

McCLAIN HALL
ARTHUR R. FRANK

IBLA 81-944

Decided January 26, 1982

Appeal from a decision of the New Mexico State Office, Bureau of Land Management, rejecting oil and gas lease offers NM 44975 through NM 44980.

Reversed.

1. Oil and Gas Leases: Generally--Oil and Gas Leases: Applications: Drawings

Where the offerors designated on an offer to lease for oil and gas are "McClain Hall and Arthur R. Frank, d/b/a Frank's Surface Radiation Evaluations" and the offer form is signed by the named individuals who state that they intend to file as individuals, the lease offer is proper since it is possible to determine the full names of the offerors and the words "d/b/a Frank's Surface Radiation Evaluations" should have been treated as surplusage.

APPEARANCES: Karen Aubrey, Esq., Santa Fe, New Mexico, for appellants.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

McClain Hall and Arthur R. Frank, appellants, have appealed from a decision of the New Mexico State Office, Bureau of Land Management (BLM), dated June 17, 1981, which rejected appellants' "over the counter" oil and gas lease offers, NM 44975 through NM 44980, because all six applications were filed by McClain Hall and Arthur R. Frank, d.b.a. Frank's Surface Radiation Evaluations. The decision stated that oil and gas lease offers may be submitted only on behalf of individual citizens, associations of citizens, corporations, or municipalities. 30 U.S.C. § 181 (1976). The BLM decision held that Frank's Surface Radiation Evaluations is not a legal entity and is, therefore, not authorized under the statute and regulations to hold mineral leases.

In the statement of reasons for appeal, appellants state that the lease offers were legibly signed by them in the spaces designated "Lessee signature." At the top of the offer to lease the words "d/b/a Frank's Surface Radiation Evaluations" were included. Appellants assert in an affidavit that these words were included at the request of an employee of BLM in Santa Fe, New Mexico. Appellants allegedly were told by the employee that the inclusion of the words "d/b/a Frank's Surface Radiation Evaluations" was necessary to show that appellants were capable of developing the resources which might be discovered.

Appellants further assert that their names were clearly shown on both the top and the bottom of the offer; that the full intent and purpose of the regulations had been complied with; that no burden was placed on BLM personnel to check on disclosure information beyond that involved in every individual filing; and that no ambiguity was created, nor was the BLM called upon to speculate about the names of the applicants.

Appellants contend that the denial of their offers was arbitrary and capricious since all information required by the regulations was provided. Further, appellants assert that BLM should be estopped from now complaining about the inclusion of language requested by its employee.

[1] Oil and gas lease offers may be submitted only on behalf of individual citizens, associations of citizens, corporations, or municipalities. 30 U.S.C. § 181 (1976). Departmental regulation 43 CFR 3102.1-1 provides in part:

§ 3102.1-1 Who may hold interests.

Mineral leases may be issued only to (a) citizens of the United States; (b) associations of such citizens organized under the laws of the United States or any State thereof, which are authorized to hold such interest by the statute under which organized and by the instrument establishing the association; (c) corporations organized under the laws of the United States or of any State thereof; or (d) municipalities. As used in this group, "association" includes "partnership."

There is nothing in the law or regulations which would indicate that an unincorporated sole proprietorship in itself is a sufficient legal entity to make the required certifications and enter into the required contract. E.g., 43 CFR 3101.1-5. A proprietorship is "a business which is owned by a person who has either the legal right and the exclusive title, or dominion, or ownership of that business." Shermco Industries, Inc. v. Secretary U.S. Air Force, 432 F. Supp. 306, 314 (N.D. Tex. 1978). A proprietorship is not the individual. See

Independent Electricians and Electrical Contractors Association v. New Jersey Board of Examiners of Electrical Contractors, 54 N.J. 466, 256 A.2d 33, 38 (1969). Thus, when a proprietorship is the applicant for an oil and gas lease the offer must be rejected as not authorized under the statute and regulations to hold mineral leases. J.F.C. Oil and Gas, 60 IBLA 191 (1981); Tom Milner, 45 IBLA 119 (1980).

In Winkler v. Andrus, 594 F.2d 775 (10th Cir. 1979), however, the return address section of the simultaneous oil and gas lease offer card was completed "J. A. Winkler Agency" and the offer on the reverse side was signed "Joseph A. Winkler." The court held the word "agency" should have been treated as surplusage. The Department was instructed to issue the lease to Winkler as an individual.

From these lease offers it is possible to determine the full names of the offerors, and BLM should not have rejected them for the reason stated.

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 reversed.

Edward W. Stuebing
Administrative Judge

We concur:

James L. Burski
Administrative Judge

Gail M. Frazier
Administrative Judge

