

ROBERT W. MYERS

IBLA 82-340

Decided March 31, 1982

Appeal from decision of the Montana State Office, Bureau of Land Management, rejecting oil and gas lease application. M 48723 (ND) Acq.

Affirmed.

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

An oil and gas lease application is not completed in accordance with regulation 43 CFR 3112.2-1 or the instructions on the application itself where questions (d) through (f) are not answered by checking appropriate boxes in the application as the instructions require.

2. Oil and Gas Leases: Applications: Attorneys-in-Fact or Agents--Oil and Gas Leases: Applications: Filing

A simultaneous oil and gas lease application is not signed by a corporate agent in accordance with 43 CFR 3112.2-1(b) where the space for the agent's signature contains only the name of the corporation and a notation that it is the applicant's agent.

3. Oil and Gas Leases: Applications: Attorneys-in-Fact or Agents--Oil and Gas Leases: Applications: Filing--Oil and Gas Leases: Bona Fide Purchaser

Even assuming arguendo that apparent omissions on an oil and gas lease application are not sufficient to put the purchaser of an interest in the application on notice that it was defective,

a defective original application is nevertheless subject to rejection, because the bona fide purchaser protection does not apply to any purchaser of interests in a lease offer or application and does not limit the Department's authority to reject such defective applications or offers.

4. Administrative Authority: Laches--Estoppel--Laches--Oil and Gas Leases: Applications: Attorneys-in-Fact or Agents--Oil and Gas Leases: Applications: Filing

The authority of the Department to enforce its oil and gas leasing regulations is not vitiated or lost through lack of or delay in enforcement by some of its officers, nor by applicant's reliance on alleged misinformation by Departmental employees. Nor is BLM barred from rejecting an application because the applicant, relying on the publication of his name as the recipient of first entitlement to have his application adjudicated, has sold an interest in the lease to a third party.

APPEARANCES: Bruce A. Budner, Esq., W. D. Burdett, Esq., Dallas, Texas, for appellant.

#### OPINION BY CHIEF ADMINISTRATIVE JUDGE PARRETTE

Robert W. Myers has appealed from the December 4, 1981, decision of the Montana State Office, Bureau of Land Management (BLM), rejecting his simultaneous noncompetitive oil and gas lease application.

Myers' application was drawn with first priority in BLM's July 1980 drawing for parcel MT 133. This Board subsequently determined that BLM had improperly excluded several competing applications from this drawing. <sup>1/</sup> On August 27, 1981, BLM held a redrawing for this parcel, but Myers was not displaced as the holder of first priority. Accordingly, BLM proceeded to adjudicate his application.

On December 4, 1981, BLM issued its decision rejecting Myers' application because it was not fully completed, in that questions (d), (e), and (f) were not answered on the back of the application form. Myers appealed.

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<sup>1/</sup> See Eloise Miller, 56 IBLA 7 (1981); John L. Messinger, 56 IBLA 1 (1981); W. W. Priest, 55 IBLA 398 (1981); and Michaela M. Fitzpatrick, 55 IBLA 108 (1981).

[1] Appellant is a client of the Federal Energy Corporation (FEC) and is represented by counsel who has appeared before this Board on behalf of many of FEC's clients. Appellant's statement of reasons states as follows:

On Mr. Myers' applications the boxes following questions (d), (e) and (f) were not filled in; instead, his filing agent, Federal Energy Corporation ("FEC"), attached to the application a document entitled "Addendum to Service Agreement," (the "Addendum") a copy of which are attached hereto as Exhibit "A" and incorporated herein by reference. The Addendum, signed by Myers, contains a statement that FEC is authorized to sign the application on the behalf of Myers. Following the statement is a reproduction of three statements that appear on the application form itself and by the three questions, differing only in that in the Addendum they specifically mention FEC. Each of the questions on the Addendum is followed by spaces labeled YES and NO. The "No" space for each question was marked by an X. [Emphasis supplied.]

