

Editor's note: appealed -- aff'd, Civ.No. C82-1141W (D.Utah Oct. 13, 1983), aff'd, No. 83-2479 (10th Cir. April 2, 1985) 758 F.2d 1369

HAROLD E. WILSON

IBLA 81-1009

Decided September 3, 1982

Appeal from decision of the Utah State Office, Bureau of Land Management, rejecting oil and gas lease offer U-45432.

Affirmed.

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

Where prior to June 16, 1980, a drawing entry card offer was prepared by an agent and the offer was signed by such agent on behalf of the offeror, the requirements of 43 CFR 3102.6-1 (1979) applied, so that separate statements of interest by both the offeror and the agent must have been filed.

2. Evidence: Presumptions -- Evidence: Sufficiency

Where a regulation requires that an oil and gas lease offer be accompanied by a separate statement, and appellant's offer is rejected for noncompliance therewith, appellant's showing that he has made it a past business practice to comply with the regulation in other instances must be regarded as evidence tending to support his assertion that he submitted the statement in this instance. However, such evidence, while cognizable, 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.

APPEARANCES: Phillip Wm. Lear, Esq., Salt Lake City, Utah, for appellant.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

Harold E. Wilson appeals from a decision dated August 4, 1981, by the Utah State Office, Bureau of Land Management (BLM), rejecting his simultaneous oil and gas lease offer U-45432, first drawn for parcel UT-35 in the January 1980 drawing.

On January 23, 1981, BLM requested of appellant additional evidence concerning the preparation of the offer and the affixing of the facsimile signature to the drawing entry card (DEC). Appellant responded by submitting to BLM a copy of the Authorization of Agent and Disclosure of Interest form which indicated that the facsimile signature was affixed on the DEC by Federal Lease Filing Corporation (FLFC), which also acted as appellant's representative in selecting the parcel filed on.

BLM concluded that FLFC acted as appellant's agent and rejected his offer because both he and FLFC had failed to meet the requirements of 43 CFR 3102.6-1 in that they had not filed agency statements.

[1] Where, prior to June 16, 1980, an agent of an offeror for a simultaneous oil and gas lease signed the entry card by affixing a facsimile of the offeror's signature, the requirements of 43 CFR 3102.6-1(a)(2) applied, and separate statements of interest by both the offeror and the agency must have been filed, or the offer was properly rejected. 1/ John Walter Starks, 55 IBLA 266 (1981); Debra F. Howard, 48 IBLA 187 (1980); Elizabeth Murase, 47 IBLA 115 (1980); D. E. Pack (On Reconsideration), 38 IBLA 23, 85 I.D. 408 (1978); D. E. Pack, 30 IBLA 166, 84 I.D. 192 (1977).

Appellant does not dispute the BLM decision with regard to the applicability of 43 CFR 3102.6-1(a)(2) to agents in general or to himself and FLFC in particular. In his statement of reasons, appellant contends that he, through his agent, FLFC, complied with the statutory and regulatory requirements for filing his DEC, including providing the requisite statements of

1/ For our purposes, the relevant portion of this regulation is subsection (a)(2), set forth in part below:

"(2) If the offer is signed by attorney-in-fact or agent, it shall be accompanied by separate statements over the signatures of the attorney-in-fact or agent and the offeror stating whether or not there is any agreement or understanding between them or with any other person, either oral or written, by which the attorney-in-fact or agent or such other person has received or is to receive any interest in the lease when issued, including royalty interest or interest in any operating agreement under the lease, giving full details of the agreement or understanding if it is a verbal one. The statement must be accompanied by a copy of any such written agreement or understanding."

Effective June 16, 1980, this regulation, in effect at the time the offer was filed, was deleted in its entirety. 45 FR 35156 (May 23, 1980). The revised regulation is now found at 43 CFR 3102.2-6.

interest at the time of the filing. Appellant asserts that: "If the Utah State Office did not find the requisite statements of interest with Appellant's DEC for parcel No. UT-35, the statements of interest were either lost or misplaced by the Utah State Office."

In support of his assertion that the required statements of interest were filed with his DEC, appellant included the affidavit of David M. Kane, Chairman of FLFC's Board of Directors. The affidavit describes FLFC's ordinary course of business in preparing and transmitting clients' offers to BLM to insure that each is accompanied by the supporting documents required. The affidavit indicates that the ordinary course of business was followed in appellant's case.

Appellant urges that the Board reconsider its holdings in Charles J. Babington, 36 IBLA 107 (1978); W. J. Langley, 32 IBLA 118 (1977); David F. Owen, 31 IBLA 24 (1977), wherein the Board held that 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, and to reverse its rule as applied for the reasons set forth in the dissents in W. J. Langley and David F. Owen, *supra*. Alternatively, appellant argues that the evidence it presents is sufficient to overcome the presumption of regularity of official acts. Appellant contends that "positive" evidence in the form of direct statements of affidavits under oath should be accorded more weight than the "negative" evidence of presumption of regularity of official acts. Further, appellant contends that direct and affirmative statements taken under oath detailing elaborate two-person control in preparing DEC's and statements for filing, the actual transmittal of the statements of interests, successful drawing of a DEC in a subsequent lottery in the same state, and proof of mailing is clear evidence sufficient to overcome the presumption of regularity of official acts.

Therefore, the issue to be resolved is whether there is sufficient evidence to establish with reasonable certainty that appellant, through his filing agent, actually did submit a statement of interest in association with his offer for parcel No. UT-35 in the January 1980 drawing.

[2] All of appellant's arguments were considered in detail and rejected in John Walter Starks, *supra* at 270. Our conclusion in Starks is dispositive of the appeal presently before us. Appellant's submissions do not constitute a sufficient predicate for holding that the agent-offeror statement of interest was properly submitted to the BLM and that BLM lost it. The fact that BLM issued its January 23, 1981, request for additional evidence concerning the preparation of the offer, implies presumptively that the BLM did not initially receive appellant's statement of interest. Therefore, we hold that the presumption of administrative regularity governs, and that 43 CFR 3102.6-1 (1979) was not satisfied. See United States v. Chemical Foundation, *supra* at 14-15 (1926); W. J. Langley, *supra*; David F. Owen, *supra*.

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:

Will A. Irwin
Administrative Judge

Anne Poindexter Lewis
Administrative Judge

