

PHILLIP A. KULIN

IBLA 80-793

Decided February 27, 1981

Appeal from a decision of the New Mexico State Office, Bureau of Land Management, dismissing appellant's protest of issuance of noncompetitive oil and gas lease, NM 39950.

Affirmed.

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

An oil and gas lease offer signed by the offeror personally need not be accompanied by statements pursuant to 43 CFR 3102.6-1 (1979) although it is submitted through a filing service.

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

The fact that an offeror signed an uncompleted oil and gas lease offer form which was subsequently completed by a duly authorized agent does not establish ground for rejection of the offer.

3. Oil and Gas Leases: Applications: Attorneys-in-Fact or Agents -- Oil and Gas Leases: Applications: Sole Party in Interest

An oil and gas lease offeror's agreement with a filing service which by its terms gives an offeror an option, exercisable only after the drawing of simultaneously filed lease offers is held, to employ the service to sell offeror's interest in the

lease in return for a specified commission does not create an interest in the lease offer at the time the offer is filed which is required to be disclosed under 43 CFR 3102.7 (1979).

4. Oil and Gas Leases: Applications: Drawings -- Oil and Gas Leases: First-Qualified Applicant -- Rules of Practice: Protests

A protest against issuance of an oil and gas lease is properly dismissed where it is based on vague allegations of noncompliance with leasing regulations and is unsupported by facts showing that the successful drawee should be disqualified.

APPEARANCES: Harvey L. Morton, Esq., Brock, Waters, Morton & Pigg, Lubbock, Texas, for appellant; William R. Hamm, Esq., Quarles and Brady, Milwaukee, Wisconsin, for appellee.

OPINION BY ACTING ADMINISTRATIVE JUDGE GRANT

This appeal is brought from a May 3, 1980, decision of the New Mexico State Office, Bureau of Land Management (BLM), dismissing appellant's protest of issuance of noncompetitive oil and gas lease NM 39950 to the offerors who received first and second priority. Priority was established in the drawing of simultaneously filed offers for parcel NM-372 held on January 16, 1980. Appellant's lease offer received third priority in the drawing.

The BLM decision rejected appellant's assertion in his protest that all drawing entry cards submitted by a filing service are illegal, that the drawing entry card must contain offeror's actual address, and that the card must be filed by the offeror. BLM cited prior Board decisions in support of its holding that submission of a lease offer in the simultaneous filing procedure through a filing service does not automatically create an interest in the filing service and that use of the address of the filing service on the entry card does not violate applicable statutes or regulations.

Counsel for appellant asserts in the statement of reasons for appeal that the regulation at 43 CFR 3102.6-1 (1979) 1/ was violated

1/ Substantial changes in the regulations governing oil and gas leasing in general, and simultaneous oil and gas lease offers in particular, were implemented by revised regulations effective June 16, 1980. 45 FR 35156-66 (May 23, 1980). Since the lease offers involved in this appeal were filed and the drawing was conducted prior to the effective date of the revised regulations, the prior regulations are controlling.

by the failure of offerors receiving first and second priority to file evidence of the agent's authority and to disclose any agreement between offeror and agent. Counsel further asserts he has "reason to believe" that offerors receiving first and second priority violated the prohibition in 43 CFR 3112.5-2 (1979) against multiple filings by filing more than one entry card. It is further alleged that the address used by those offerors is the address of the filing service they employed rather than their "legal" address. Appellant also contends that the entry cards were improperly completed by parties other than the offerors themselves.

The answer filed herein on behalf of the offeror receiving first priority, Odell Lee, Sr., contends that at the time the subject offer was filed the regulation required evidence of the agent's authority, and of any agreement between offeror and agent, only in those situations where the lease offer was actually signed by the agent. It is pointed out that in this case the offeror signed the drawing entry card himself. Counsel for the first-drawn offeror also asserts that appellant has presented no evidence that the offerors receiving first and second priority had an interest in more than one offer for the subject lease and that, in the absence of some evidence that this is the case, the protest must be dismissed. Finally, the answer alleges that use by offeror of a common address is not a violation of the regulations.

