

Editor's note: appealed - dismissed, Civ.No. 81-0711 (D.Utah Mar. 2, 1982)

JOHN WALTER STARKS

IBLA 81-329

Decided June 25, 1981

Appeal from decision of the Utah State Office, Bureau of Land Management, rejecting oil and gas lease offer U-44743.

Affirmed.

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

Where prior to June 16, 1980, a drawing entry card offer was prepared by an agent and the offer was signed by such agent on behalf of the offeror, the requirements of 43 CFR 3102.6-1 (1979) applied, so that separate statements of interest by both the offeror and the agent must have been filed.

2. Evidence: Presumptions -- Evidence: Sufficiency

Where a regulation requires that an oil and gas lease offer be accompanied by a separate statement, and appellant's offer is rejected for noncompliance therewith, appellant's showing that he has made it a past business practice to comply with the regulation in other instances must be regarded as evidence tending to support his assertion that he submitted the statement in this instance. However, such evidence, while cognizable, is insufficient to prove such an assertion

without corroboration. A presumption of regularity supports the official acts of public officers and, absent clear evidence to the contrary, it will be presumed that they have properly discharged their official duties.

APPEARANCES: Phillip Wm. Lear, Esq., Salt Lake City, Utah, for appellant; Don M. Fedric, Esq., Roswell, New Mexico, for adverse party, Margaret Ann Lawrence.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

John Walter Stark filed a simultaneous noncompetitive oil and gas lease offer card with the Utah State Office, Bureau of Land Management (BLM), for parcel UT-99 in the November 1979 drawing, which card was drawn with first priority. By decision dated January 15, 1980, BLM required appellant to submit: "A copy of any service agreement and all other collateral agreements including brokerage arrangements between yourself and any other party must be submitted. Also delineate how and who applied the facsimile signature to your drawing entry card."

By letter dated February 6, 1980, and received by BLM on February 14, 1980, appellant submitted the required evidence, a copy of the Authorization of Agent and Individual Disclosure of Interest form which indicated that the facsimile signature was affixed on appellant's drawing entry card (DEC) by Federal Lease Filing Corporation (FLFC) and that FLFC acted as Stark's representative in selecting the parcel in question for him.

On January 7, 1981, BLM issued a decision rejecting Stark's offer because both he and FLFC had failed to meet the requirements of 43 CFR 3102.6-1 in that they had not filed agency statements. BLM noted therein that these requirements applied to Stark's offer, as FLFC was acting as agent for appellant. Stark appealed from this decision. We affirm.

[1] Where, prior to June 16, 1980, an agent of an offeror for a simultaneous oil and gas lease signed the entry card by affixing a facsimile of the offeror's signature, the requirements of 43 CFR 3102.6-1(a)(2) applied, and separate statements of interest by both the offeror and the agency must have been filed, or the offer was rejected. 1/ Henry A. Alker, 49 IBLA 118 (1980); Debra F. Howard,

1/ For our purposes, the relevant portion of this regulation is subsection (a)(2), set forth in part below:

"(2) If the offer is signed by attorney-in-fact or agent, it shall be accompanied by separate statements over the signatures of the

48 IBLA 187 (1980); Elizabeth Murase, 47 IBLA 115 (1980); D. E. Pack (On Reconsideration), 38 IBLA 23, 85 I.D. 408 (1978); D. E. Pack, 30 IBLA 166, 84 I.D. 192 (1977).

Appellant does not dispute the BLM decision with regard to the applicability of 43 CFR 3102.6-1(a)(2) to agents in general or to himself and FLFC in particular. In his statement of reasons appellant contends that he, through his agent, FLFC, complied with the statutory and regulatory requirements for filing his DEC, including providing the requisite statements of interest at the time of the filing. Appellant asserts that: "If the Utah State Office did not find the requisite statements of interest with Appellant's DEC for parcel No. UT-99, the statements of interest were either lost or misplaced by the Utah State Office."

In support of his assertion that the required statements of interest were filed with his DEC appellant included the affidavits of Joseph D. Frascella and Thomas H. Hobbs, FLFC employees, neither of whom was directly involved in handling appellant's offer. These affidavits describe the procedure followed by FLFC employees in preparing and transmitting clients' offers to BLM to insure that each is accompanied by the supporting documents required. The procedure involves the use of a check list. The check list for Starks' offer indicates that all procedures were completed.

Appellant also included the following affidavit of Kean Mantius:

Kean Mantius, being duly sworn deposes and says:

Under cover of her letter dated November 21, 1979, she transmitted to the Utah State Land Office, Bureau of Land Management in Salt Lake City, Utah, the simultaneous entry card prepared for and in behalf of said John Walter Stark, Social Security No. 522-20-8911 for parcel UT-99, dated November 21, 1979. A photocopy of said transmittal

fn. 1 (continued)

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."

Effective June 16, 1980, this regulation, in effect at the time the offer was filed, was deleted in its entirety. 45 FR 35156 (May 23, 1980).

letter of November 21, 1979, is attached hereto as Exhibit "A" and for all purposes made a part hereof.

