

MARILYN S. WATSON

IBLA 81-1017

Decided September 10, 1982

Appeal from decision of Nevada State Office, Bureau of Land Management, denying protest against issuance of noncompetitive oil and gas lease. N-33295.

Affirmed.

1. Oil and Gas Leases: Applications: Attorneys-in-fact or Agents -- Oil and Gas Leases: Applications: Filing

The Board will affirm a BLM decision denying a protest contending that the first drawn applicant for a noncompetitive oil and gas lease has not complied with 43 CFR 3102.2-6 (1980), requiring the disclosure of any agreement with the lease filing service which assisted the applicant, where the record, as supplemented on appeal, indicates that the first drawn applicant did comply.

APPEARANCES: R. Hugo C. Cotter, Esq., Albuquerque, New Mexico, for appellant; Stephen F. Dellino, Esq., Ridgefield, New Jersey, for Goldie Skodras.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

Marilyn S. Watson has appealed from a decision of the Nevada State Office, Bureau of Land Management (BLM), dated August 27, 1981, denying her protest against the issuance of noncompetitive oil and gas lease, N-33295, to Goldie Skodras.

Goldie Skodras' simultaneous oil and gas lease application was drawn with first priority for parcel NV-51 in the May 1981 simultaneous oil and gas lease drawing. Appellant's application was drawn with second priority. Effective July 1, 1981, a noncompetitive oil and gas lease was issued to Goldie Skodras, pursuant to section 17 of the Mineral Leasing Act, as

amended, 30 U.S.C. § 226 (1976). On July 7, 1981, appellant protested issuance of the lease, contending that Ms. Skodras had failed to comply with 43 CFR 3102.2-6 by not disclosing the nature of any agreement with the lease filing service, "Metropolitan Marketing," which had prepared her application. Appellant submitted the sworn affidavit of Henry A. Alker, dated July 27, 1981, in which he stated that he had called Goldie Skodras after the lease drawing and was told by her that "she had not prepared her own application on said parcel but that the parcel selection and 'all the paper work' had been done by Metropolitan Marketing which she identified as a lease filing service." In its August 1981 decision, BLM denied appellant's protest, stating that BLM records indicated that the application filed by Goldie Skodras had been properly filed and that the "evidence submitted with your protest does not substantiate the allegation made."

In her statement of reasons for appeal, appellant contends that BLM wrongly interpreted the burden of proof required of a protestant and that, quoting from Lee S. Bielski, 39 IBLA 211, 222-23, 86 I.D. 80, 86 (1979), "where a protestant supports his contention with sufficient evidence to warrant further inquiry or investigation by BLM, the protest should not be summarily dismissed, but adjudicated on its merits after all available information has been developed." Appellant states that BLM should have solicited a response from Goldie Skodras to the allegations made in the Alker affidavit, rather than summarily dismissing her protest.

On October 6, 1981, Goldie Skodras filed an answer to appellant's statement of reasons in which she argues that appellant presented no evidence to BLM, in support of the protest, which indicated that she had not complied with 43 CFR 3102.2-6, and that the protest was properly denied. In addition, she states that the regulation has been complied with. She submits the affidavit of Joseph Boratto, dated September 30, 1981, in which he states that he is affiliated with Metropolitan Marketing Services (Metropolitan) and that Metropolitan has a contractual agreement with Goldie Skodras for the purpose of assisting her in participating in the simultaneous oil and gas leasing program. Further, he states that on May 19, 1981, he mailed to BLM "the filing cards of Goldie Skodras for certain parcels in the May, 1981 simultaneous drawing for the State of Nevada together with a copy of the contractual agreement between Skodras and Metropolitan Marketing Services. Also included were the names and addresses of all other clients who were being filed on Nevada parcels." (Emphasis added.)

Attached to the affidavit is a copy of a letter addressed to the Nevada State Office, BLM, dated May 19, 1981, from Metropolitan, which states:

Pursuant to the rules promulgated concerning filing services, please be advised that Metropolitan Marketing Services is filing on behalf of those individuals named on the attached sheet.

