

**Editor's note: 88 I.D. 345; Reconsideration denied by order dated April 22, 1981**

ALLEN DUNCAN

IBLA 80-693

Decided March 4, 1981

Appeal from decision of the Wyoming State Office, Bureau of Land Management, rejecting simultaneous oil and gas lease offer W-70179.

Appeal dismissed.

1. Attorneys -- Practice Before the Department: Persons Qualified to Practice

Qualifications to practice before the Department of the Interior are prescribed by regulations. Where an appeal is brought by a corporation that does not appear to fall within any of the categories of persons authorized to practice, the appeal is subject to dismissal.

APPEARANCES: Richard A. Williams, of Commonwealth Management Corporation, Dallas, Texas, for appellant.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

Allen Duncan has appealed from a decision of the Wyoming State Office, Bureau of Land Management (BLM), dated May 8, 1980, rejecting

his noncompetitive oil and gas lease offer W-70179. The offer was rejected because appellant failed to include his zip code in his address on the drawing entry card (DEC).

[1] The appeal is brought by Commonwealth Management Corporation, of Dallas, Texas, on behalf of the appellant, who authorized the corporation to represent him in this matter. This is violative of the regulations governing practice before the Department, codified under 43 CFR Part 1.

It cannot be disputed that the appearance of the corporation before us in a representative capacity constitutes "practice" as that term is defined in 43 CFR 1.2. It is not alleged that the corporation is a professional association of attorneys licensed to practice before any of the states or any possession or territory of the United States. 43 CFR 1.3(b)(1) and (2). Nor do any of the special provisions of 43 CFR 1.3(b)(3) apply. Moreover, 43 CFR 4.3 and 43 CFR 1812.1-1 require that representatives of parties in proceedings before appeals boards of the Office of Hearings and Appeals must be qualified under 43 CFR Part 1. These regulations were promulgated pursuant to statute, 43 U.S.C. § 1464 (1976), and have the force and effect of law. Rodway v. U.S. Department of Agriculture, 514 F.2d 809 (D.C. Cir. 1975); G.S.A. v. Benson, 415 F.2d 878 (9th Cir. 1969); Whattoff v. United States, 355 F.2d 473 (8th Cir. 1966); A. N. Deringer, Inc. v. United States, 447 F. Supp. 451 (Cust. Ct. 1978).

The fact that appellant authorized the corporation to represent him in this appeal does not alter the situation. This Board has repeatedly held that an appeal filed for an appellant by an attorney-in-fact who is not qualified to practice before the Department under 43 CFR 1.3 is subject to summary dismissal. Haruyuki Yamane, 19 IBLA 320 (1975); Thomas P. Lang, 14 IBLA 20 (1973); Henry H. Ledger, 13 IBLA 356 (1973).

The authority of the Secretary to promulgate these regulations was judicially recognized as early as 70 years ago. In Phillips v. Ballinger, 37 App. D.C. (1911), the Court held that the right to appear before the Department of the Interior is not an inherent right, but a privilege granted by law, and subject to such limitations and conditions as are necessary for the protection both of the Department and the public.

In Haruyuki Yamane, *supra*, this Board dismissed appeals filed by one who was not authorized to practice on behalf of several oil and gas lease applicants. In affirming the Board's decision, sub nom. Burglin v. Secretary of the Interior, Civ. No. A 75-133 (D. Alaska, Jan. 7, 1977), the Court said:

[N]or is the regulation arbitrary or capricious or otherwise in contravention of plaintiffs' Constitutional rights. Parties in interest are expressly permitted to practice before the Department on their own behalf, or to have any qualified person so designated under the regulation appear

for them. Plaintiffs have failed to show that their Constitutional rights of due process were in any way violated. The Secretary's motion for summary judgment is granted.

The District Court's decision was subsequently affirmed by the Court of Appeals in Burglin v. Secretary of the Interior, No. 77-1655 (9th Cir. Aug. 18, 1978), saying, inter alia, "The appellants' attack on the Department of the Interior's regulations prescribing standards for those who practice before its administrative bodies are [sic] similarly without merit. See Federal Communications Commission v. Schreiber, 381 U.S. 279, 290-91 (1965)."

For a more extensive analysis of the regulations and cases relating to practice before the Department, see cases collected in United States v. John Gayanich, 36 IBLA 111 (1978).

In an almost identical case to the one at bar, W. Duane Kennedy, 24 IBLA 152 (1976), a corporate leasing service attempted to appeal the rejection of one of its client's offers. The Board held that the corporation was not qualified to practice before us and had no standing to appeal in its own right in light of the offeror's declaration that he was the sole party in interest. In the present circumstances Commonwealth Management Corporation has also failed to make a necessary showing that it is qualified to practice before the Department.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the appeal is dismissed.

Anne Poindexter Lewis  
Administrative Judge

We concur:

Bernard V. Parrette  
Chief Administrative Judge

Edward W. Stuebing  
Administrative Judge

