decision to this Board appellant conceded using the service of one Bryan Bell prior to making his offer. In the appeal, appellant questioned the application of Departmental regulation 43 CFR 3102.6-1(a)(2), in his case. That regulation states in part:

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 under the lease, giving full details of the agreement or understanding if it is a verbal one. The statement must be accompanied by a copy of any such written agreement or understanding.

In Killian L. Huger, Jr., 39 IBLA 332 (issued February 27, 1979), the Board held that where an agent signs an offer for an applicant, the applicant cannot be considered qualified unless the statements required by 43 CFR 3102.6-1 have been timely filed. The Board further held that where a rubber stamp is used to imprint an applicant's signature and where no agent's statement has been submitted under 43 CFR 3102.6-1, BLM may take appropriate action to establish whether the applicant's signature was imprinted at his request and whether he formulated the offer. 1/

On March 28, 1979, appellant filed with BLM his statement that he intended the facsimile signature on his DEC to be his signature, that

1/ Huger followed Robert Leary, 27 IBLA 296 (1976) in its holding that BLM may seek further authentication of the circumstances which led to impression on DEC of facsimile signature.

he himself did not imprint the signature nor formulate the offer, and that Bryan Bell selected parcels and formulated offers on behalf of appellant.

By decision dated June 8, 1979, BLM notified appellant that additional evidence was required before adjudication could continue on the parcel in question. BLM asked appellant to indicate whether his agreement with Bell was written or oral, to furnish a copy if written, and to explain in writing if oral. In response, appellant filed on June 29 a document captioned "Bell Agreement." Appellant stated therein that Bell acted in an advisory capacity, that he selected parcels, and that he prepared and forwarded to BLM DEC's on behalf of appellant. Thereafter, although appellant made two inquiries regarding the status of his offer (letters dated November 7, 1979, and April 24, 1980), he apparently heard nothing from BLM until he received the June 18, 1980, decision rejecting the offer which is the subject of this appeal. The relevant text of the June 16 decision is as follows:

An Additional Evidence Required Decision dated June 8, 1979 was completed and returned to this office on June 29, 1979 by K. L. Huger, Jr. Mr. Huger states, on an attachment to the decision, that the drawing entry card bears a facsimile signature applied by Bryan Bell and was meant to be his signature.

Mr. Huger has given Bryan Bell the discretionary authority to formulate and file offers on his behalf. In so doing, an agent relationship has been created within the meaning of 43 CFR 3102.6-1.

The regulations Title 43 CFR 3112.2-1(a): Offer to lease, provides in part: Entry Card. Offer to lease such designated units by parcel numbers must be submitted on a form approved by the Director, "Simultaneous Oil and Gas Entry Card", signed and fully executed by the applicant or his duly authorized agent in his behalf.

The drawing entry card contains instructions which provide that "compliance must also be made with the provisions of 43 CFR 3102". Part 3102 defines the qualifications of lessees and 3102.6 sets forth the statements and evidence required when an agent formulates and files an offer on behalf of the applicant. The entry card submitted by K. L. Huger, Jr. was not accompanied by the statements required by 43 CFR 3102.6-1. We have made a thorough check of all of the attachments for the drawing held on February 19, 1976 and did not find any statements from K. L. Huger, Jr. nor Bryan Bell. See D. E. Pack, 30 IBLA 166, 84 I.D. 192 (1977). [Emphasis in original.]

In his statement of reasons, appellant denies that Bell was his agent and that consequently no agency statements had to be filed. In the alternative appellant argues that BLM cannot retroactively require him to file agency statements for the offer in question. Appellant asserts that under D. E. Pack (On Reconsideration), 38 IBLA 23, 85 I.D. 408 (1978); Runnells v. Andrus, 484 F. Supp. 1234 (D. Utah 1980); and Stewart Capital Corp. v. Andrus, No. C79-123K (D. Wyo. Apr. 24, 1980), no issues of fact are involved in the instant case. Appellant urges that BLM be estopped to require the filing of agency statements in connection with his 1976 offer, as ordered by the court decisions.

[1] We turn first to appellant's denial of an agency relationship between himself and Bell. Appellant has incorporated by reference the statement of reasons he filed in Killian Huger Jr., supra, wherein he attempted to draw distinctions between the services performed for him by Bell and the agency situation, as it obtained in D. E. Pack, supra. Appellant's arguments were fully explained and clearly answered by the Board in Huger, and his assertion to the contrary on page 6 of the statement of reasons filed in the instant appeal is unconvincing and not persuasive. In any event, the previous Huger decision will not be reconsidered herein. We will, however, quote our holding in D. E. Pack, 30 IBLA 166, 177 (1977), which was sustained on reconsideration, has the approval of the court decisions, and is squarely applicable here: "A person is an agent of an offeror if he has authority to act with discretion on the offeror's behalf rather than only to perform manual or mechanical tasks involving no discretion such as signing an entry as the offeror's amanuensis." See also Elizabeth Murase, 47 IBLA 115 (1980), and Henry A. Alker, 49 IBLA 118 (1980). According to the submissions made by appellant, Bell was vested with discretion to act on the offeror's behalf.

[2] As appellant correctly points out, the Court in Runnells, supra, has ruled that the Board's holding in D. E. Pack, may be applied prospectively only. The Secretary and his designees were enjoined from applying the Pack holding to lease offers filed prior to November 9, 1978. The Court found essentially that the Pack holding materially altered interpretations of 43 CFR 3102.6-1(a)(2) followed by earlier administrative decisions and that if Pack were retroactively applied, the offerors in Runnells would be effectively penalized for failing to anticipate that the Board would overrule prior Bureau practice. While the offerors in Runnells had numerous offers pending we perceive no rational distinction between their position and that of appellant herein, whose offer was filed on January 20, 1976, almost 3 years before the Board's decision in D. E. Pack (On Reconsideration). Inasmuch as it attempts to apply the Pack holding to appellant's offer, the BLM decision appealed herein is contrary to governing authorities and must be reversed.

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 BLM is directed to issue the lease to appellant, all else being regular.

Douglas E. Henriques

Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

Anne Poindexter Lewis
Administrative Judge

