

GIAN R. CASSARINO

IBLA 83-528

Decided February 22, 1984

Appeal from a decision of the Alaska State Office, Bureau of Land Management, rejecting, in part, over-the-counter oil and gas lease offer AA-48510.

Affirmed.

1. Oil and Gas Leases: Applications: Generally

An oil and gas lease offer filed for lands embraced in a senior offer is properly rejected when a lease issues in response to the senior offer.

APPEARANCES: Gian R. Cassarino, pro se.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

Gian R. Cassarino has appealed from a decision of the Alaska State Office, Bureau of Land Management (BLM), dated March 25, 1983, rejecting over-the-counter oil and gas lease offer AA-48510 to the extent it embraced sec. 26, T. 10 N., R. 5 W., Copper River meridian. We affirm.

Oil and gas lease offer AA-48510 was filed between 8:52 and 8:53 a.m. on January 11, 1983. At that time, Cassarino was using the services of one William O. Vallee, a certified professional landman. Vallee was also employed for similar services by Frederick von Musser, president of Alaska Capital Corporation (ACC). Vallee also filed an offer for ACC embracing, in part, sec. 26. This offer was date-stamped between 8:51 and 8:52 a.m. on the same date. While Cassarino's offer was serialized as AA-48510, ACC's offer was assigned AA-48511. A note to the file, dated April 11, 1983, by Mike Motschenbacher, recounted this as follows:

Oil and gas offer to lease AA-48511 was filed on 1/11/83, and the offer to lease forms were date-stamped from 8:51 a.m. to 8:52 a.m. Oil and gas lease offer to lease AA-48510 was filed on 1/11/83, and the offer to lease forms were date-stamped from 8:52 a.m. to 8:53 a.m. The serial numbers of these two offers were inadvertently assigned in reverse order to the date-stamps.

On February 18, 1983, the authorized officer issued an oil and gas lease for sec. 26 to ACC, with an effective date of March 1, 1983. As noted above, a decision rejecting AA-48510 to the extent it embraced sec. 26 was

issued on March 25, 1983. 1/ From this decision, appellant has sought review.

Appellant, in essence, makes two discrete arguments. First, he argues that since his application was first in time, he should receive a lease for sec. 26. Secondly, he contends that Vallee made an inadvertent mistake in filing for sec. 26 on behalf of ACC in the first place, and thus, ACC's offer should not have been considered. 2/

Insofar as appellant's first contention is concerned, it is not the assigned serial numbers which control lease issuance. Rather, the critical factor is the time of filing as reflected by the date-stamp affixed to each filing. In this regard, the relevant date-stamps do show that the offer filed for ACC was prior in time to that filed for Cassarino. 3/ While the unfortunate error in serialization may have misled appellant as to the relative priorities of the two offers, this cannot serve to vitiate the rights of ACC, the prior offeror.

In support of his second contention, appellant submits a letter from Vallee, dated January 15, 1983. In this letter, Vallee notified appellant that, because of a potential conflict of interest, he was terminating his business relationship with both Cassarino and ACC. In that letter, he notes:

This, therefore, will be my final summary report concerning recent activities in your behalf with regard to your oil and gas lease acquisition program to date.

The following applications have been filed with the BLM of recent:

* * * * *

AA 048510 T 10 N., R 4 W., CRM - Sec. 30-33, incl.,
T 10 N., R 5 W., CRM - Sec. 25 & 26/3,840 acres

REMARKS: This application was inadvertently filed in conflict with an application which I prepared for Alaska Capital Corp. Section 26 was a typographical error and was intended to be section 36. I think that this demonstrates the primary reason that I cannot serve two clients in conflicting areas.

1/ While BLM is authorized to issue oil and gas leases in response to senior offers, regardless of the pendency of junior offers, considering the unusual fact situation of the instant case, where the senior offer was inadvertently given a later serial number than that given a junior offer, BLM might have been well advised to simultaneously adjudicate both offers. 2/ Appellant's relationship to ACC is unclear from his submissions. Thus, at one point he refers to ACC as his "former employees." Subsequently, he describes ACC as his "former employees."

3/ In fact, lease offer AA-48509, while serialized before both AA-48510 and AA-48511, was actually date-stamped at 8:54 a.m., after both later serialized offers. Obviously, the mistake in serialization was not limited to just the two conflicting offers.

Contrary to appellant's assertion, we think it clear that Vallee inadvertently applied for sec. 26 on appellant's application, not on ACC's. Thus, Vallee states that "this application [meaning Cassarino's] was inadvertently filed." Moreover, he notes that "section 26 was a typographical error and was intended to be section 36." Changing sec. 26 in appellant's offer to sec. 36 would require only a single change. ACC's application, on the other hand, embraced secs. 26 through 29, and 33 through 35, inclusive. Two separate changes, the deletion of sec. 26 and the addition of sec. 36 would be required to effectuate the change. If, in fact, a typographical error occurred it seems clear that it transpired on appellant's offer and not on that of ACC.

[1] The law is well settled that an offer to lease filed after another offer to lease the same land, acquires a preference right to lease subsidiary to the senior offer. Where such a senior offer ripens into a lease, the junior offer is properly rejected. BLM properly rejected appellant's offer as to sec. 26.

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 affirmed.

James L. Burski
Administrative Judge

We concur:

Will A. Irwin
Administrative Judge

Gail M. Frazier
Administrative Judge

