

HARRY S. HILLS ET AL.

IBLA 80-135, 80-136

80-459, 80-527

80-692

Decided October 28, 1981

Appeals from decisions of the New Mexico and Montana State Offices, Bureau of Land Management, rejecting simultaneous oil and gas lease offers NM 36117, NM A 36984 (OK), NM 37789, NM 39021, and M 45277 (SD).

Reversed.

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

When an individual files an oil and gas lease offer through a leasing service under an agreement whereby, when the individual sells a lease acquired during his participation in the program, the proceeds from the sale of that lease will be deposited into the Lease Sales Escrow Account, and 49 percent of any consideration received by the individual shall be assigned to the leasing service should the individual dispose of his interest in a lease in any manner other than by sale, the leasing service does not have an enforceable right to share in the proceeds of any sale or any interest therein. Such an agreement does not create for the leasing service an interest in the lease as that term is defined in 43 CFR 3100.0-5(b) (1979).

2. Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases: Applications: Attorneys-in-Fact or Agents -- Oil and Gas Leases: Applications: Drawings -- Oil and Gas Leases: Applications: Sole Party in Interest -- Words and Phrases

"Interest." Where there is an agreement giving an individual the option of selling part of an oil and gas lease to his

agent leasing service, exercisable solely at the offeror's discretion, the agent has a mere hope or expectancy and not an "interest" in the offer, as defined in 43 CFR 3100.0-5(b) (1979).

APPEARANCES: Robert D. Conover, Esq., Riverside, California, for the Bureau of Land Management; James T. Waring, Esq., San Diego, California, for appellants.

#### OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

These matters originated in appeals from decisions of the New Mexico and Montana State Offices, Bureau of Land Management (BLM), which rejected simultaneous oil and gas lease offers NM 36117, NM A 36984 (OK), NM 37789, NM 39021, and M 45277 (SD) for alleged violations of 43 CFR 3102.7 (1979) and 43 CFR 3112.5-2 (1979). <sup>1/</sup>

The appeals were before the Board of Land Appeals which referred the matters to the Hearings Division for a fact-finding hearing and recommended decision. See, e.g., Harry S. Hills, 48 IBLA 356 (1980). The recommended decision issued by Judge E. Kendall Clarke on May 28, 1981, held that there was no violation of either 43 CFR 3100.0-5(b) (1979) or 43 CFR 3112.5-2 (1979) and that decisions of the New Mexico and Montana State Offices should be reversed. On July 2, 1981, the Bureau of Land Management filed exceptions to the recommended decision.

All of the cases involved simultaneous noncompetitive drawing entry cards for oil and gas lease offers submitted by the various appellants individually. In each instance, there was a drawing by BLM, which resulted in a first priority for a particular parcel in a particular state for the named individual.

The basis of the BLM decision was that appellants entered into an agreement with Eden Capital Corporation (Eden), prior to filing their lease offers which gave Eden an interest in the lease. BLM regulations at 43 CFR 3102.7 (1979) required that certain information be filed regarding other parties in interest within 15 days of filing the lease offer. Since that information was not filed, BLM rejected the lease offers.

Appellants had entered into agreements with Eden which incorporated by reference an offering memorandum, which stated in part that:

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<sup>1/</sup> The regulations in 43 CFR Parts 3100 and 3110 were amended effective June 16, 1980. 45 FR 35156 (May 23, 1980). The references for the current regulations on sole party-in-interest and multiple filings are 43 CFR 3102.2-7 and 3112.6-1(c) respectively.

When the client sells a lease acquired during his participation in the program, the proceeds from the sale of that lease will also be deposited into the Lease Sales Escrow Account. \* \* \* If the client disposes of his interest in a lease in any manner other than by sale 49% of any consideration received by the client shall be assigned to Eden.

