

CHARLES FOX AND GEORGE H. KEITH, PARTNERSHIP

IBLA 83-348

Decided November 18, 1983

Appeal from decision of the Wyoming State Office, Bureau of Land Management, rejecting simultaneous oil and gas lease application selected with first priority for two parcels and assigned serial numbers W-83252 and W-83276.

Reversed and remanded.

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

An automated simultaneous oil and gas lease application filed by a partnership in the partnership name is not properly rejected under 43 CFR 3112.2-1(c) (1982), where the name of only one entity as defined in 43 CFR 3102.1 (1982), appears as applicant on Part B of the application.

2. Oil and Gas Leases: Applications: Generally--Oil and Gas Leases: Applications: Drawings--Oil and Gas Leases: Applications: Filing

Where a partnership consists of the names of two individuals and the designation "PTR" and the names and designation are typed on both Part A and Part B of the automated simultaneous oil and gas lease application as the name of the applicant, the fact that the automated part of Part A contains the surname and initials of only one of the individuals is a nonsubstantive error, and it does not require rejection of the application as not being properly completed under 43 CFR 3112.2-1(g) (1982).

APPEARANCES: Charles Fox and George H. Keith, pro sese, and for the partnership.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

Charles Fox and George H. Keith appeal the Wyoming State Office, Bureau of Land Management (BLM), decisions of January 4, 1983, which

rejected an automated simultaneous oil and gas lease application selected with first priority for two of the parcels listed on the September 1982 "Notice of Land Available" in Wyoming and drawn in November 1982. Those selections were assigned serial numbers W-83252 and W-83276. The reasons for rejection provided in the decisions are as follows: "Part B of your application shows Charles Fox and George H. Keith as the applicants. The identification number, 942 29 7044, corresponds to Part 'A' filed by G. H. Keith. Since both [Fox and Keith] cannot be listed as applicants, your application is incorrect and is hereby rejected." In rejecting the applications BLM cited the regulation, 43 CFR 3112.2-1(c), which generally provides that the name of only one citizen, association, corporation, or municipality may appear as applicant on any application. 1/

Part A of the application lists "George H. Keith & Charles Fox PTR," in the space marked print or type applicant's full name. Part A also provides the following instruction: "MARK FIRST 16 LETTERS OF APPLICANT'S LAST NAME OR ORGANIZATION NAME / INITIALS." Below this instruction are 16 blocks for letters of a name and two blocks for initials. Beneath the blocks are circles to be darkened with pencil to allow automated processing. The blocks on Part A of this application contained the letters "KEITH," 11 blank blocks, and the initials "GH." Part B, as completed and submitted to BLM by Fox and Keith, shows "Charles Fox & George H. Keith PTR" as the entry in the space which requires that applicant's full name be disclosed. Part B of the application was signed by both Charles Fox and George H. Keith with nothing further being entered in the signature block.

In the statement of reasons for appeal of the lease application rejections, Fox and Keith state that the U.S. Internal Revenue Service more than a decade ago required that they consider themselves a partnership; that they were issued a number, which also serves as the partnership "Employer Identification Number," under which they pay taxes and otherwise conduct business as a general partnership; and that this number was entered on Part A of the application. 2/ The same number appears in the appropriate space on Part B of the application.

The statement of reasons further provides that the names of Fox and Keith followed by an abbreviation for the word partnership constitutes the entity through which appellants conduct business; that instructions on Part A of the application read in part, "[i]f the applicant is an entity, enter so much of the entity's name as is possible in the spaces provided"; and that

1/ On July 22, 1983, 43 CFR Part 3100 was revised effective Aug. 22, 1983. 48 FR 33648. The applicable regulations, however, and those controlling here, are those which were in effect at the time the application was filed in this case (September 1982).

2/ Attached to the statement of reasons were copies of the covers of U.S. Internal Revenue Service, 1982, U.S. Partnership Return of Income form, and State of California, 1982 Partnership Form 565, both of which contain address labels which use identification number 942 29 7044 as a reference number, both of which show that the forms were sent to "Charles Fox & George H. Keith, PTR" or "PT," and both of which use the same address as that entered on both Part A and Part B of the application.

there is room on Part A for the name of George H. Keith alone. In effect, Fox and Keith's contention is that their partnership constitutes a single entity which is the applicant.

