

Appeal from decision of the Oregon State Office, Bureau of Land Management, canceling oil and gas lease OR 27113 (WA).

Affirmed.

1. Oil and Gas Leases: Cancellation -- Oil and Gas Leases: First-Qualified Applicant -- Oil and Gas Leases: Noncompetitive Leases

Where BLM erroneously issues a noncompetitive over-the-counter oil and gas lease to a junior offeror, BLM's decision canceling that lease will be affirmed, since the law requires that the qualified person first making application for a lease (the senior offeror) is entitled to receive any lease which is issued.

2. Oil and Gas Leases: Bona Fide Purchaser -- Oil and Gas Leases: Cancellation

Where, at the time of an assignment of an oil and gas lease, the official BLM records reveal that the leased lands are subject to a senior, and therefore superior, oil and gas lease offer, the assignee of the lease is not a bona fide purchaser, for it is imputed to have knowledge of BLM's records which contained information adequate to raise doubt that the assigned lease was validly issued.

APPEARANCES: Don M. Fedric, Esq., Roswell, New Mexico, for appellant; Thomas A. Miller, Esq., Houston, Texas, for Shell Oil Company.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

A. W. Rutter, Jr., has appealed a decision of the Oregon State Office, Bureau of Land Management (BLM), dated June 21, 1982, canceling his oil and

gas lease OR 27113 (WA). 1/ BLM held that the lease was issued in error because a prior conflicting offer (OR 25280 (WA)) had been filed on October 10, 1980, 2/ by Shell Oil Company (Shell). Appellant protested the BLM decision by requesting reconsideration because he had formally assigned his lease to William James Stark, 3/ whom appellant asserted was a bona fide purchaser (BFP) entitled to BFP protection. BLM issued a decision July 21, 1982, dismissing the protest. BLM held that the assignee was not a BFP because at the time of the lease assignment BLM's oil and gas status plat 4/ revealed that the leased lands were subject to a senior oil and gas lease offer.

Appellant contends on appeal, however, that his assignee, having exercised the ordinary care and diligence of a reasonable prudent investor, is indeed a BFP. Appellant asserts that three independent record searches 5/ revealed no senior offer and raised no questions for inquiry. Appellant further alleges that even the appearance at some point subsequent to the searches of an apparent junior offer ("the Shell offer occupies second position to the

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1/ OR 27113 (WA) was filed on June 4, 1981, and described all of sec. 35 in T. 18 N., R. 27 E., Willamette meridian, Washington.

2/ The record reflects that the Shell offer OR 25280 (WA) was, in fact, filed on Oct. 31, 1980. It described land in T. 18 N., R. 27 E., Willamette meridian, Washington, totaling 3,840 acres and included all of secs. 21, 23, 25, 27, and 35, and the N 1/2, SE 1/4 of sec. 26, and NE 1/4 of sec. 34.

3/ On Dec. 18, 1981, appellant and Stark executed a contract entitled "Purchase Agreement" which gave Stark first priority to obtain 10 leases covering about 10,837 acres. Appellant agreed to an assignment of all right, title, and interest in the described lands "when and if issued." The described lands included sec. 35 covered by OR 27113 (WA). On Mar. 5, 1982, appellant was paid \$2 per acre by a Mar. 2, 1982, check from Stark as down payment against the purchase consideration for the assignment of lease OR 27113 (WA) which appellant formally executed on June 8, 1982. On June 16, 1982, Stark filed the record title assignment with the Oregon State Office of BLM.

4/ The record shows that Shell offer OR 25280 (WA) was recorded on the oil and gas plat on Jan. 7, 1981. The oil and gas plat current as of Jan. 9, 1981, was in error, however, because for secs. 27, 34, and 35 lines were noted but the serial number was missing. On Apr. 28, 1981, the plat was still in error for secs. 34 and 35 but sec. 27 had been corrected. The lines were removed for secs. 34 and 35 so there was nothing on the plat to reflect that secs. 34 and 35 had been part of OR 25280 (WA). On July 23, 1981, appellant's offer OR 27113 (WA) was noted on the oil and gas plat. On Feb. 26, 1982, the oil and gas plat was corrected for sec. 35, to reflect OR 25280 (WA), and BLM noted in its "Case History of T. 18 N., R. 27 E., sec. 35" that sec. 34 was still in error.