In its various decisions BLM decided that since Eden was to participate in the proceeds derived from appellants' leases, if issued, compliance with 43 CFR 3102.7 (1979) was mandatory. In addition, BLM in examining the records found entry cards filed for the same parcels by Eden and Peter L. Edelmuth, President and sole stockholder of the corporation. BLM determined that the filing of the entry cards for these parcels by appellants, Eden and Edelmuth gave them a greater probability of success for obtaining a lease or an interest therein and therefore put them in violation of the regulations. 2/

The appellants have asserted that the Put-Option as provided in the Eden program is an election, exercisable solely by the subscriber, to sell to Eden, for the sum of \$5,500, an undivided 49 percent interest in any and all leases acquired by the client during any single period of participation. The key element of the Put-Option is that the client has total control and discretion to decide whether or not to exercise the option. The appellants also contend that Eden's memorandum which is incorporated into the clients' agreement with the corporation, shows that Eden has no claim to any interest in the leases unless the client elects to exercise the "Put-Option."

The basic issue is whether the agreement between Eden and its clients, as understood and implemented by them, establishes that Eden had any interest in the lease offers at the time they were filed. This may include the right to receive interest on funds in the Lease

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2/ In its decision in Harry S. Hills, supra, the Board noted that the decision issued in Ervin I. Powers, 45 IBLA 186 (1980), had recently held that "the mere participation of the leasing service company or its officer in the same filing, without anything more to create an interest, did not constitute a violation of the regulations which should be charged against the client whose offer had drawn first priority." 48 IBLA at 359 (emphasis supplied). Accordingly, the decision of the State Office was reversed as to this ground.

We note in addition, however, that the above situation must be carefully distinguished from a situation where a corporation and an individual who owes a fiduciary duty to the corporation both file lease applications for the same parcel in the same drawing. The Board has held that such applications are violative of the regulation prohibiting multiple filings with respect to both such applications. Petroleum Shares, Inc., 53 IBLA 254 (1981); William R. Boehm, 34 IBLA 216 (1978); Graybill Terminals Co., 33 IBLA 243 (1978).

Sales Escrow Account (LSEA), derived from a sale of the lease, including a sale to Eden by the clients' exercise of the option.

"Interest" in a lease is defined in 43 CFR 3100.0-5(b) (1979), which provides:

Sole party in interest. A sole party in interest in a lease or offer to lease is a party who is and will be vested with all legal and equitable rights under the lease. No one is, or shall be deemed to be, a sole party in interest with respect to a lease in which any other party has any of the interests described in this section. The requirement of disclosure in an offer to lease of an offeror's or other parties' interest in a lease, if issued, is predicated on the departmental policy that all offerors and other parties having an interest in simultaneously filed offers to lease shall have an equal opportunity for success in the drawings to determine priorities. Additionally, such disclosures provide the means for maintaining adequate records of acreage holdings of all such parties where such interests constitute chargeable acreage holdings. An "interest" in the lease includes, but is not limited to, record title interests, overriding royalty interests, working interests, operating rights or options, or any agreements covering such "interests." Any claim or any prospective or future claim to an advantage or benefit from a lease, and any participation or any defined or undefined share in any increments, issues, or profits which may be derived from or which may accrue in any manner from the lease based upon or pursuant to any agreement or understanding existing at the time when the offer is filed, is deemed to constitute an "interest" in such lease.

[1, 2] The offering memorandum, which was quoted earlier, in relevant part, was prepared by Eden after consultation with the State of California Department of Corporations. The entire program was registered with that Department in California (Tr. 10, 11). An amount equal to the maximum liability of Eden for the obligations for the Put-Options was either placed in the LSEA or in separate certificates of deposit. The money in the LSEA also eventually was placed in certificates of deposit. Prior to the exercise of the Put-Options Eden owned the \$5,500 in each particular account and interest earned on the LSEA was for the benefit of Eden (Tr. 13, 14).

Clients could exercise the Put-Option anytime within a 3-year period and Eden could never compel the client to exercise the option. At the end of the 3-year period, the appellants would be deemed to not have exercised the option (Tr. 14-16). If the option is exercised, \$5,500 is paid to the client. If the option is not exercised, the \$5,500 is paid to Eden (Tr. 32-33).

