

Editor's note: Overruled to the extent inconsistent with 74 IBLA 173 (July 13, 1983)

GLENN W. GALLAGHER

IBLA 82-496

Decided July 27, 1982

Appeal from the January 14, 1982, decision of the New Mexico State Office, Bureau of Land Management, rejecting oil and gas lease application NM 46027.

Affirmed.

1. Evidence: Presumptions--Evidence: Sufficiency--Rules of Practice: Evidence

The legal presumption that administrative officials have properly discharge their duties and not lost or misplaced legally significant documents filed with them is rebuttable by probative evidence to the contrary. However, the presumption is not overcome merely by the submission of an affidavit that the document was mailed. Rather, BLM's denial of its receipt can be rebutted only by substantial countervailing evidence, as an instrument is not "filed" by depositing it in the mail, but only when it is delivered to and received by the proper BLM office.

APPEARANCES: Glen W. Gallagher, pro se; John H. Harrington, Esq., Santa Fe, New Mexico, Department counsel.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Glenn W. Gallagher's simultaneously filed oil and gas lease application NM-46027 for parcel NM 464 was drawn with first priority at the public drawing held in June 1981 by the New Mexico State Office of the Bureau of Land Management (BLM).

The application was filed on Gallagher's behalf by Petroleum Leasing Services, Inc., which is in the business of providing assistance to participants in the Federal oil and gas leasing program. It was signed by Valarie Gerhold, vice president of Petroleum Leasing Services, Inc., as agent for Gallagher. In such circumstances, 43 CFR 3102.2-6 requires the filing of certain disclosures concerning the contract or agreement by which the applicant has authorized the leasing service to render such assistance. The

regulation provides alternative methods by which the requisite information may be submitted. Under paragraph (a), the lease application must be submitted by a copy of the written agreement personally signed by the applicant, or a personally signed statement of any understanding, together with copies of allied instruments relating thereto. Alternatively, paragraph (b) of the regulation provides that where the leasing service (agent) enters into a uniform agreement with several applicants, a single copy of such agreement, together with a list of the names and addresses of each applicant participating under the agreement shall be filed in the proper BLM office no later than 15 days from each filing of applications.

By decision dated January 14, 1982, BLM rejected Gallagher's offer, saying, in pertinent part:

Petroleum Leasing Services, Inc. submitted a blank copy of Agents Agreement for the filing period of May 1981. But a list of client's names and addresses was not submitted for this filing period. Therefore, compliance was not made to Regulation 43 CFR 3102.2-6(b).

This office further checked the attachments submitted with the applications for the May 1981 filing period and found that a statement was not filed with the application for this parcel. Therefore, compliance was not made to Regulation 43 CFR 3102.2-6(a).

Compliance was also not made to Regulation 43 CFR 3102.2-1(c) "a statement of the qualifications of a trust or guardianship (Subpart 3102.2-3), association (Subpart 3102.2-4), corporation (Subpart 3102.2-5) agent, if the duration of the authority to act is less than two years and is specifically set out (Subpart 3102.2-6). [Emphasis in original.]

Gallagher has appealed from this decision on the strength of assertions by personnel of Petroleum Leasing Services, Inc., that a list of participating clients was mailed to BLM's New Mexico State Office on or about May 30, 1981. In support of this assertion, appellant has enclosed the affidavits of Gypsy Kemp, president of Petroleum Leasing Services, Inc., and Valarie Gerhold, former office manager for the corporation.

The latter states that "on the last day for filing entries during the month of May 1981" she filed entries for the corporation's clients with BLM's New Mexico State Office, "and filed with said entries a statement of authorization and an agency agreement." She further states, "That prior, or on or about May 30, 1981, that [sic] she mailed * * * customer's lists" to BLM's New Mexico and Wyoming offices.