[1] Under regulation 43 CFR 3102.1, "Who may hold interests," leases may be acquired and held only by citizens of the United States; associations (including partnerships) of such citizens; certain corporations; and municipalities.

It is apparent that BLM employees concerned overlooked the fact that Part B of the application listed a partnership name, as denoted by the letters "PTR" after the names "Charles Fox & George H. Keith," rather than two individual names being listed, as the applicant. Part A of the application similarly contains the typed full partnership name. However, some confusion existed because BLM's computer printout of the Part A information showed the applicant as Keith, G.H., while Part B showed two names and two signatures. BLM rejected the application as to the two parcels without undertaking any further investigation, even though Part B indicated that the applicant's full name was "Charles Fox & George H. Keith PTR."

We must find that BLM erroneously rejected the application for the reason that there was a failure to comply with 43 CFR 3112.2-1(c) which allows only one citizen, corporation, association, or municipality to appear as applicant on any application. Part B of the application clearly shows that a partnership filed the application and that the individuals operating as a partnership both signed the application.

The question presented in this appeal, however, is whether the application should have been rejected because it was not properly completed. We conclude that it should not have been.

[2] Under the Mineral Leasing Act, the Department is authorized to issue noncompetitive oil and gas leases only to the first-qualified applicant. See *Udall v. Tallman*, 380 U.S. 1 (1965); 30 U.S.C. § 226(c) (1976). The Department has promulgated regulations which provide for the simultaneous filing of applications to be selected for priority of consideration. 43 CFR Subpart 3112.

Failure properly to complete the information required on a simultaneous oil and gas lease application renders the filing defective and requires its rejection under 30 U.S.C. § 226(c) (1976). The applicable regulations provide that an application consists of an approved form "completed, signed and filed pursuant to the regulations in this subpart" and that the "properly completed and signed lease application be filed in the proper office of the Bureau of Land Management." 43 CFR 3112.2-1(a) and (g) (emphasis added). <sup>3/</sup>

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<sup>3/</sup> The present regulation, 43 CFR 3112.2-1(a), 48 FR 33678 (July 22, 1983), provides: "An application to lease under this subpart consists of a simultaneous oil and gas lease application on the form approved by the Director, completed, signed and filed pursuant to the instructions in the application form and to the regulations in this subpart."

Since January 1, 1982, the form approved by the Director, BLM, is the automated simultaneous oil and gas lease application form 3112-6 (Part A), and 3112-6a (Part B). 46 FR 55783 (Nov. 12, 1981). Part A, which is submitted only with the applicant's first filing under the automated process, enables BLM to record the applicant's name and address and identification number. A separate Part B is submitted during each filing period. Part B identifies all parcels which the applicant desires to lease.

As noted in the statement of reasons, Part A instructions direct the applicant to: "Print in the appropriate squares the applicant's last name and initials or, if the applicant is an entity, enter so much of the entity's name as is possible in the spaces provided." As set forth above, Part A of the application provides room for 16 letters of a surname together with space for 2 initials, or in the case of an entity there is space for 16 letters of the entity's name to be entered. Appellants assert that "[t]here is room on Part A for the name of George H. Keith alone." The Part A in this case contains the typed name "George H. Keith & Charles Fox PTR." The boxes contain the printed name "KEITH" and "GH" in the boxes for initials. If the instructions on the application had been followed precisely, the following information could have been conveyed in the 16 boxes -- "GEORGE H. KEITH A or CHARLES FOX AND." <sup>4/</sup>

Thus, although appellants are literally correct in their assertion, completely filling in the 16 boxes in either case would disclose that the applicant was, in fact, an entity, even though the actual information conveyed would be nothing more than the name of an individual. On the other hand, if the name "KEITH AND FOX PT" or "FOX AND KEITH PT" had been entered in the boxes on Part A, the entire partnership name would have appeared. However, the failure to do so in this case should not result in rejection of the application.

