

JOHN W. BIERLEIN

IBLA 80-903

Decided February 27, 1981

Appeal from decision of the Wyoming State Office, Bureau of Land Management, dismissing protest against the validity of first-drawn simultaneous oil and gas lease offer drawing entry card. W 70199.

Affirmed.

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

A protest against the validity of a simultaneous noncompetitive oil and gas lease offer drawing entry card (DEC) on the grounds that the DEC was signed by someone other than the offeror and that no power of attorney was filed is properly dismissed where the record indicates that the offeror's wife signed the card for him as his amanuensis, in the absence of a clear showing by the protestant that the wife was the offeror's "agent" (i.e., was invested with discretionary authority to act for the offeror) instead. This is because a copy of a power of attorney or agency statements are not required to be filed when the person affixing the offeror's signature on the DEC is not his agent or attorney-in-fact.

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

The mere fact that a DEC is signed by someone other than the offeror does not necessarily mean that the person affixing the signature has an interest in the offer which must be disclosed.

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

An oil and gas lease offeror is not required to disclose the existence of any interests in the offer flowing to his wife on account of community property laws of any state.

APPEARANCES: John W. Bierlein, appellant, pro se; Jefferson D. McLeroy, respondent, pro se.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

The simultaneous noncompetitive drawing entry card (DEC) oil and gas lease offer of Jefferson D. McLeroy was drawn with first priority in the November 1979 drawing for parcel number WY 4969 in the Wyoming State Office, Bureau of Land Management (BLM). The DEC of John W. Bierlein for this parcel was drawn with second priority.

On December 5, 1979, Bierlein filed a protest against the issuance of the lease to McLeroy, alleging that the DEC was irregular in that the address on it was fictitious, and requesting that BLM initiate an investigation into this irregularity. The address on McLeroy's DEC was: "Rt. 2 Box 375[,] Alice, Texas." Bierlein alleged that postal authorities in Alice, Texas, had verified that there was no post office box No. 375 there.

On December 21, 1979, Bierlein supplemented this protest with a report from the credit bureau of Saginaw, Michigan, which contained no information to verify that a person named Jefferson McLeroy existed in Alice, Texas. ^{1/} Bierlein also alleged that a search conducted in Washington, D.C., by a concern retained by him had been unable to verify McLeroy's existence through examination of voter registrations. Finally, Bierlein alleged that the signature on the DEC was not McLeroy's and argued that, if it were not his, the DEC should be rejected because no power of attorney had been filed and because he had failed to disclose the existence of another party in interest. Accordingly, he requested that BLM verify that the signature on McLeroy's DEC was his true signature.

^{1/} Bierlein's submission of the credit bureau's report raises questions concerning compliance with the provisions of the Fair Credit Reporting Act of 1970, 15 U.S.C. § 1681-1681f (1976). In view of our disposition, infra, we need not explore this matter further.

On December 26, 1980, Bierlein filed a statement from the postmaster in Alice, Texas, that "there is no post office box in the Alice, TX post office with the number 375." On January 30, 1980, Bierlein filed a copy of a deed of trust from McLeroy and his wife. While this document clearly put to rest Bierlein's allegations that McLeroy did not exist, it raised the possibility that this wife, Ella May McLeroy, had signed his DEC, as both signatures on the trust deed were quite clearly written by the same hand that had signed the DEC. ^{2/} Accordingly, Bierlein alleged that McLeroy had violated the regulations by failing to file a copy of her power of attorney to sign for him.

On May 1, 1980, ^{3/} BLM advised McLeroy that it required further evidence about the circumstances surrounding the signing of his DEC. BLM alluded to a telephone conversation on March 10, 1980, between McLeroy and the chief of its oil and gas section in which McLeroy indicated that his wife signed his DEC for him, asking McLeroy to confirm or deny this statement. On May 15, 1980, McLeroy complied with this request, stating in an affidavit that he has given his wife specific authority to sign his name to all documents whenever he is not at home. He noted that she had in fact signed his name to the DEC.

On August 14, 1980, BLM dismissed Bierlein's protest. First, BLM cleared up the alleged irregularity in the address on McLeroy's DEC and Bierlein's questions about whether McLeroy actually existed and was a bona fide offeror. BLM noted that the postmaster's statement filed by Bierlein had concerned the absence of a post office box No. 375, and not a box number on a rural route, which is what McLeroy's address indicated. As BLM has communicated with McLeroy at this address, it was clear that Bierlein's allegation that McLeroy had used a fictitious address was false, as was his initial suggestion that McLeroy was a fictitious person.