On page 2 of the memorandum, in which Eden outlines its offering of services, \$9,350 is specified as the subscription fee for a unit. A payment of \$3,850 is due upon subscribing, of which \$3,500 is allocated to the basic service. That amount provides for 144 filings by Eden for each client over 12 months. BLM's fee for each filing is \$10 and therefore total filing fees would be \$1,440. <sup>3/</sup> The premium paid for the right to an option is \$350. That amount in effect is the consideration or the cost for securing the option which if exercised by the client obligates Eden to purchase 49 percent of the lease. The \$350 goes into Eden's general account (Tr. 30-32). The remaining \$5,500 is due 30 days after the first payment or by December 31 of the year of subscription, whichever is first.

If a client is successful in obtaining a lease and the client accepted an offer to purchase the lease from a third party, funds received from the third party would normally be received by Eden or in Eden's office payable to the client (Tr. 15). Eden would then transmit the full amount together with an invoice from Eden based on 49 percent of the net proceeds. The 49 percent remitted by the client would then be deposited into Eden's general account (Tr. 16-19). If, however, the client were to negotiate a deal whereby 49 percent of the net proceeds from a third party were to be above \$5,500, the client would, in all probability, decline to exercise his option, and would therefore retain the entire proceeds from sale of the lease (Tr. 20).

The leading Departmental case examining the question of sole party in interest is John V. Steffens, 74 I.D. 46 (1967). In Steffens, a leasing service selected lands, filed offers, and advanced funds on behalf of its clients for leases which the leasing service was willing to purchase from any successful client. It was held that the leasing service did not hold an "interest" in the offers which it filed on behalf of its clients. The service had no enforceable right to purchase the leases. It had merely a hope or expectation of sharing in the profits. Id. at 53. The Board has repeatedly reaffirmed that where there is an agreement giving the offeror an option to sell part of an oil and gas lease to his agent leasing service, exercisable solely at the offeror's discretion, the agent's mere hope or expectancy is not an "interest" in the offer as defined by 43 CFR 3100.0-5(b) (1979). Geosearch, Inc., 48 IBLA 190 (1980); Virginia L. Jones, 34 IBLA 188 (1978); D. E. Pack, 30 IBLA 230 (1977); D. E. Pack, 30 IBLA 166, 175, 84 I.D. 192, 197 (1977); R. M. Barton, 4 IBLA 229 (1972).

As in John V. Steffens, supra, Eden had no enforceable right to purchase the leases. Appellants were free to exercise the Put-Option or not and Eden could never compel the client to exercise the option.

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<sup>3/</sup> Effective Oct. 1, 1981, the filing fee for an oil and gas lease offer or application was increased to \$25.

If appellants chose to exercise the option, Eden was contractually obligated to purchase 49 percent of leases won by the client during the contract period. However, should a client negotiate a sale of a lease or leases with a third party such that 49 percent of the net proceeds exceeded \$5,500, the option would not be exercised and the client would get the full proceeds. Accordingly, Eden had merely a hope or expectation of sharing in the profits and Eden has no claim to any interest in the leases unless the client exercised the Put-Option. <sup>4/</sup> Therefore, there is no violation of either 43 CFR 3100.0-5(b) (1979) or 43 CFR 3112.5-2 (1979).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions of the New Mexico and Montana State Offices, Bureau of Land Management, are reversed.

Douglas E. Henriques  
Administrative Judge

We concur:

James L. Burski  
Administrative Judge

Edward W. Stuebing  
Administrative Judge

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<sup>4/</sup> Although, under optimum circumstances, it would be to the client's advantage to wait until the conclusion of the leasing program to decide whether to utilize his option, the client might decide to avail himself of the funds on deposit in the LSEA. If the client exercises the Put-Option while his program is still in progress, however, he has committed to Eden 49 percent of any and all future leases which might be awarded to him as well. Once the Put-Option is exercised by the lessee, it is "conclusive on the lessee on all subsequent acquisitions and leases by him" (Tr. 37). Thereafter, Eden would be a party-in-interest to the extent of 49 percent in every application which it filed on behalf of that client and disclosure would be required under the current regulation 43 CFR 3102.2-7. Such a situation would also result in a prohibited multiple filing if Eden or any of its officers filed on the same parcel. See n.1, supra.

