

Appeal from decision of Nevada State Office, Bureau of Land Management, rejecting simultaneous oil and gas lease offer N-34032.

Reversed and remanded.

1. Oil and Gas Leases: Applications: Generally

Where a simultaneous oil and gas lease applicant establishes that he had, in fact, personally signed his application and his offer, as required by 43 CFR 3112.2-1(b) and 43 CFR 3112.4-1, his offer was rejected improperly.

APPEARANCES: Stephen F. Pellino, Esq., for appellant.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

Paul Mirialakis has appealed from a September 17, 1981, decision of the Nevada State Office rejecting his simultaneous oil and gas lease offer N-34032. Appellant's simultaneous oil and gas lease application was selected with first priority for parcel NV-29 in the Nevada State Office July 1981 simultaneous oil and gas lease drawing. BLM stated in the decision that the reason for rejection was that the signature on the application and that on the offer "[do] not appear to be the same." 1/

[1] Pursuant to 43 CFR 3112.4-1, BLM forwarded the lease agreement, consisting of the offer to lease and certain stipulations, to Mirialakis. Subsequently, BLM received a letter from Metropolitan Marketing Services

1/ 43 CFR 3112.2-1(b) requires that a simultaneous oil and gas lease application be "holographically (manually) signed in ink by the applicant or holographically (manually) signed in ink by anyone authorized to sign on behalf of the applicant." 43 CFR 3112.4-1(a) states that "[o]nly the personal handwritten signature of the prospective lessee, or his/her attorney-in-fact * * *, in ink shall be accepted [on the offer]."

(Metropolitan) dated August 17, 1981, which stated: "Enclosed please find payment of first year's rental together with attached stipulations duly signed and dated concerning the above entitled parcel (NV-29-Paul Mirialakis) which was awarded to the above individual in the July, 1981 Simultaneous drawing." Enclosed were four copies of the offer to lease form and three stipulations all signed by Paul Mirialakis. Each signature was the same. In each case every letter of the name was legible. These signatures bore no resemblance to the signature on the application. The signature on the application in the box labeled "Applicant's Signature" is indecipherable, the letter P in the first name being the only distinguishable feature. No other signature appears on the application.

The case record contains a "Agreement and Disclosure Statement" dated August 8, 1980, in which Metropolitan agreed to assist Mirialakis in applying for leases through the simultaneous oil and gas leasing system. Metropolitan is designated as Mirialakis' agent to exercise its discretion "in selection, completion and execution of drawing entry cards * * *." This document is signed by Mirialakis. The signature is the same as that appearing on the offer forms.

Clearly, BLM believed, not without reason, that someone other than Mirialakis had signed the application. In the decision it stated "[i]f Metropolitan Marketing Services signed as agent on your behalf, they should have signed the application as your 'agent' (Reference 43 CFR 3112.2-1)."

The question presented is what should BLM have done when it realized the discrepancies in the signatures. BLM, rather than rejecting the offer, should have requested explanatory information from Mirialakis. If BLM were not satisfied following receipt of such information, then it could have rejected the offer. However, if the necessary material was forthcoming, this appeal could have been avoided.

On appeal counsel for Mirialakis has provided his client's affidavit which establishes that the application and the offer were both, in fact, signed by Mirialakis. Documents submitted show Mirialakis' signature in the manner it appears on both the application and the offer. Had BLM requested this information from Mirialakis, it could have resolved the signature problem.

2/ 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 3102.26. 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 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. Arthur H. Kuether, 65 IBLA 184, 186 (1982).

We note that in another affidavit submitted on appeal the Research Director for Metropolitan, Joseph B. Boratto, states: "4. In my capacity as Research Director, I prepared the application cards of Paul Mirialakis for the July, 1981 Simultaneous Oil and Gas Lease Lottery for the State of Nevada and I also reviewed his offer to lease following his award of Number One Priority * * *." Such assistance in July 1981 necessitated compliance with 43 CFR 3102.2-6. 2/ See Alvyn G. Novotny, 55 IBLA 196, 198 (1981). The present record does not indicate whether there was compliance with those agent requirements. Prior to acceptance of the offer, BLM should make that determination.

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 and case remanded for appropriate action.

Bruce R. Harris
Administrative Judge

We concur:

Franklin D. Arness
Administrative Judge
Alternate Member

Douglas E. Henriques
Administrative Judge