BLM recognized the accuracy of Bierlein's accusation that McLeroy had not affixed his own signature to his DEC, and that his wife, Ella May McLeroy, had signed his name on the card. However, BLM held that, notwithstanding this fact, the requirements that a copy of her power of attorney and an agency statement be filed with the offer (43 CFR 3102.6-1(a)) did not apply here, as Ella May McLeroy had signed her husband's DEC as an amanuensis and not as his agent. Accordingly, BLM dismissed Bierlein's (appellant's) protest, from which decision he has appealed.

^{2/} Of course, it would be equally possible that Mr. McLeroy had signed his wife's name to the deed, except that the signatures on the deed were apparently witnessed by a notary.

^{3/} BLM had withheld consideration of Bierlein's protest because of the Secretary's order suspending the issuance of all onshore noncompetitive oil and gas leases.

[1] We affirm BLM's holding that McLeroy was not required to comply with the terms of 43 CFR 3102.6-1(a) (1979), even though his signature was affixed on the DEC by his wife. As we have previously held, this regulation does not apply where the offeror's signature is affixed by a person who lacks authority to do anything other than mechanical tasks involving no discretion, such as signing the offeror's name as his "amanuensis," and who does not participate in the formulation of the offer, as he is not the offeror's "agent" in these circumstances. W. H. Brown, 45 IBLA 81 (1980); Rebecca J. Waters, 28 IBLA 281 (1977); Evelyn Chambers, 27 IBLA 317, 83 I.D. 540 (1976); accord, D. E. Pack (On Reconsideration), 38 IBLA 23, 29-32, 85 I.D. 408, 411-13 (1978).

Appellant, as protestant, must bear the burden of supporting his allegation of impropriety. See Alice M. Hardy, 44 IBLA 5 (1979); Arjay Oil Co., 43 IBLA 98 (1979); Kelley Everette, 41 IBLA 155 (1979); Jack Mask, 41 IBLA 147 (1979); Clyde Frazier, 36 IBLA 141 (1978). Appellant has not demonstrated that Ella May McLeroy participated in the formulation of this offer or had authority to do anything more than sign the card on her husband's behalf. The record suggests the contrary, as it shows that Jefferson McLeroy is in the oil and gas business, so that it is likely that he would decide which parcels to select.

Appellant argues that Ella May McLeroy was unauthorized to sign her husband's name. This is untrue, as indicated by Jefferson McLeroy's affidavit that he had authorized her to sign documents for him while he is away from home. Appellant argues that McLeroy's wife was required to acknowledge that she was signing the card for her husband by so noting the card, and that she was also required to note her authority to sign for her husband on the DEC. We disagree. The authority of the amanuensis is strictly limited to inserting information mechanically on the DEC, as though done by the offeror himself. In these circumstances, it is unnecessary to require disclosure of the fact that the signature is not affixed by the offeror, either on the card or by separate filings.

Appellant states that the signature was "unsubstantiated" and "fraudulent." As to the former, there is no doubt that Jefferson McLeroy has substantiated that he intended this signature as his, and that his existence as a bona fide offeror has been substantiated. Thus, we are unable to see how the signature is faulty in this regard.

There is no fraud here either. While it might be fraudulent for a person to sign a name other than his own to a DEC in some circumstances, such as where the other name is fictitious or where the other person has not authorized the signer to use his name, no such circumstances are present here. It was neither fraudulent nor even a violation of the regulations, prior to amendments effective on June 16, 1980, 45 FR 35156, for a person to use an amanuensis to sign his DEC without disclosing that he has done so, as McLeroy did here.

[2,3] Finally, we reject the argument which appellant advances in his protest that the fact that McLeroy's DEC had been signed by someone else indicated that McLeroy failed to disclose the existence of all parties in interest in the offer. The mere fact that someone other than the offeror signs the card for him does not necessarily mean that the signer has an interest in the offer, even if the signer is the offeror's agent. See, e.g., D. E. Pack, 30 IBLA 166, 84 I.D. 192 (1977). Nor was McLeroy required to disclose any interest in the offer which flowed to his wife on account of the community property laws of Texas. See June Oil and Gas Inc., 41 IBLA 394, 403, 86 I.D. 374, 379 (1979); 4/ Solicitor's Opinion, M-36416, 64 I.D. 44 (1957); Solicitor's Opinion, M-36418, 64 I.D. 51 (1957). 5/

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.

Edward W. Stuebing
Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

James L. Burski
Administrative Judge

4/ Appeal pending on other grounds.

5/ We do not hold nor imply that a husband or wife may not create some other type of interest in his or her spouse which would have to be disclosed.