5/ Stark employed Richard Hoyt, asserted to be an experienced landman, to search the Oregon State Office BLM records in October or November 1981. In January 1982, Stark again employed Hoyt to search the records. Hoyt provided Stark with a copy of the oil and gas plat applicable to the land in OR 27113 (WA), posted current by BLM to July 23, 1981. Only offer OR 27113 (WA) was noted on the plat. In February 1982 appellant, per the purchase agreement, provided Stark with a copy of the oil and gas plat for the land in OR 27113 (WA), which plat was posted current to Feb. 4, 1982.

Rutter offer, thus leading one to reasonably believe the Shell offer to be junior in nature") did not trigger the need for further inquiry. Finally, appellant asserts that, circumstances being what they are, it appears that BLM recorded the senior offer on the oil and gas plat only after Stark filed the assignment with BLM on June 16, 1982.

[1] The statute governing oil and gas leasing of lands which are not on a known geologic structure of a producing oil and gas field requires that the person first making application for the lease shall be entitled to receive it if the Department determines to lease the land, provided that the applicant is qualified to hold it. 30 U.S.C. § 226(c) (1976); York Associates, 58 IBLA 25 (1981). Shell's offer, OR 25280 (WA), which included the subject lands, was filed over-the-counter on October 31, 1980; appellant's offer OR 27113 (WA) for the subject lands was filed on June 4, 1981. In the absence of some defect, Shell, as senior offeror, should have received the lease. A. D. Matchett, 56 IBLA 231 (1980); George P. Wolter, Jr., 47 IBLA 396 (1980). BLM, acknowledging that appellant, as junior offeror, had been erroneously issued the lease, canceled appellant's lease on June 21, 1982.

[2] This Board held in George P. Wolter, Jr., supra at 399, that an incorrectly issued oil and gas lease may not be canceled if it has been assigned to a BFP, even if a superior offer was extant when the lease issued. 30 U.S.C. § 184 (1976); 43 CFR 3108.3(c). A BFP must have acquired his interest in good faith, for valuable consideration, and without notice of violation of Departmental regulations. Winkler v. Andrus, 614 F.2d 707, 711 (10th Cir. 1980); Southwestern Petroleum Corp. v. Udall, 361 F.2d 650, 656 (10th Cir. 1966). Assignees who seek to qualify as BFP's are deemed to have constructive knowledge of all BLM records pertaining to the lease at the time of assignment. Winkler v. Andrus, supra at 713; James Koch, 61 IBLA 235 (1982).

BLM, in its decision dated July 21, 1982, dismissing appellant's protest, cited York Associates, supra, as the basis for its determination that appellant's assignee is not a BFP. The decision stated:

An IBLA decision decided September 16, 1981, IBLA 81-750, 58 IBLA 25, York Associates, LTD (copy enclosed), states in part "where, at the time of an assignment of an oil and gas lease, BLM's oil and gas status plat reveals that the leased lands are subject to a senior, and therefore superior, oil and gas lease offer, the assignee of the lease is not a bona fide purchaser, for it is imputed to have knowledge of BLM's records which contained information adequate to raise doubt that the assigned lease was validly issued".

Appellant contends that in York the oil and gas plat reflected the prior superior offer at all times preceding the date of lease assignment to the third party thus putatively vesting the alleged BFP with knowledge sufficient to create title doubts and preventing the third party from being a BFP. Appellant asserts that, in contrast, his assignee was provided with information from three separate record searches which reflected nothing that would create doubts concerning the validity of appellant's lease. Consequently, appellant contends that his assignee is a BFP and that this status should have attached March 2, 1982, the date Stark "made his first payment of consideration."