A Part B application is not paired with the Part A by visual inspection. The simultaneous application has been adapted for data processing. Part B provides no circles for darkening to indicate the name of the applicant. The only computer link between a Part A and a Part B is the identification number. That number is the feature which, when processed by machine, will distinguish the application as distinctly that of the applicant. In this case the number was properly entered on both Part A and Part B. Clearly, neither the Part A nor the Part B in this case was completed in a manner that prevented automatic processing.

When the BLM computer printout showed "KEITH GH" as the first-drawn applicant for the two parcels in question and the Part B was signed by Charles Fox and George H. Keith, BLM rejected the application. However, since BLM had to visually inspect the Part B to examine the signatures, it

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<sup>4/</sup> Although the partnership name contains an ampersand, there is no circle on the automated simultaneous oil and gas lease application representing that character. Therefore, in such a situation filling in the boxes and circles on Part A of an application requires the use of the word "and."

should also have realized that the signatories were named as the applicant on Part B as "Charles Fox & George H. Keith PTR." The partnership status of Fox and Keith was ignored by BLM in its decision, possibly because the computer printout showed "KEITH GH" as the applicant. The inconsistency between the information on Part B and the computer printout of the applicant's name, however, should have triggered visual inspection of the Part A. The applicant's full name typed on Part A was "George H. Keith & Charles Fox PTR."

While it clearly could be argued that Part A of the application was not properly completed and that past Board decisions require the rejection of the application, we believe the better course to follow in this case is that which Judge Burski charted in his concurring opinion in Irvin Wall, 69 IBLA 371, 374 (1983). Therein, he stated that recent judicial decisions had undermined past adjudicative practice by the Board as related to simultaneous oil and gas lease applications, citing Ahrens v. Andrus, 690 F.2d 805 (10th Cir. 1982), and Winkler v. Andrus, 594 F.2d 775 (10th Cir. 1979). He concluded at 375:

to the extent that information called for by the [application] relates to establishing the qualifications of the offeror or policing the system to prevent abuses, failure to submit the information must compel rejection of the offer. But, where a requirement for information neither establishes an applicant's qualifications nor advances any other governmental interest, failure to comply should not be invoked against any applicant so as to deprive the individual of a statutory preference right.

In addition, the Tenth Circuit has most recently reversed the district court's decision in Conway v. Watt, No. C82-0029 (D. Wyo. July 12, 1982), affirming the Board's decision in Joe Conway, 59 IBLA 314 (1981). Conway v. Watt, 717 F.2d 512 (10th Cir. 1983). In Conway we had held that failure to date a simultaneous oil and gas lease application required rejection of the application. The Tenth Circuit found the failure to date to be a nonsubstantive error. <sup>5/</sup> Although we might question the court's reasoning in that case, it is clear that the court has developed the theory that nonsubstantive errors are inappropriate grounds for finding simultaneous applications defective. We believe that this case represents a situation involving a nonsubstantive error. <sup>6/</sup>

Moreover, failure precisely to follow the Part A instructions under the circumstances of this case should not cause rejection of the application because the name of the applicant, as completed in the boxes and circles on Part A of an application, in most cases, would not be the name utilized by BLM in the lease offer which it would forward to the first-qualified applicant. See 43 CFR 3112.4-1(a), presently 43 CFR 3112.6-1(a), 48 FR 33680 (July 22,

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<sup>5/</sup> The Tenth Circuit cited Conway as controlling in Zuckerman v. Watt, No. 81-1323, issued on Oct. 6, 1983. That case overruled another Board decision, Harry A. Zuckerman, 41 IBLA 372 (1979), in which the Board had ruled that failure to date a simultaneous application required rejection.

<sup>6/</sup> This conclusion is reinforced by the fact that a bold faced printed statement appears on the Part A instructions as follows: "The abbreviated Name and Address is for mail purposes only." (Emphasis added.)

1983). Thus, BLM must visually inspect Part B of the application (or Part A) to determine the full name of the applicant.

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 remanded for further processing of the application.

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Bruce R. Harris  
Administrative Judge

We concur:

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Edward W. Stuebing  
Administrative Judge

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Will A. Irwin  
Administrative Judge