Additionally, we are enclosing an executed agreement between those individuals and Metropolitan Marketing Services,

which sets forth the entire agreement between the parties. Be further advised, as is indicated in the executed agreement, no further understanding exists between Metropolitan Marketing Services and its clients.

At the bottom of the letter is the statement: "Receipt is hereby acknowledged this 21 day of May, 1981. Dockets Section Nevada State Office." The underlined words are handwritten.

[1] The applicable regulation, 43 CFR 3102.2-6, mandates the disclosure of any understanding or agreement by an applicant in the simultaneous oil and gas leasing program who is "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." ^{1/} 43 CFR 3102.2-6(a). The regulation provides two alternative methods of disclosure. Arthur H. Kuether, 65 IBLA 184 (1982). 43 CFR 3102.2-6(a) provides that an applicant

shall submit with * * * the lease application if leasing 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.

In the alternative, 43 CFR 3102.2-6(b) provides:

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.]

In the present case, the applicant drawn with first priority seeks to take advantage of subsection (b). In Arthur H. Kuether, supra at 188, we concluded that "[p]ursuant to 43 CFR 3102.2-6(b), a copy of the uniform agreement must be submitted with the lease application; also a list of names

^{1/} On Feb. 26, 1982, the Department published interim final regulations which revised 43 CFR Subpart 3102 effectively eliminating the requirement to file the agent qualifications found in 43 CFR 3102.2-6. 47 FR 8544 (Feb. 26, 1982). In the absence of countervailing public policy reasons or intervening rights, this Board may apply an amended version of a regulation to a pending matter where it benefits the affected party to do so. See James E. Strong, 45 IBLA 386 (1980); Wilfred Plomis, 34 IBLA 222, 228 (1978); Henry Offe, 64 I.D. 52, 55-56 (1957). In this case, however, it is not possible to do so because of the intervening rights of the second and third priority applicants.

and addresses of each applicant participating under the agreement must be submitted within 15 days of the filing of the application." (Emphasis in original.)

In her protest, appellant challenged whether the first drawn applicant had complied with 43 CFR 3102.2-6 and stated that the latter had admitted to receiving assistance from a lease filing service in preparing her application. A review of lease file N 33295 would not have revealed compliance with either 43 CFR 3102.2-6(a) or (b). Thus, appellant assumed that no filing was attempted under either provision.

It seems reasonably clear to us that the genesis of the instant problem arises in the State office handling of filing services' submissions tendered pursuant to 43 CFR 3102.2-6(b). By the nature of compliance under that section, the submissions necessarily relate to a number of applications. Thus, it is not surprising that the State office does not file these documents in any specific case file. However, by failing to cross-reference the filings in the individual case files, the State office engendered the likelihood that another person, perusing the file, would arrive at the erroneous conclusion that no submission under either 43 CFR 3102.2-6(a) or (b) had been made. This is precisely what transpired herein.

Moreover, the initial failure to cross-reference compliance was exacerbated by the nonresponsive nature of the protest denial. Based on the case file as it then existed, appellant's protest was well grounded. To blandly state, as the protest decision did, that the application of Goldie Skodras "was properly completed, signed and filed," without addressing the real substance of the protest, or even mentioning that the applicant had complied with 43 CFR 3102.2-6(b), is not acceptable adjudicative practice.

In addition, despite the fact that the protest specifically raised the question of compliance with 43 CFR 3102.2-6, it was not until our direct inquiry that the relevant documents which showed compliance were submitted to this Board. These multiple failures by the State office not only succeeded in generating a needless appeal, they actually endangered the continued viability of lease N-33295, since without those documents there was nothing before the Board which showed compliance by the applicant with the disclosure requirements. We suggest that, in the future, where any document which is necessary to show compliance with a statute or regulation is not filed in an individual case file, its existence be cross-referenced within that case file. In any event, where a protest, clearly not spurious, is filed, we expect nothing less than an informed and informative response.

It goes without saying, however, that inasmuch as Goldie Skodras and Metropolitan did comply with the provisions of 43 CFR 3102.2-6(b), the denial of the protest must be affirmed.

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.

James L. Burski
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Edward W. Stuebing
Administrative Judge