Kemp's affidavit explains that the filing of such documents was included among Gerhold's responsibilities and attests to her competence as an employee and to her good moral character. She also states that Gerhold

mailed the customer lists to the Wyoming State Office and the New Mexico State Office on the same day "and that to the best of her information and knowledge Valarie Gerhold did mail said customer's lists on or about May 30, 1981."

As we interpret the foregoing, there were allegedly two mailings by Petroleum Leasing Services, Inc., referable to the subject application. The first of these included the application (entry) itself, together with "a statement of authorization and an agency agreement" (Gerhold's affidavit). BLM acknowledges receipt of the application and a blank copy of the agency agreement, but does not acknowledge receipt of "a statement of authorization." The second mailing allegedly transmitted the "customers list," which BLM states was not received.

There is a legal presumption of regularity which supports the official acts of public officers and the proper discharge of their official duties. United States v. Chemical Foundation, 272 U.S. 1 (1926); Legille v. Dan, 544 F.2d (D.C. Cir. 1976). This rebuttable presumption that administrative officials have properly discharged their duties and not lost or misplaced legally significant documents filed with them has arisen in numerous appeals decided by this Board in cases where the timely filing of a document or the remittance of a payment was essential to appellant's establishment or maintenance of a right. Lynda Bagley Doye, 65 IBLA 340 (1982). Indeed, a substantial volume of the public's business with the many offices of BLM is conducted by mail under circumstances which require as a matter of law or regulation that diverse documents, payments, or recordations be filed within a specified time. The considerations of public policy which mandate the Department's reliance on the presumption of official regularity in such case are discussed in some detail in Bernard S. Storper, 60 IBLA 67 (1981). In the special context of the Federal oil and gas leasing program, we said in Lynda Bagley Doye, supra at :

Without sufficient probative evidence to rebut the presumption of official regularity, we must affirm the decision of BLM, for to do otherwise would prejudice the right of the junior offeror[s], whose priority attaches eo instante upon failure of the applicant having first priority to qualify. Ballard E. Spencer Trust, Inc., 18 IBLA 25 (1974), aff'd, B.E.S.T., Inc. v. Morton, 544 F.2d 1067 (10th Cir. 1976). Because an oil and gas lease may be awarded only to the first qualified applicant, the requirements governing the qualification of applicants in the simultaneous leasing procedure are mandatory, and strict compliance therewith is enforced. 30 U.S.C. § 226(c) (1976); Don C. Bell II, Trustee, 42 IBLA 21 (1979), and cases cited therein. [Emphasis in original.]

Therefore, when an appellant asserts that a document was sent to BLM, and BLM has no record of having received it, the presumption of regularity militates against a finding that it was in fact received by BLM and then lost through mishandling without any record or recollection of it by BLM personnel. We have also held repeatedly that while the presumption of regularity may be rebutted by probative evidence (see, e.g., Bruce L. Baker, 55 IBLA 55 (1981);

L. E. Garrison, 52 IBLA 131 (1981)); the presumption is not overcome merely by a self-serving affidavit that the missing document was mailed to BLM. James Heldman, 65 IBLA 180 (1982); Bernard S. Storper, *supra*; H. S. Rademacher, 58 IBLA 152, 88 I.D. 873 (1981); Metro Energy, Inc., 52 IBLA 369 (1981); and cases therein cited. Depositing a document in the mails does not constitute filing. 43 CFR 1821.2-2(f). Filing is accomplished only when a document is delivered to and received by the proper BLM office. Philip Cramer, 57 IBLA 386 (1981). Rebuttal of the presumption of official regularity entails the presentation of "substantial countervailing evidence." Stone v. Stone, 136 F.2d 761, 763 (D.C. Cir. 1943).

We are unable to conclude that appellant has carried his burden of establishing that the list of client's names and addresses was duly received by BLM.

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.

Edward W. Stuebing
Administrative Judge

We concur:

Anne Poindexter Lewis
Administrative Judge

James L. Burski
Administrative Judge