The case record reveals that BLM sent the offeror receiving first priority a decision dated February 14, 1980, requiring further evidence regarding the circumstances of the lease offer prior to lease issuance. In response to the BLM questionnaire, offeror indicated that he personally signed his drawing entry card; that the blanks on the card were filled out by Resource Service Company, Inc.; that the address shown on the card is that of Resource Service Company, Inc.; and that offeror is the sole party in interest in the lease offer. The response to the BLM questionnaire was signed by the offeror, Odell Lee, Sr., under admonition that it is a crime for any person to knowingly or willfully make a false, fictitious, or fraudulent statement to an agency of the United States Government concerning any matter within its jurisdiction. 18 U.S.C. § 1001 (1976).

Offeror Lee attached to his response to BLM a copy of his agreement employing the service to file a lease offer on his behalf. This agreement contains a reference to an option of the offeror, exercisable only after the drawing is completed, of retaining the service as an agent to negotiate a sale of the lease for the successful offeror subject to a specified commission. The case record also contains a copy of an agreement executed January 21, 1980, by offeror and the filing service under the terms of which the offeror retains the filing service for the purpose of negotiating a sale of his interest in the lease. The record also contains a certification by Lee, acknowledged before a notary public, that at the time of the drawing at which his lease offer received priority (January 16, 1980), the agreement with the filing service authorizing the service to file offers on his behalf was his

only agreement with the service and that the sales agency agreement concerning his interest in the lease offer was executed by offeror on January 21, 1980.

Several issues are raised by this appeal. The first question is whether the completion and/or filing by an agent of a drawing entry card which is signed by the offeror himself requires statements by the offeror and the agent pursuant to 43 CFR 3102.6 (1979). Another issue is whether use of a filing service address disqualifies an offer. The final question is whether a filing service agreement that gives offeror an option exercisable after the drawing to retain the service as an agent to sell the lease for a commission gives rise to an interest in the lease offer which must be disclosed under the regulations.

[1, 2] The regulations require that an oil and gas lease offer signed by an agent must be accompanied by separate statements over the signatures of the agent and the offeror stating whether or not there is any agreement between them or with any other person by which the agent or such other person has received or is to receive any interest in the lease when it issues. 43 CFR 3102.6-1 (1979). This provision is only applicable where the offeror's signature is placed on the offer by an agent. In situations where, as the evidence clearly establishes in this case, the offeror signed the lease offer form personally, the requirement does not apply and rejection of the lease offer would be in error. Federal Resources Corp., 48 IBLA 138, 139-40 (1980); Adam F. Zbilski, 34 IBLA 4, 5-6 (1978); Virginia A. Rapozo, 33 IBLA 344, 346-47 (1978). Further, the fact that offeror signed an uncompleted entry card which was later completed by a duly authorized agent does not establish ground for rejection of the offer. Federal Resources Corp., *supra* at 140; Adam F. Zbilski, *supra* at 6; Virginia A. Rapozo, *supra* at 347.

It is well settled that use by offeror of the address of a leasing service on the simultaneous oil and gas drawing entry card does not disqualify the offer. J. Theodore Ellis, 41 IBLA 231 (1979); Lisa Heymann, 37 IBLA 170 (1978); Bruce E. Watkins, 36 IBLA 168 (1978); Marion Bacil, 35 IBLA 366 (1978).

[3] An offeror's agreement with a filing service submitting a lease offer on his behalf which gives offeror the option, exercisable only after the drawing of lease offers is completed, of retaining the leasing service to sell offeror's interest in the lease in return for a specified commission does not create an interest in the lease offer which offeror would be required to disclose under 43 CFR 3102.7 (1979). Ervin J. Powers, 45 IBLA 186, 188-89 (1980). It is clear from the facts of this case that employment of the leasing service as an agent to sell offeror's interest in the lease at a specified commission was merely an option of which offeror could avail himself after the drawing, as distinguished from a duty which the leasing service could enforce. Under these circumstances, offeror was not precluded from certifying that he was the sole party in interest under 43 CFR 3102.7 (1979).

[4] A protest against issuance of an oil and gas lease is properly dismissed where it is based on vague allegations of noncompliance with leasing regulations and is unsupported by facts showing that the successful drawee should have been disqualified. Geosearch, Inc., 50 IBLA 347 (1980). Appellant has not proffered any evidence in support of his allegation of improper multiple filings. Accordingly, BLM properly dismissed appellant's protest.

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.

C. Randall Grant, Jr.
Acting Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

Anne Poindexter Lewis
Administrative Judge