This Board has held that in order to invoke the BFP protection afforded by the Act of September 21, 1959, as amended, 30 U.S.C. § 184(h) (1976), the oil and gas lease must have issued. Until execution and issuance of the lease, only an offer exists and the assignment of rights in such an offer is outside the purview of the BFP provisions in the Mineral Leasing Act. Herman A. Keller, 14 IBLA 188, 81 I.D. 26 (1974). Accordingly, appellant's contention that BFP status attached on March 2, 1982, is unacceptable since the lease in question did not issue until after that date.

While the general rule is that the relevant date to determine bona fides is the date that the consideration for the assignment was paid, Winkler v. Andrus, supra at 712, citing 77 Am. Jur. 2d Vendor & Purchaser § 706 (1975), the Tenth Circuit stated in Winkler that the court in Southwestern Petroleum Corp. v. Udall, supra at 655-56, determined the critical time was instead the date of the assignment. See James Koch, supra at 241; see also Richard W. Eckels (On Reconsideration), 65 IBLA 76 (1982). However, here, as in Winkler, and Koch, it is immaterial whether the critical time is regarded as the date the parties agreed to the assignment or the date the consideration was paid.

The record reflects that the lease was issued May 7, 1982, effective June 1, 1982. Payment by Stark to appellant was made on June 3, 1982. Appellant formally assigned his lease to Stark on June 8, 1982, and the assignment was filed with BLM on June 16, 1982.

At the time the consideration was paid and the assignment was made, the corrected oil and gas plat, part of the reference records located in the public room of the Oregon State Office, reflected the existence of senior offer OR 25280 (WA).

Appellant contends, however, that even if the records were searched immediately prior to the assignment, they would not have given notice of a senior offer because the posting of an offer at some time subsequent to February 4, 1982 (the last record search conducted by appellant), would have appeared to be the posting of a subsequent offer and no cause for suspicion. In addition, appellant argues that in viewing the plat one sees the Shell offer occupying a position below appellant's offer, "thus leading one to reasonably believe the Shell offer to be junior in nature" (Statement of Reasons at 9). We would note, however, that offers are numbered as they are filed and the number of the Shell offer, OR 25280 (WA), indicates that it was filed earlier in time than appellant's offer, OR 27113 (WA). See BLM manual at 1274.

"The test as to imputing notice of a superior right is whether facts are sufficient to put an ordinarily prudent man on inquiry, an inquiry which, if followed with reasonable diligence, would lead to discovery of defects in title affecting the property." Winkler, supra at 712, citing Southwestern, supra at 657. In this case more than 3 months prior to the assignment of the lease and payment of consideration the record facts were such as to put an ordinarily prudent man on notice as to a possible senior offer for the lands in question. Further inquiry would have revealed the senior offer.

Finally, appellant argues in his statement of reasons that it is not unreasonable to assume that the Oregon State Office did not discover its

error until Stark filed his assignment with BLM on June 16, 1982. Then, according to appellant, BLM hastily posted the senior offer for the subject land on its records. Appellant believes that the correcting of the problem only as to the subject land and not to other land that had also been incorrectly noted, 6/ and the May 7, 1982, lease issuance effective June 1, 1982, create a presumption that the BLM leasable minerals plat was not corrected until the filing of the assignment.

Appellant's argument is not supported by the record. On February 26, 1982, the oil and gas plat, available in the public room of the Oregon State Office, reflected the senior offer OR 25280 (WA). This date is documented by the BLM Oregon State Office records control log. BLM asserts that when issuing the lease to appellant it relied on the master title plat which had not been corrected to reflect the senior offer. It is conceivable that the filing of the assignment on June 16, 1982, triggered the more inclusive record search by BLM that revealed the senior offer and resulted in the cancellation of the appellant's lease. In so doing, BLM was appropriately correcting an error.

Thus, we hold that, as a matter of law, Stark was not a BFP, and BLM was not barred from canceling lease OR 27113 (WA).

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 affirmed.

Bruce R. Harris  
Administrative Judge

We concur:

Douglas E. Henriques  
Administrative Judge

James L. Burski  
Administrative Judge

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6/ Sec. 34 on the oil and gas plat did not reflect senior offer OR 25280 (WA) until July 27, 1982.