Also under cover of said letter of November 21, 1979, she transmitted a photocopy of the "Authorization of Agent and Individual Disclosure of Interest in Offers to Lease Pursuant to 43 CFR 3102.6" executed by said John Walter Stark on June 20, 1979, evidencing the authority of Federal Lease Filing Corporation to act for an in behalf of said John Walter Stark. A copy of said "Authorization" is attached hereto as Exhibit "B" and for all purposes made a part hereof.

Further, under cover of said letter November 21, 1979, she transmitted the "Separate Statement of Federal Lease Filing Corporation" executed by J. D. Frascella, President, stating that Federal Lease Filing Corporation had no agreement with John Walter Stark to receive an interest in any lease if issued. Said "Separate Statement" is attached hereto as Exhibit "C" and for all purposes made a part hereof.

She sent the simultaneous entry cards, "Authorization" and "Separate Statement" under the same cover (in packing box) by Network Courier Service, P.O.B. 90912, Los Angeles, California 90009, as evidenced by photocopy of said couriers' invoice dated November 22, 1979, as having been received by one B. Bruhms at 8:30 a.m. on November 23, 1980 at the Utah State Office Bureau of Land Management. The photocopy of said courier's invoice is attached hereto as Exhibit "D" and for all purposes made a part hereof.

Appellant urges that the Board reconsider its holdings in Charles J. Babington, 36 IBLA 107 (1978); W. J. Langley, 32 IBLA (1977); David F. Owen, 31 IBLA 24 (1977), wherein the Board held that there is a legal presumption of regularity which supports the official acts of public officers, and, in the absence of clear evidence to the contrary, courts presume that they have properly discharged their official duties, and to reverse its rule as applied for the reasons set forth in the dissents in W. J. Langley and David F. Owen, *supra*. Alternatively, appellant argues that the evidence it presents is sufficient to overcome the presumption of regularity of official acts.

Therefore, the issue to be resolved is whether there is sufficient evidence to establish with reasonable certainty that appellant, through his filing agent, actually did submit a statement of interest in association with his offer for parcel No. UT-99 in the November 1979 drawing.

[2] Appellant's argument is that "positive" evidence in the form of direct statements or affidavits under oath should be accorded more

weight than the "negative" evidence of presumption of regularity of official acts. Further, appellant contends that direct and affirmative statements taken under oath detailing elaborate two-person control in preparing DEC's and statements for filing, the actual transmittal of the statements of interests, successful drawing of a DEC in a subsequent lottery in the same state, and proof of mailing is clear evidence sufficient to overcome the presumption of regularity of official acts.

As appellant recognizes in his statement of reasons on appeal, there is a legal presumption of regularity which supports the official acts of public officers and, in the absence of clear evidence to the contrary, courts presume that they have properly discharged their official duties. United States v. Chemical Foundation, 272 U.S. 1, 15-16 (1926). To overcome such a presumption, convincing and uncontradicted evidence to the contrary must be offered, which clearly and distinctly establishes a fact, so that reasonable minds can draw but one inference. Falstaff Brewing Corp. v. Thompson, 101 F.2d 301 (8th Cir.), cert. denied, 302 U.S. 709 (1939).

This Board has previously considered the problem of alleged BLM misplacement of offeror's interest statements. E.g., Charles J. Babington, supra; W. J. Langley, supra; Duncan Miller, 29 IBLA 43 (1977). In Langley and Owen, supra, we held that the evidence tendered by the appellants to show that they had in fact sent their fractional interest declarations along with their entry cards to the BLM was insufficient to rebut the legal presumption that administrative officials have properly discharged their duties and had not misplaced or lost the document in issue. In Owen we noted that BLM also follows procedures, amounting to "regular business practice," to insure that submitted materials are not mishandled. We also noted the adverse effect that would accrue to the holders of the next priority and to BLM's efforts to effectively administer the program were we to hold that such evidence is sufficient. 31 IBLA at 29. 2/

We find that the assertions contained in the affidavits submitted by appellant do not constitute a sufficient predicate for holding that the agent-offeror statement of interest was properly submitted to the BLM, and that BLM lost it. The fact that the BLM issued its January 15, 1980, decision requiring evidence of "any service agreement and all other collateral agreements," implies presumptively that the BLM did not initially receive appellant's statement of interest. Therefore, we hold that the presumption of administrative regularity governs, and that 43 CFR 3102.6-1 (1979) was not satisfied. See United States v. Chemical Foundation, supra at 14-15 (1926); W. J. Langley, supra; David F. Owen, supra.

2/ Judge Burski wishes to note his agreement with the dissenting opinion of Judge Ritvo in David F. Owen, 31 IBLA 24, 31 (1977), which, however, he believes must be limited to the specific facts therein disclosed and is not applicable here.

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:

James L. Burski
Administrative Judge

Bruce R. Harris
Administrative Judge

