

RICHLAND RESOURCES

IBLA 82-586

Decided July 29, 1982

Appeal from a decision of the Montana State Office, Bureau of Land Management, rejecting oil and gas lease application. M 50420.

Affirmed.

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

Where a corporation files an application for a lease for a certain parcel of land and is the successful offeror in the drawing and the secretary of the corporation also filed an application for the same parcel of land in the same drawing as an individual, the offer of the corporation must be rejected because an officer of the corporation stands in a fiduciary relationship to the corporation and his offer thereby increases the corporation's chances to be the successful applicant.

APPEARANCES: Richard A. Bassham, Jr., President, Richland Resources.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

Richland Resources, by its president, Richard A. Bassham, Jr., appeals from a decision of the Montana State Office, Bureau of Land Management (BLM), dated March 1, 1982, rejecting its simultaneous oil and gas lease application. Appellant's application was drawn with first priority for parcel MT-4 in the March 1981 drawing of simultaneous oil and gas lease applications, but rejected by BLM because it violated 43 CFR 3112.2-1(f). That regulation provides: "No person or entity shall hold, own or control any interest in more than one application for a particular parcel."

BLM concluded that a multiple filing had occurred by the fact that Mark L. Bassham, the corporate secretary of Richland Resources, had also

filed an application for the identical parcel. Since Mark L. Bassham stood in a fiduciary relationship to the corporation, BLM concluded that any lease won by him would be held for the corporation, thus increasing the corporation's chances of obtaining the lease at issue. The corporation's application had been signed by Richard A. Bassham, Jr., president of Richland Resources.

In its statement of reasons, appellant maintains that Mark L. Bassham had no fiduciary responsibility to Richland Resources with respect to the instant application and, therefore, his application did not increase the corporation's chance to be a successful applicant. Appellant further states:

Mark L. Bassham owns no capital stock in Richland Resources and Mark L. Bassham does not receive any compensation either material or otherwise from Richland Resources for performing the duties of Secretary. Mark L. Bassham is not a salaried employee of Richland Resources. Mark L. Bassham filed an application on the parcel in question for his own gain and benefit as his business pursuit as a professional petroleum landman is principally in the area of acquiring oil and gas properties. Mark L. Bassham, as Secretary of Richland Resources may perform certain duties for the company under the direction of the President and/or the corporate Board of Directors, however in this matter under appeal, Mark L. Bassham had no fiduciary relationship to the company.

Although appellant provides information as to the compensation, duties, and motivation of its secretary, these facts do not establish the absence of a fiduciary relationship between the corporation and its secretary. In McKay v. Wahlenmaier, 226 F.2d 35, 44 (D.C. Cir. 1955), the court stated that it is universally held that the directors and officers of a corporation occupy a fiduciary relationship with the corporation. As secretary of Richland Resources, therefore, Mark L. Bassham occupied a fiduciary relationship with the corporation.

The link between Bassham's fiduciary capacity and the prohibited multiple filing is succinctly set forth in Alvest, Inc. v. Superior Oil Corp., 398 P.2d 213 (Alaska 1965):

A corporate officer or director stands in a fiduciary relationship to his corporation. Out of this relationship arises the duty of reasonably protecting the interests of the corporation. It is inconsistent with and a breach of such duty for an officer or director to take advantage of a business opportunity for his own personal profit when, applying ethical standards of what is fair and equitable in a particular situation, the opportunity should belong to the corporation. Where a business opportunity is one in which the corporation has a legitimate interest,

the officer or director may not take the opportunity for himself. If he does, he will hold all resulting benefit and profit in his fiduciary capacity for the use and benefit of the corporation. [Citations omitted.]

That parcel MT-4 was a business opportunity of Richland Resources is established by the fact that Richland Resources filed on this same parcel. Had Mark L. Bassham's application been drawn with first priority, he would have held the lease for the use and benefit of Richland Resources. In this sense, his application for parcel MT-4 constituted a second application in favor of the corporation. BLM properly rejected the first drawn application of the corporation as violative of 43 CFR 3112.2-1(f). Petroleum Shares, Inc., 51 IBLA 246 (1980).

Had the corporation not submitted an application in its own behalf, the filing of an application by an officer would not necessarily be a violation of that officer's fiduciary duty. Raymond J. Stipek, 74 I.D. 57, 61 (1967). Indeed, in Graybill Terminals Co., 33 IBLA 243 (1978), the Board noted that an officer who was authorized by the bylaws of the corporation to engage in the oil and gas business, who was not a stockholder, and who had the consent of the stockholders to engage in the oil and gas business could file an application on his own behalf in competition with his corporation. See also Lawrence C. Harris, 63 IBLA 132, 89 I.D. 185 (1982).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the State Office is affirmed.

Anne Poindexter Lewis
Administrative Judge

We concur:

James L. Burski
Administrative Judge

C. Randall Grant
Jr., Administrative Judge