In the past, while expressing our doubts that this is an accurate statement of what transpired, we have, in many opinions, assumed its truth arguendo and held that answering these questions by attachment is improper, and that they must be answered on the form itself. Ottlin D. Hass, 61 IBLA 338 (1982), and cases cited. If we assumed similar facts in this case, we would follow those cases. However, we now note that not one of the case records concerning FEC's clients that have come under our review has contained an addendum that was attached to the application when it was filed with BLM. Accordingly, we conclude that the situation was not as represented above.

What actually transpired in this case was quite different. FEC filed a general information package concerning its client's applications with BLM in advance of the drawing, including a blank copy of the addendum along with a list of FEC's clients' names and addresses. FEC had each of its clients execute one copy of this addendum, which it kept in its records. This procedure was patterned after 43 CFR 3102.2-6(b), which provides that, where there is a uniform agency statement between an agent and several offerors, a single copy of the statement may be filed with BLM in lieu of submitting a copy with every application. The portion of appellant's statement of reasons dealing with estoppel supports this version of the facts.

As we held in Clyde K. Kobbeman, 58 IBLA 268, 88 I.D. 289 (1981), neither 43 CFR 3102.2-6(b) nor any other provision of the regulations authorizes a filing service to state the qualifications of its clients to apply for a particular parcel by executing general statements in advance of drawings and then filing with BLM a blank reference copy along with a list of the clients' names. Id. at 272. To the contrary, it is essential for an applicant to attest on the application itself, either personally or through an agent, to his qualifications to apply for each parcel. A general "one-time" attestation concerning interests in other applications for the same parcel, such as that executed by FEC's clients, is not only at odds with the regulations, it is meaningless, since a client's situation is constantly subject to change. Accordingly, BLM properly rejected appellant's application for this reason.

[2] Independent of the above, and equally dispositive, though not mentioned by BLM, is the fact that appellant's application was not properly signed in accordance with 43 CFR 3112.2-1(b). The signature line bears the following: "FEC agent for Myers." "FEC" is in block capitals, and "agent for Myers" is in longhand script, both in ink.

We held as follows in Vincent M. D'Amico, 55 IBLA 116, 123 (1981), a case presenting this identical situation with another of FEC's clients:

If a person chooses to use a corporate filing service to act as his agent in preparing and filing an application for an oil and gas lease, that corporate agent must use the signature box marked "Agent's Signature" on form 3112-1 (June 1980). It is not enough, however, that the corporate name be handwritten in this box. There must also appear the holographic signature of the person authorized to sign on behalf of the corporate filing service. Ordinarily, such a corporate signature might take the form "John Brown, Vice President, Acme, Inc." See Anchors and Holes, Inc., 33 IBLA 339 (1978). The additional requirements of 43 CFR 3112.2-1, requiring an application to be rendered in a manner to reveal the name of the applicant, the name of the signatory, and their relationship, suggest the following as an appropriate signature of a corporate filing service on behalf of Robert Jones, applicant: "John Brown, Vice President, Acme, Inc., agent for Robert Jones."

Accord Charles Goodrich, 60 IBLA 25 (1981). The person authorized to sign on behalf of FEC did not place his or her holographic signature in the space provided on the application, and it was therefore not properly signed under 43 CFR 3112.2-1(b) and must be rejected for this reason as well.

[3] Appellant argues that BLM may not "cancel his lease" since it has now been assigned to a bona fide purchaser. Appellant never had a lease, because the Department never accepted an offer from him or even allowed him to make an offer. Appellant, by having his application drawn first, gained only the right to have it adjudicated first, and Santa Fe Energy Company, which evidently purchased appellant's interest, 2/ gained no greater right. Since the application was defective, it was properly rejected. 43 CFR 3112.6-1.

