

HOWARD K. DAVIS

IBLA 82-933

Decided January 6, 1983

Appeal from a decision of the Montana State Office, Bureau of Land Management, rejecting oil and gas lease application M 53300.

Affirmed.

1. Oil and Gas Leases: Generally -- Oil and Gas Leases: Applications: Filing

Where the regulations require an oil and gas lease applicant 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 to file a copy of any agreement with such person or entity and the applicant fails to do so, the application properly is rejected.

2. Administrative Authority: Laches -- Estoppel -- Laches
The authority of the United States to enforce a public right or protect a public interest is not vitiated or lost by acquiescence of its officers or by their laches, neglect of duty, failure to act, or delays in the performance of their duties, nor can reliance upon information or opinion of any officer, agent, or employee, or on records maintained by land offices, operate to vest any right not authorized by law.

APPEARANCES: Howard K. Davis, pro se.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

Howard K. Davis appeals from the May 24, 1982, decision of the Montana State Office, Bureau of Land Management (BLM), rejecting his simultaneous oil

and gas lease application for parcel MT 50, which was drawn with first priority in the simultaneous oil and gas drawing held during September 1981. BLM rejected Davis' application because he failed to comply with 43 CFR 3102.2-6. ^{1/}

[1] The regulation, 43 CFR 3102.2-6(a), provides:

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. [Emphasis added.]

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

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. [Emphasis added.]

On May 3, 1982, BLM requested additional information from Davis whether he had received assistance in selecting and filing the application as defined in the regulation, 43 CFR 3100.0-5(d). In response, Davis submitted a copy of an "Advisory Agreement", dated July 27, 1981, between himself and U.S. Oil and Gas Corporation (U.S. O&G). Sections 2 and 5 of that agreement provide as follows:

^{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.

2. Retainer: Client hereby agrees to retain U.S. OIL AND GAS CORP. to provide its advisory services in connection with a total of 144 recommendations, pursuant to the oil and gas lease acquisition program. The U.S. OIL AND GAS CORP. agrees to provide its advisory service in connection with both the Federal and the State of Wyoming simultaneous oil and gas lease program. Client hereby agrees to pay U.S. OIL AND GAS CORP. in advance the sum of \$6,624.00.

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5. Selection: The suggested selection of the parcels is to be made by U.S. OIL AND GAS CORP. from a list provided by The Bureau of Land Management, or The Commissioner of Public Lands, State of Wyoming. U.S. OIL AND GAS CORP. shall under no circumstances participate in any profits or overriding royalties acquired by the Client. Each filing period, U.S. OIL AND GAS CORP. will forward to the Client parcel recommendations, plus the filing fees to be paid to the appropriate agency. [Emphasis added.]

At the time of the filing of the application this agreement was in force.

On appeal Davis states that he entered into an agreement with U.S. O&G which provided him with geologic advice as to the suitability of various parcels available in the September 1981 drawing, but that the corporation is not an agent for, nor does it in any way participate in, any benefits received by him. Davis contends that any assistance rendered by U.S. O&G was purely ministerial in nature and would fall into the exclusion of general secretarial service under 43 CFR 3100.0-5(d). Davis further states that he was advised orally by a BLM representative that the objection to granting of the lease arose because payment of the filing fee was in the form of a certified check from Coral Gables, Florida, the location of U.S. O&G, rather than being drawn from a bank in Davis' home area which is Artesia, New Mexico. Davis contends that there is no evidence of an agency relationship between himself and U.S. O&G and, in fact, no agency relationship did exist; that he, at all times, had full and complete discretion to act as he desired, and that mere use of advisory information provided by U.S. O&G is not a violation of any pertinent regulations.

We have considered Davis' arguments but do not find them compelling. The facts are that Davis contracted with U.S. O&G to have the company perform services for him. The "Advisory Agreement" set forth the respective duties and obligations of the parties. This is the type of arrangement that is covered by 43 CFR 3102.2-6(a) and, as such, a personally signed copy of it should have been filed with the lease application. Under the definition found in 43 CFR 3100.0-5(d), the services provided by U.S. O&G qualify U.S. O&G as a "person or entity in the business of providing assistance to a participant in a Federal oil and gas leasing program." Section 2 of the agreement quoted above provides for consideration to be paid to U.S. O&G

for the services provided. ^{2/} Section 5 of the agreement provides that U.S. O&G will suggest selections of the parcels to be made and will forward filing fees to be paid by Davis.

[2] Davis has alleged that he was misled or misinformed by employees of BLM concerning filing requirements. His reliance, however, cannot confer any rights not authorized by statute or regulation. 43 CFR 1810.3(c). The authority of the United States to enforce a public right or protect a public interest is not vitiated or lost by acquiescence of its officers or by their laches, neglect of duty, failure to act or delays in the performance of their duties. 43 CFR 1810.3(a); James N. Tibbals, 58 IBLA 42 (1981). Moreover, at the time of filing, the regulations required that a copy of an agreement such as that involved herein be filed with the application. Ignorance of that requirement cannot excuse the failure to file. See Charles L. Roberts, 65 IBLA 67 (1982).

We conclude that BLM properly rejected Davis' application.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the Montana State Office is affirmed.

Bruce R. Harris
Administrative Judge

We concur:

James L. Burski
Administrative Judge

Will A. Irwin
Administrative Judge

^{2/} At the time that Davis filed the application, Sept. 10, 1981, the filing fee was \$10 per application. 45 FR 35163 (May 23, 1980). (The fee was subsequently increased to \$25 per application effective Oct. 1, 1981, 46 FR 45887 (Sept. 15, 1981) and currently is \$75 per application). Since the agreement between Davis and U.S. O&G provided for 144 "recommendations" for a total advance sum of \$6,624, each recommendation would be worth \$46 which, minus the actual \$10 filing fee, leaves \$36 per filing that can only be seen as consideration paid by Davis to U.S. O&G, for services provided. In addition, with his notice of appeal Davis submitted a copy of another agreement with U.S. O&G dated Sept. 2, 1981. That agreement provided for U.S. O&G to render the same services for 36 recommendations for which Davis agreed to pay \$1,656. Thus, Davis was again paying \$36 per filing more than the \$10 filing fee.

