

PHILIP SCATURRO

IBLA 82-471

Decided October 18, 1982

Appeal from decision of the Montana State Office, Bureau of Land Management, rejecting oil and gas lease application for parcel MT 144. M 51490 (SD).

Reversed.

1. Evidence: Presumptions -- Evidence: Sufficiency

The legal presumption that administrative officials have properly discharged their duties and not lost or misplaced legally significant documents filed with them is rebuttable by probative evidence to the contrary. A copy of a letter addressed to BLM providing the required information coupled with a return receipt card showing receipt thereof will rebut the inference of nonreceipt arising from the absence of the document from the file.

APPEARANCES: Philip Scaturro, pro se.

OPINION BY ADMINISTRATIVE JUDGE GRANT

Philip Scaturro appeals from the January 27, 1982, decision of the Montana State Office, Bureau of Land Management (BLM), rejecting his application for parcel MT-144 on the May 1981 list of parcels available for simultaneous filing. The application was drawn with first priority in the simultaneous oil and gas drawing held on June 11 and 12, 1981. Appellant's application was filed by Sartex Energy Services, Inc. (Sartex), which signed the lease application as his agent.

By its decision dated January 27, 1982, BLM notified appellant that his application had been rejected "as required by \* \* \* 43 CFR 3112.6-1(b) for failure to file the application in accordance with 43 CFR 3102.2-1(c), 3102.2-6(a) or 3102.2-6(b)." The decision further stated that the regulation, 43 CFR 3102.2-1(c), allows the statement of qualifications of an agent to be filed in any BLM office and a serial number assigned in lieu of resubmitting the statements each month. BLM noted that no serial number was shown on

appellant's application. The BLM decision goes on to state that appellant's oil and gas lease application failed to comply with 43 CFR 3102.2-6(a) and (b), because no personally-signed copy of a written agreement was submitted, as required by 43 CFR 3102.2-6(a), and appellant's agent failed to submit, in lieu thereof, a blank copy of their agreement along with a list setting forth the names and addresses of each applicant represented by Sartex participating under the agreement.

The regulations at 43 CFR 3102.2-6 1/ provide:

(a) 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 offer, or 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. 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.

(b) 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.

On appeal appellant asserts that he was in compliance with 43 CFR 3102.2-6(b). He states that he was assured by his agent, Sartex, that the required list of Sartex's clients filing in the State of Montana and a copy of the agreement between appellant and Sartex were forwarded to the Montana State Office, BLM, on May 13, 1981.

The case record reflects that an unsigned copy of the agency agreement was stamped as received by the Montana State Office, BLM, on May 21, 1981. Appellant has tendered with the notice of appeal a copy of a letter dated May 13, 1981, on the letterhead of Sartex, which was addressed to the Montana State Office, BLM. The letter contains a list of the names and addresses of four clients of Sartex (including the appellant) participating in the May

---

1/ Subsequent to the drawing of applications in this case, this regulation was repealed effective Feb. 26, 1982. 47 FR 8544 (Feb. 26, 1982).

1981 drawing for which Sartex acted as agent. Appellant contends this letter was mailed to BLM by his agent. The letter does not otherwise appear in the case file and a memorandum in the file indicates that a search by BLM of documents received for the May 1981 drawing did not disclose receipt of that letter.

[1] The legal presumption that administrative officials have properly discharged their duties and not lost or misplaced legally significant documents submitted for filing, coupled with the absence of the relevant documents from the file, will support a finding that a document was not filed, in the absence of substantial evidence to the contrary. See H. S. Rademacher, 58 IBLA 152, 88 I.D. 873 (1981), and cases cited therein. Although there is no further evidence in the case file that the letter providing the names and addresses of the clients of Sartex was received by BLM, we may take official notice of the public records of the Department of the Interior. 43 CFR 4.24(b). In another case recently decided by this Board involving the same issue regarding another client of Sartex in the same drawing, counsel for the applicant tendered on appeal a copy of three return receipt cards signed for by an employee of the Montana State Office, BLM, on May 15, 1981. We held in the case of Elizabeth D. Anne, 66 IBLA 126, 128 (1982), that this constituted sufficient corroboration of receipt of the May 13, 1981, letter to overcome the inference arising from the absence of the letter from the case file. We are bound by that holding in this case.

Accordingly, 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.

C. Randall Grant, Jr.  
Administrative Judge

We concur:

Will A. Irwin  
Administrative Judge

Edward W. Stuebing  
Administrative Judge.

