

J. EUGENE MEYER

IBLA 81-703

Decided August 25, 1981

Appeal from decision of the Utah State Office, Bureau of Land Management, rejecting oil and gas lease offer U-45431.

Affirmed.

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

Where a drawing entry card form of offer to lease a parcel of land for oil and gas is prepared by a person or corporation having discretionary authority to act on behalf of the named offeror, and the offer is signed by such agent or attorney-in-fact on behalf of the offeror, the requirements of 43 CFR 3102.6-1 apply, so that separate statements of interest by both the offeror and the agent must be filed, regardless of whether the agent signed his principal's name or his own name as his principal's agent or attorney-in-fact, and regardless of whether the signature was applied manually or mechanically.

APPEARANCES: William M. King, Esq., Austin, Texas, for appellant.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

This appeal is taken from a decision dated May 5, 1981, of the Utah State Office, Bureau of Land Management (BLM), rejecting oil and gas lease offer U-45431. Appellant's drawing entry card (DEC) for parcel No. UT 34 was drawn with first priority in the January 1980 drawing.

On March 31, 1981, BLM requested from appellant additional evidence concerning the preparation of the offer and the affixing of the facsimile signature on the DEC. Appellant's response indicated that Leland Capital Corporation (Leland) was authorized to apply the facsimile signature to the DEC. A copy of the service agreement between Leland and appellant was also submitted to BLM. The terms of this contract state that Leland will provide its advisory services "in connection with, and to file" 144 filings per 12 months "pursuant to LCC's [Leland Capital Corporation's] Federal Oil Land Acquisition Program." For these services, appellant agreed to pay a nonrefundable sum of \$5,500. Against the invoice of Leland, appellant also agreed to pay to Leland all costs of the first year's advance rentals.

Based upon these facts, BLM concluded that Leland had discretionary authority to act for appellant in the selection of lands, the preparation and filing of offers, and the advancement of funds. The effect of such authority, BLM further concluded, was to require that appellant's DEC be accompanied by certain statements referred to in 43 CFR 3102.6-1. Failure to accompany his DEC with such statements caused rejection of appellant's first-drawn DEC.

[1] Regulation 43 CFR 3102.6-1(a)(2) (1979) states in part:

(2) If the offer is signed by an attorney in fact or agent, it shall be accompanied by separate statements over the signatures of the 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. If such an agreement or understanding exists, the statement of the attorney-in-fact or agent should set forth the citizenship of the attorney-in-fact or agent or other person and whether his direct and indirect interests in oil and gas leases, applications, and offers including options for such leases or interests therein exceed 246,080 acres in any one State, of which no more than 200,000 acres may be held under option, or exceeds the permissible acreage in Alaska as set forth in § 3101.1-5. The statement by the principal (offeror) may be filed within 15 days after the filing of the offer.

This regulation was revised in 43 CFR 3102.2-6. 1/

The service agreement here before us was recently considered in D. R. Gallagher, 54 IBLA 72 (1981); Carolyn W. Laeser, 53 IBLA 336 (1981). In those cases the Board held that the statements pursuant to 43 CFR 3102.6-1 were required to be filed with the offers.

Appellant contends that the contract provision whereby Leland agrees "to file client on parcels which have a potential of \$10,000 or more" does not require Leland to select, but merely to file, a clerical and administrative task. We are not persuaded by this argument. Leland's agreement to file for parcels with a potential of \$10,000 or more requires Leland to evaluate the worth of those parcels which BLM places in its monthly list. To evaluate the worth of a parcel, Leland might consider past bonuses for the parcel, past exploration or development in the area, or present and future plans for exploration. Leland does not contend that it merely advises its clients of parcels which it believes are worth more than \$10,000 and then awaits their instructions. Rather Leland "selects" these parcels itself, and then "files" its clients DEC's on these parcels. Leland's practice is clearly within the scope of the agency definition as delineated by D. E. Pack (On Reconsideration), 38 IBLA 23 (1978), aff'd as modified sub nom. Runnells v. Andrus, 484 F. Supp. 1234 (D. Utah, 1980). See, Henry S. Alker, 49 IBLA 118 (1980); Elizabeth Murase, 47 IBLA 115 (1980).

1/ The revision was effective June 16, 1980. 45 FR 35156 (May 23, 1980). It presently reads as follows:

"§ 3102.2-6 Agents.

"(a) Any applicant receiving the assistance of any other person or entity which is in the business of providing assistance to participants in a Federal oil and gas leasing program shall submit with the lease offer, or the lease application if leasing is in accordance with subpart 3112 of this title, a personally signed statement as to any understanding, or a personally signed copy of any written agreement or contract under which any service related to Federal oil and gas leasing or leases is authorized to be performed on behalf of such applicant. Such agreement or understanding might include, but is not limited to: a power of attorney; a service agreement setting forth duties and obligations; or a brokerage agreement. (b) Where a uniform agreement is entered into between several offerors or applicants and an agent, a single copy of the agreement and the statement of understanding may be filed with the proper office in lieu of the showing required in paragraph (a) of this section. A list setting forth the name and address of each such offeror or applicant participating under the agreement shall be filed with the proper Bureau of Land Management office not later than 15 days from each filing of offers, or applications if leasing is in accordance with subpart 3112 of this title."

Appellant further argues that highly technical requirements, such as those posed by 43 CFR 3102.6-1, will discourage persons like appellant from seeking assistance in an effort to participate in the simultaneous filing program. If assistance in filing offers is discouraged or penalized, appellant continues, "the only entrants may be oil companies and others directly involved in exploration for oil and gas who are capable of determining the lands available, ascertaining which of the lands are potentially valuable, and filing proper DEC's in accordance with ever-increasing technical requirements of the Board" (Statement of Reasons at 4). Appellant's description of the duties necessary to file an intelligent offer in the simultaneous filing program belies his earlier statements that Leland provided only clerical or administrative services to its clients. Both the contract and appellant's argument indicate a far greater role.

Therefore, we find that BLM correctly concluded that Leland had discretionary authority to act for appellant, and that Leland, consequently, was required to submit with the DEC the statements listed in 43 CFR 3102.6-1(a)(2) (1979). As appellant did not file the required statements, we agree that BLM correctly rejected oil and gas lease offer U-45431.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the State Office is affirmed.

Anne Poindexter Lewis
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Edward W. Stuebing
Administrative Judge

