

EVELYN CHAMBERS

IBLA 82-625

Decided September 28, 1982

Appeal from decision of Montana State Office, Bureau of Land Management, rejecting simultaneous oil and gas lease application M 50481.

Reversed and remanded.

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

Where an employee who is not "in the business of providing assistance to participants in a Federal oil and gas leasing program" signs an application as an "attorney-in-fact" of the offeror, she is not an agent within the meaning of 43 CFR 3102.2-6(a), and thus is not required to submit statements required by 43 CFR 3102.2-6(a) or to reference a serial number on the application referring to such statements filed in the BLM office as required by 43 CFR 3102.2-1(c).

APPEARANCES: C. M. Peterson, Esq., for appellant.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

Evelyn Chambers appeals from a decision of the Montana State Office, Bureau of Land Management (BLM), dated February 26, 1982, rejecting her simultaneous oil and gas lease application M 50481 for failure to reference a serial number for a qualification statement as required by 43 CFR 3102.2-1(c).

Appellant's application, dated March 10, 1981, was drawn with first priority for parcel MT 65 in the March 1981 drawing. In the space provided on the application for the applicant's signature, the words "Evelyn Chambers, Principal" were typed. The application shows the manual signature "Carolyn Zick" in the space provided for the agent's signature with the words "Atty-in-Fact" typed under the signature. On the left hand portion of the card the words "Qualifications filed and still in effect" were typed.

The file contains a copy of the power of attorney by which appellant appointed Carolyn Zick as her attorney-in-fact. The document reads in pertinent part as follows:

Evelyn Chambers, 3401 West Pershing Road, Chicago, Illinois, hereby appoints Carolyn Zick as her true and lawful attorney-in-fact, to execute and file with the Bureau of Land Management on his [sic] behalf simultaneous oil and gas lease applications on a form approved by the Director of the Bureau of Land Management.

The authority of the attorney-in-fact herein appointed is specifically limited to execute and file such simultaneous oil and gas lease applications for the sole and exclusive benefit of the principal and not on behalf of any other person in whole or in part.

This Power of Attorney shall be effective as of the date hereof, and shall continue in effect until either two years after the day before the date hereof or until it is specifically revoked by an instrument in writing, executed by me and filed with the office of the Bureau of Land Management in which this Power of Attorney has been filed, whichever is sooner.

On December 3, 1980, BLM notified appellant that it had accepted appellant's power of attorney limited to the execution and filing of simultaneous oil and gas lease applications and had filed the authorization under serial reference number MONTANA 065500. BLM also instructed appellant that each time Carolyn Zick executed simultaneous oil and gas lease applications, evidence of the attorney-in-fact to sign the document must be furnished by referring to MONTANA 065500.

On February 26, 1982, BLM rejected appellants' application because she neither referenced a serial number on the application nor submitted a qualification statement in conjunction with the filing.

On appeal, appellant contends that since all qualification files, files on powers of attorney, associations, corporations, trusts, guardianships, etc., on file in the Montana State Office or any other state office are given the same file reference number, the statement on the card "Qualifications filed and still in effect" adequately informed the Montana State Office that the qualifications were on file in its office without reference to the common qualifications number used by that office.

Appellant also notes that under 43 CFR 3102.2-6 (1980), "agents" deals with a "person or entity which is in the business of providing assistance to participants in a Federal oil and gas leasing program." Appellant asserts that this phrase, defined in 43 CFR 3100.0-5(d), deals with filing services, and not an employee such as Carolyn Zick who has been designated as an attorney-in-fact for the sole purpose of executing and filing applications for the exclusive benefit of appellant.

[1] BLM rejected appellant's application for failure to comply with 43 CFR 3102.2-1(c), which provides as follows:

(c) Filing statements for reference. A statement of the qualifications of a trust or guardianship (§ 3102.2-3), association (§ 3102.2-4), corporation (§ 3102.2-5), agent, if the duration of the authority to act is less than 2 years and is specifically set out (§ 3102.2-6) or municipality (§ 3102.2-9) may be placed on file with a Bureau of Land Management office described in § 1821.2-1 of this title. The office receiving the statement shall indicate its acceptance of the qualifications by assigning a serial number to the statement. Reference to this serial number may be made to any Bureau of Land Management office in lieu of resubmitting the statement. Such a reference shall constitute certification that the statement complies with paragraph (b) of this section. Amendments to a statement of qualifications shall be filed promptly and the serial number shall not be used if the statement on file is not current.

As the text of this regulation suggests, it must be read in conjunction with 43 CFR 3102.2-6 for the purpose of this appeal and with the other cited regulations as appropriate.

The provisions of 43 CFR 3102.2-6(a) state:

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 * * * application * * * 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.

The phrase "[p]erson or entity in the business of providing assistance to participants in a Federal oil and gas leasing program," is defined by 43 CFR 3100.0-5(d) as meaning

those offering services for consideration in connection with the acquisition of Federal oil and gas leases. Included in this definition are those enterprises, commonly known as filing services, which sign, formulate, prepare, offer advice on formulation or preparation, mail, deliver, receive mail or otherwise complete or file lease applications or offers for consideration. Excluded from the definition are those services which only tangentially relate to Federal oil and gas lease acquisition, such as general secretarial assistance, or general geologic advice which is not specifically related to Federal lease parcels or leasing.

Thus, if an agency relationship exists within the meaning of 43 CFR 3102.2-6(a) and 43 CFR 3100.0-5(d), the requirements of 43 CFR 3102.2-6(a) apply. Bernard S. Storper, 60 IBLA 67 (1981), appeal pending, Storper v. Watt, No. 82-0449 (D.D.C. Feb. 17, 1982). In lieu of resubmitting the appropriate statement of qualifications with every application filed, under 43 CFR 3102.2-1(c) an applicant is permitted to submit the appropriate statement to BLM to be kept on file for reference and thereafter refer to the file serial number on applications so long as the statement contained therein remained current. R. Hugo C. Cotter, 58 IBLA 145, 88 I.D. 870 (1981).

We find, however, that Carolyn Zick is not "in the business of providing assistance to participants in a Federal oil and gas leasing program," and is not an agent within the meaning of 43 CFR 3102.2-6. She is an employee of appellant and her duties relating to the application consisted solely of executing and filing the application for appellant. Carolyn Zick's services are secretarial in nature and are excluded by 43 CFR 3100.0-5(d) from the definition of "[p]erson or entity in the business of providing assistance to participants in a Federal oil and gas leasing program." The Board has held that where a personal secretary who is not "in the business of providing assistance to participants in a Federal oil and gas leasing program" signs an oil and gas lease application as an "agent" of the offeror, he or she is not an agent within the meaning of 43 CFR 3102.2-6(a). Kathleen I. Anderson, 56 IBLA 214 (1981). The same reasoning is applicable here where Carolyn Zick signed appellant's application as "Atty-in-Fact" of the offeror. Since Carolyn Zick is not an agent as defined by the regulations, it was not necessary for her to submit the information required by 43 CFR 3102.2-6(a), or to reference a serial number on the application as required by 43 CFR 3102.2-1(c). Thus, BLM's decision is in error and BLM should accept appellant's application if all other requirements are met.

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 reversed, and the case is remanded to BLM for further action consistent with this opinion.

Anne Poindexter Lewis
Administrative Judge

We concur:

James L. Burski
Administrative Judge

Bruce R. Harris
Administrative Judge

