

**Editor's note: Appealed -- Reversed, Civ.No. C84-0192 (D.Wyo. Jan. 2, 1985), dismissed as moot, (10th Cir. Mar 17, 1986), D.Ct. Wyo. vacated Jan. 1985 decision, (Mar. 25, 1986)**

AMY POLAK  
P. R. POLAK

IBLA 83-491

Decided March 27, 1984

Appeal from decision of the Wyoming State Office, Bureau of Land Management, rejecting noncompetitive oil and gas lease offers. W 83450 and W 83473.

Affirmed.

1. Oil and Gas Leases: Applications: Attorneys-in-Fact or Agents--Oil and Gas Leases: Applications: Drawings

Pursuant to 43 CFR 3112.4-1(b) (1982) the power of attorney authorizing an attorney-in-fact to sign lease offers submitted under the simultaneous filing procedures must preclude the attorney-in-fact from filing offers on behalf of any other offeror.

APPEARANCES: Philip G. Dufford, Esq., and Stephen J. Sullivan, Esq., Denver, Colorado, for appellants.

#### OPINION BY ADMINISTRATIVE JUDGE GRANT

Amy and P. R. Polak have appealed from a decision of the Wyoming State Office, Bureau of Land Management (BLM), dated March 4, 1983, rejecting their respective noncompetitive oil and gas lease offers, W 83450 and W 83473.

Appellants' respective applications were each drawn with first priority for different parcels in the November 1982 simultaneous oil and gas lease drawing. BLM forwarded lease forms to each appellant for signing and required payment of the first year's advance rentals, in accordance with 43 CFR 3112.4-1 (1982). <sup>1/</sup> On February 28, 1983, BLM received first year advance rental payments and lease offer forms signed on behalf of each appellant by John M. Deisch as their individual "Attorney-in-Fact."

A power of attorney from each appellant individually to John M. Deisch, dated December 27, 1982, authorizing him to sign lease forms on their behalf was submitted with their respective leases. The Amy Polak offer and the P. R. Polak offer were rejected by BLM on the ground that the regulation permits an attorney-in-fact to sign a lease offer only if the authorization prohibits the attorney-in-fact from filing offers on behalf of any other participant. 43 CFR 3112.4-1(b).

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<sup>1/</sup> This regulation has subsequently been recodified as 43 CFR 3112.6-1. 48 FR 33680 (July 22, 1983).

In their statement of reasons for appeal, appellants contend that a proper interpretation of the applicable regulation, 43 CFR 3112.4-1(b), would not prevent an individual who is an attorney-in-fact for two persons to sign two separate lease offers, one for the exclusive benefit of each principal, so long as only one principal has an interest in the lease offer. Appellants assert that the purpose of the regulation is to ensure that the purported offeror in a lease offer is the sole party in interest rather than to preclude an attorney-in-fact from filing separate offers for the sole and exclusive benefit of different principals. The intent of the regulation, appellants contend, was to prevent filing services and agents from obtaining an unfair advantage in acquiring leases that have been awarded pursuant to lease offers filed by the clients of filing services or by the agent's principals. The regulations, appellants further state, are meant to prevent filing services and agents from exercising undue influence over a successful lease applicant. Appellants contend that the interpretation of the regulation adopted by BLM exceeds its statutory authority as being unrelated to ascertaining the first-qualified applicant since it has no bearing on the existence of a collusive filing.

[1] Appellants do not dispute that their separate noncompetitive oil and gas lease offers were signed or that the first year's advance rental was paid by the same attorney-in-fact. Where an attorney-in-fact signs a lease offer submitted pursuant to the simultaneous filing procedures (43 CFR Subpart 3112), the regulation at 43 CFR 3112.4-1(b) provides that the power of attorney must prohibit "the attorney-in-fact from filing offers on behalf of any other participant." The evidence of record shows that John M. Deisch held and exercised powers of attorney from both appellants which constituted a violation of the regulation.

Appellants are correct in their statement that the promulgation of 43 CFR 3112.4-1(b) was, in part, directed at abuses of "filing services." See 44 FR 56176 (Sept. 28, 1979). Thus, the Department noted that: "Some services have advanced the first year's rental and obtained leases which have then been assigned without their client's knowledge." Id. In order to "increase an applicant's involvement and reduce the influence of agents in the process," the Department provided in its proposed rulemaking that the lease offer be signed and the first year's rental be submitted by the lease applicant. 45 FR 35159 (May 23, 1980). However, in its final rulemaking, the Department changed the regulation to permit an attorney-in-fact to sign the offer and submit the first year's rental "if the requirements of the section [43 CFR 3112.4-1(b)] are followed." Id. This was done to provide "greater flexibility for the leasing system." Id. Accordingly, as the Board held in a case very similar to the case under review, while an attorney-in-fact might act on behalf of a single offeror in these instances, the regulation was worded to limit an attorney-in-fact to one participant in the simultaneous oil and gas leasing system, at any given time. Kirk Rhone, 76 IBLA 332 (1983). This was intended to promote a more direct relationship between an offeror and his or her attorney-in-fact, and thereby involve an offeror more directly in the process. It prevented filing services from acting as attorneys-in-fact on behalf of several participants in this manner and effectively precluded them from offering that service to their clients. This eliminated major areas of abuse. Id. Abuses sought to be eliminated included the securing of leases by agents without the knowledge of the lessee as well as the sale of

lease interests without the knowledge of the lessee. See Clinkenbeard v. Central Southwest Oil Corp., 526 F.2d 649 (5th Cir. 1976) (detailing abuses by lease filing service); see generally United States v. Allen, 554 F.2d 398 (10th Cir. 1977). Thus, the objective of the regulation is not to enforce disclosure of interested parties, but to protect offerors from being defrauded by agents.

The language of the regulation clearly prohibits an attorney-in-fact from executing a lease offer under the simultaneous filing procedures (43 CFR Subpart 3112) as an attorney-in-fact for one individual so long as he or she is authorized to file such offers as an attorney-in-fact for another individual. Indeed, the regulation specifically requires the power of attorney to expressly prohibit the attorney-in-fact from filing offers on behalf of any other participant. Not only was this not done in the instant case, the sequence of events shows that the substance of the regulation was violated as well. John M. Deisch as attorney-in-fact signed the separate offers on behalf of each appellant on the same day and submitted both offers to the Wyoming State Office. This is what the regulation is designed to prevent. We adhere to our holding in Kirk Rhone, *supra*, that this mandates rejection of the lease offers.

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.

C. Randall Grant, Jr.  
Administrative Judge

We concur:

Wm. Philip Horton  
Chief Administrative Judge

R. W. Mullen  
Administrative Judge

