

Editor's note: appealed - aff'd, Civ.No. 81-298 (D.Wyo. Feb. 2, 1982), aff'd in part, rev'd in part, No. 82-1442 (10th Cir. Nov. 7, 1983) 721 F.2d 694; cert. denied, 104 S.Ct. 2347, 466 US 972 (May 14, 1984)

ALEX SACHEN
RESOURCE SERVICE CO., INC.

IBLA 81-384

Decided July 16, 1981

Appeal from decision of the Wyoming State Office, Bureau of Land Management, rejecting first-drawn drawing entry card. W 63405.

Affirmed.

1. Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases: Applications: Sole Party in Interest -- Oil and Gas Leases: First-Qualified Applicant

When an individual files an oil and gas lease offer through a leasing service under an agreement whereby the leasing service is authorized to act as the sole and exclusive agent to negotiate for sublease, assignment, or sale of any rights obtained by the offeror; where the offeror is required to pay the leasing service according to a set schedule, even if the offeror negotiates the sale; and where such agency to negotiate is to be valid for 5 years, the leasing service has an enforceable right to share in the proceeds of any sale of the lease or any interest therein, and in any payments of overriding royalties retained. Such an agreement creates for the leasing service an "interest" in the lease as that term is defined in 43 CFR 3100.0-5(b).

2. Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases: Applications:

Sole Party in Interest -- Oil and Gas Leases: First-Qualified Applicant

Where an individual files an oil and gas lease offer through a leasing service under an agreement with the service which has been determined to create an interest in the lease for the service, and the service files a "waiver" of that interest (which, by its own terms, does not apply to the service agreement) with the BLM prior to a simultaneous drawing, without communicating such "waiver" to the client, and without any contractual consideration running from the client to the leasing service, the "waiver" is without effect as a matter of law and both the successful drawee and the leasing service are required to make a showing as to their respective interests under 43 CFR 3102.7.

3. Equitable Adjudication: Generally -- Estoppel -- Federal Employees and Officers: Authority to Bind Government -- Oil and Gas Leases: Applications: Generally

The Department is not estopped from rejecting an oil and gas lease offer because the offeror allegedly relied on the acceptance by employees in a BLM state office of a plan designed by the offeror to remove a fatal defect in the offer, where the offeror had both constructive and actual knowledge that the BLM state office employees are subordinate personnel and that their decisions are subject to reversal on review at the Secretarial level, and where there was no affirmative misconduct by BLM employees.

APPEARANCES: David B. Kern, Esq., Milwaukee, Wisconsin, for Alex Sachen and Resource Service Company, Inc.; Harold J. Baer, Jr., Esq., Office of the Regional Solicitor, Department of the Interior, Denver, Colorado, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

On March 27, 1978, Alex and Mary Jane Sachen filed a joint simultaneous noncompetitive oil and gas lease offer drawing entry card (DEC) for parcel WY 92 with the Wyoming State Office, Bureau of Land

Management (BLM). The Sachens' DEC, which was apparently completely filled out, bore their signed certification that they were the sole parties in interest in the offer and lease, if issued, and was drawn with first priority in the April 1978 drawing for this parcel.

On April 14, 1978, BLM notified the Sachens that it required further evidence from them in order to determine whether they had violated the regulations requiring disclosure of all parties in interest and forbidding multiple filings by a party on one parcel. Specifically, it requested a copy of any service agreement between them and Fred Engle, d.b.a. Resource Service Company (now Resource Service Company, Inc.) (RSC), whose address appeared on their DEC.

On May 1, 1978, the Sachens filed a copy of their service agreement with Engle, dated December 15, 1977, which authorized Engle to act as their sole and exclusive agent to sell the lease for 5 years in return for specified percentages of the sale price and of any retained overriding royalties. Engle's right was vested by the contract itself, was not at the Sachens' option, and applied whether Engle or the Sachens arranged the sale.

BLM suspended its consideration of the validity of the Sachens' offer pending judicial action on an appeal presenting controlling issues of law, and, on January 26, 1981, issued its decision rejecting their offer. BLM held that the service agreement gave Engle an "interest" in the Sachens' offer which was not disclosed at the time the offer was filed as required by 43 CFR 3102.7 (1979). Alex Sachen and RSC appealed this decision.

We have considered the question of the validity of offers filed by RSC clients in these circumstances many times in the past and have held consistently that they must be rejected. Nancy L. Stewart, 56 IBLA 122 (1981); Robert E. Belknap, 55 IBLA 200 (1981); Wilbur G. Desens, 54 IBLA 271 (1981); Inexco Oil Co., 54 IBLA 260 (1981); Home Petroleum Corp., 54 IBLA 194 (1981); Estate of Glenn F. Coy, 52 IBLA 182, 88 I.D. 236 (1981); D. R. Weedon, Jr., 51 IBLA 378 (1980); Donald W. Coyer (On Judicial Remand), 50 IBLA 306 (1980), *aff'd*, Coyer v. Andrus, Civ. No. C80-370K (D. Wyo. May 5, 1981) (appeal to 10th Cir. pending); Fredrick W. Lowey, 40 IBLA 381 (1979), *aff'd*, Lowey v. Watt, Civ. No. 79-3314 (D.D.C. May 28, 1981); Alfred L. Easterday, 34 IBLA 195 (1978); Sidney H. Schreter, 32 IBLA 148 (1977); Lola I. Doe, 31 IBLA 394 (1977). We have also affirmed BLM's rejection of offers in which other leasing services held similar undisclosed interests at the time their client's offers were filed. Gertrude Galauner, 37 IBLA 266 (1978); Marty E. Sixt, 36 IBLA 374 (1978). We adhere to these holdings.