The bona fide purchaser protection applies only to purchasers of interests in leases and does not affect the Department's authority to reject a defective offer or application. Leon M. Flanagan, 25 IBLA 269 (1976); Herman A. Keller, 14 IBLA 188, 81 I.D. 26 (1974). Otherwise, an applicant

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2/ We can locate no copy of appellant's agreement with Santa Fe Energy Company, although his statement of reasons indicates that one was attached. Accordingly, we do not know if it was an outright sale of the rights to the application or an agreement or option to transfer these rights at a later time.

could bar the Department from rejecting his defective application simply by selling it to a bona fide purchaser. Many disqualifying defects, such as bogus identities and multiple filings, may not be apparent from the application form, and the case record may not note them for some time, because they are revealed only by BLM's investigation after the drawing. Extending the bona fide purchaser protection to purchasers of interests in offers or applications would afford an applicant a period of time to avoid the consequences of an illegal filing simply by selling it without revealing the illegality of the filing to the buyer. This procedure cannot be condoned.

In any event, the fact that the application was not completed properly was apparent on its face. Any reasonable purchaser checking the case file would have had substantial reason to doubt its validity and could not, therefore, be a bona fide purchaser.

We need not reach the question of whether appellant's apparent sale <sup>3/</sup> of his prospective rights violated the prohibition against transfer of applications prior to the issuance of an actual lease. 43 CFR 3112.4-3.

[4] In Vincent M. D'Amico, *supra*, and Clyde K. Kobbeman, *supra*, cases presenting facts similar to this appeal, we considered and dismissed the same argument raised by appellant here that BLM is estopped from rejecting his application because it allegedly misinformed FEC that the applications that it had filed for its client were correctly completed. We expressly adopt the holdings dealing with this issue and dismiss appellant's claim of estoppel here as well.

Additionally, appellant asserts that BLM is estopped from rejecting his application because BLM affirmatively asserted that he was the proper winner by publishing his name on its list of results and failed to inform him timely that it was defective. He notes that, in reliance, he borrowed considerable sums of money to finance purchase of a residential boat.

The Department's authority to protect the public interest by enforcing its oil and gas lease regulations, which it must do (McKay v. Wahlenmaier, 226 F.2d 35 (D.C. Cir. 1955)), is not vitiated by delays in the performance of its duties. 43 CFR 1810.3(a). In any event, BLM's delay was not unreasonable, in view of the earlier appeals to this Board and the vast administrative burden represented by the simultaneous filing program. See Federal Energy Corp., 51 IBLA 144 (1981).

Moreover, appellant had no right to presume that he would receive a lease simply because his application was chosen first, since it should have been clear to him that he would not have a lease unless his application and offer were accepted by BLM. We held as follows in Betty J. Thomas, 56 IBLA 323, 325 (1981):

We reject appellant's argument that the Department is estopped from rejecting appellant's \* \* \* [application] after having

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<sup>3/</sup> See n.2 supra.

published the results of the drawing and after appellant had engaged in negotiations with third parties to sell her interest. In view of the regulations [43 CFR 3112.6-1], which make it abundantly clear that \* \* \* [an application] can be rejected even after selection, and in view of the fact that BLM's published list also named applicants with second and third priorities who would replace her, 1/ she could not reasonably have believed that she had any vested interest to sell. Moreover, BLM certainly did nothing to engender such a false belief. The regulations specify the manner in which a "successful" applicant will be notified, to wit, by forwarding a lease agreement and stipulations, if any, to the applicant. 43 CFR 3112.4-1. BLM took no such action here, so that appellant had no basis on which to believe that she had been "successful." 2/

1/ By drawing three \* \* \* [applications] for each parcel, the Department provides for the possibility that a winning \* \* \* [application] will be found to be defective after selection and avoids the necessity of having to hold another drawing, since either the second or third \* \* \* [application] will probably be valid.

2/ We do not hold nor imply that BLM's notifying an applicant that he was successful under 43 CFR 3112.4-1 would bar its subsequently taking action to reject the offer, for 43 CFR 3112.6-2 expressly provides to the contrary.

So it is here 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.

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Bernard V. Parrette  
Chief Administrative Judge

We concur:

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Bruce R. Harris  
Administrative Judge

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Anne Poindexter Lewis  
Administrative Judge

