

JANET THOMPSON

IBLA 81-849

Decided July 20, 1982

Appeal from decision of the New Mexico State Office, Bureau of Land Management, rejecting oil and gas application NM-43398.

Affirmed.

1. Evidence: Presumptions -- Evidence: Sufficiency

Where a regulation requires that an oil and gas lease application be accompanied by a separate statement, appellant's mere allegation that the statement was submitted is insufficient to prove such an assertion without corroboration. A presumption of regularity supports the official acts of public officers and, absent clear evidence to the contrary, it will be presumed that they have properly discharged their official duties.

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

Under the provisions of 43 CFR 3102.2-6(b) (1981), 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 that section, provided that a list setting forth the name and address of each such offeror or applicant participating under the agreement be filed with the proper Bureau of Land Management office not later than 15 days from each filing of applications under 43 CFR Subpart 3112.

APPEARANCES: Janet Thompson, pro se.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

Janet Thompson appeals from the June 5, 1981, decision of the New Mexico State Office, Bureau of Land Management (BLM), rejecting her application for parcel NM-02, which was drawn with first priority at the December 1980 drawing.

In January 1981, BLM requested appellant to furnish additional information regarding the filing of her application. In response, appellant filled out and filed BLM's "Additional Evidence Required" form indicating thereon that she was assisted in filing her application by Revere Energy of Dallas, Texas. She also indicated that she submitted with her lease application a personally signed statement as to any understanding, or a personally signed copy of any agreement or contract with the filing service under 43 CFR 3102.2-6(a) (1981). ^{1/} Appellant answered in the negative queries whether a copy of a uniform agreement between several applicants and an agent had been filed, and whether a list setting forth the names and addresses of such applicants had been filed under 43 CFR 3102.2-6(b).

The decision appealed from states that BLM could not locate the copy of the agreement or contract appellant had allegedly filed pursuant to section 3102.2-6(a). The decision further states: "On file in our office we located a blank service agreement with a list of clients' names, but not their addresses submitted by Revere Energy. This information is not acceptable in that compliance to Regulations 43 CFR 3102.2-6(b), was not made because the clients' addresses were not submitted." The "blank service agreement" referred to in the decision is not contained in the file.

Appellant's statement of reasons asserts: "The reason for this appeal is that I believe that Regulations 43 CFR 3102.2-6(b) does not state that the client's address must be enclosed in the sample agreement that I had with Revere Energy and which was filed at the Santa Fe, New Mexico Office with my application cards."

The regulations in question provide 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

^{1/} The regulation at 43 CFR 3102.2-6 was deleted effective Feb. 26, 1982, in a revision of the regulations governing oil and gas leasing. 47 FR 8544 (Feb. 26, 1982). However, the existence of conflicting junior applications in the simultaneous drawing context (the number 2 and 3 drawees) precludes retroactive application of the revised regulation in this case.

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. [Emphasis added.]

As the Board has observed, 43 CFR 3102.2-6(b) is an alternative to 43 CFR 3102.2-6(a), and compliance with subpart "b" obviates the need to comply with subpart "a." Robert R. Amdahl, 62 IBLA 246 (1982).

[1] There is a legal presumption of regularity which supports the official acts of public officers and in the absence of clear evidence to the contrary, courts presume that they have properly discharged their official duties. United States v. Chemical Foundation, 272 U.S. 1, 15-16 (1926). To overcome such a presumption, convincing and uncontradicted evidence to the contrary must be offered, which clearly and distinctly establishes a fact, so that reasonable minds can draw but one inference. Falstaff Brewing Corp. v. Thompson, 101 F.2d 301 (8th Cir.), cert. denied, 302 U.S. 709 (1939). In the case at bar, the filing of the personally signed statement or agreement under 43 CFR 3102.2-6(a) is in issue. Appellant has not challenged BLM's assertion that it could not locate the allegedly filed document, nor has she attempted, in any way, to substantiate that such a document was actually filed. Under these circumstances the presumption of administrative regularity governs and we hold that 43 CFR 3102.2-6(a) was not satisfied. See United States v. Chemical Foundation, supra at 14-15; John Walter Starks, 55 IBLA 266 (1981).

[2] With respect to 43 CFR 3102.2-6(b), we note that the document to which the decision adverts should have been included in the file. In any event, BLM's finding that the requirements of the regulation were not met because no client's addresses were submitted is not controverted by appellant. In order to comply with 43 CFR 3102.2-6(b) a filing service must file, in each drawing a list of participating clients with their home addresses not later than 15 days from each filing of applications under 43 CFR Subpart 3112. Bernard S. Storper, 60 IBLA 67, 72 (1981) (appeal pending); see Alvin G. Novotny, 55 IBLA 196 (1981). Since appellant complied with neither 43 CFR 3102.2-6(a) nor 3102.2-6(b), the State Office properly rejected her application.

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.

Gail M. Frazier
Administrative Judge

We concur:

C. Randall Grant, Jr.
Administrative Judge

Edward W. Stuebing
Administrative Judge