[1, 2] The service agreement in effect at the time Engle filed the Sachens' offer gave Engle an "interest" in this offer. ^{1/} This

^{1/} Donald W. Coyer (On Judicial Remand), *supra* at 312; Frederick W. Lowey, *supra* at 383; Alfred L. Easterday, *supra* at 198; Sidney H. Schreter, *supra*; Lola I. Doe, *supra*.

interest was not abrogated by Engle's unilateral attempt to disclaim it, as Engle did not communicate this putative waiver to the Sachens or receive any consideration from them to bind the contract. 2/

In Lowey v. Watt, supra, Judge Pratt reviewed de novo our ruling on this point in Lowey, supra, and held as follows:

[T]he IBLA ruled that * * * the disclaimer * * * was * * * invalid because not mutually consented to or supported by consideration. Although authorities are split as to the requirements for an effective disclaimer of a contract right, the common law and majority rule hold a disclaimer valid only if given under seal or in exchange for consideration. Absent a seal or consideration, the disclaimer was ineffective unless the obliged party relied on it to his detriment. Since RSC's disclaimer was not under seal, nor supported by consideration, nor communicated to RSC's clients until after a first place drawing, it did not eliminate its interest in its clients' lease offers.

We note additionally that this purported amendment and disclaimer, by its own terms, does not apply to the service agreement between Engle and the Sachens. This agreement was entered into on December 15, 1977, well after January 13, 1977, the date of the amendment and disclaimer, which clearly applies only to agreements extant on January 13. Thus, the purported disclaimer, even if legally effective, could not have applied to these offers. Home Petroleum Corp., supra at 204; D. R. Weedon, Jr., supra at 382; Fredrick W. Lowey, supra at 385-86.

In Lowey v. Watt, supra, Judge Pratt also held as follows:

The IBLA concluded * * * that RSC's disclaimer was not effective to eliminate its interest in any client's lease offer for which the service agreement was signed after the date of the disclaimer. We find this conclusion unassailable. The disclaimer states that Engle "is a party to various contracts" and that he waives any rights "which [he] may have by reason of said service agreements." In addition to the disclaimer's plain language, it is well established that a release that purports to discharge future rights and claims not yet in existence is not operative to discharge any rights under a contract made subsequently to the release.

[A] manifested intention [to create an obligation that] is in conflict with the words of the release . . . will prevail over it because

2/ Donald W. Coyer (On Judicial Remand), supra at 313; Frederick W. Lowey, supra at 384-92; Alfred L. Easterday, supra at 199.

later in time So, also, a contract that is entirely inconsistent with the terms of a previously executed release will prevail over that previous release and destroy its operation.

5A CORBIN, CONTRACTS § 1238, at 560 (1964). The exclusive agency provision of the subsequent service agreement was entirely inconsistent with the language of the earlier release. The earlier disclaimer could not reach or eliminate RSC's interest in * * * offers [such as the Sachens']. [Footnote omitted; emphasis in original.]

The Sachens failed to disclose Engle's interest at the time they made their offer as required by 43 CFR 3102.7 (1979), and it must therefore be rejected because it violates this regulation. 3/

[3] The question of whether the Department is estopped from rejecting Engle's clients' offers was fully considered in Donald W. Coyer (On Judicial Remand), supra at 313-14. We adhere to our holding there that the Department is not estopped to reject these offers.

After noting that the authorities have held that "affirmative misconduct" may give rise to equitable estoppel against the Government, Judge Pratt held as follows about the same circumstances at issue in the instant case:

The BLM officials' actions do not approach the requisite level of "affirmative misconduct." Although the officials erred in agreeing to accept RSC's disclaimer, they did so at RSC's request and to protect RSC's clients until RSC could put a revised service agreement into effect. Further, it would be a misstatement to assert that RSC is without blame. It had notice as early as December of 1976 that its exclusive agency provision was improper and was in clear violation of the regulations, yet it refused to change its service agreement for fifteen months. RSC could have entered new service agreements with its existing clients but declined to do so. Plaintiffs have no entitlement to the leases for which they submitted offers, but a mere hope or expectation. Schraier v. Hickel, 419 F.2d 663, 666 (D.C.Cir. 1969); McDade v. Morton, 353 F. Supp. 1006, 1010 (D.D.C. 1973), aff'd, 494 F.2d 1156 (D.C.Cir. 1974). Against these considerations we must balance the public interest in fair administration of the noncompetitive lease program. All offerors are entitled to assurance that the

3/ Donald W. Coyer (On Judicial Remand), supra; Gertrude Galauner, supra; Marty E. Sixt, supra; Alfred L. Easterday, supra; Sidney H. Schreter, supra; Lola I. Doe, supra.

Government will impartially enforce its regulations. Plaintiff's claim of Governmental estoppel is without merit. [Footnote omitted.]

Similarly, in D. R. Weedon, Jr., supra at 383-84, we considered and rejected the suggestion of Engle and his clients that it is unfair to give retroactive effect to our decision to reject offers such as this in which Engle had an undisclosed interest. We adhere to our holding there as well.

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:

C. Randall Grant, Jr.
Administrative Judge

Bruce R. Harris
Administrative Judge