

CHRISTOPHER F. CLANCY

IBLA 83-695

Decided February 26, 1985

Appeal from a decision of the Montana State Office, Bureau of Land Management, rejecting simultaneous oil and gas lease application. M 54562(ND) Acq.

Affirmed as modified.

1. Oil and Gas Leases: Applications: Drawings -- Oil and Gas Leases: Applications: Filing -- Oil and Gas Leases: Applications: Sole Party in Interest

Where a filing service is retained to file oil and gas lease applications on behalf of a partnership and instead files four applications, each bearing the name of one partner, for the same parcel without any reference to the partnership or other parties in interest and said applications are paid for with partnership funds, the applications are partnership property. In the absence of a disclosure of the partnership's interest in such applications, 43 CFR 3102.2-7(a) (1981) has been violated. Moreover, as the holder of an interest in more than one application, the partnership has violated 43 CFR 3112.6-1 (1981) forbidding multiple filings by a partnership for the same parcel.

APPEARANCES: Guy R. Martin, Esq., Robert F. Bauer, Esq., Washington, D.C., for appellant; David A. Gottenborg, Esq., Denver, Colorado, for protestant.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

Christopher F. Clancy has appealed from a decision of the Montana State Office, Bureau of Land Management (BLM), dated May 9, 1983, rejecting a simultaneous oil and gas lease application bearing appellant's name as applicant. BLM rejected this application because it held that the application was filed contrary to 43 CFR 3112.2-1(f) and 3112.6-1(c)(3) (1981) prohibiting the filing of multiple applications by the same individual for a single parcel.

The application at issue was prepared by Leland Capital Corporation (Leland), a filing service. On the front of the application, the name

"Christopher F. Clancy" has been typed in the area that identifies the lease applicant. On the reverse side in a box denoted "Applicant's Signature," the name "Christopher F. Clancy" appears, apparently handwritten by an employee of Leland named Hauerwas, who has signed her name directly below Clancy's in a box denoted "Agent's Signature." Although this application was drawn with second priority for parcel MT 180 in the January 1982 drawing, BLM notified Clancy by letter of October 7, 1982, that his application had "obtained priority" for this parcel. The file reveals that the application of the first-drawn applicant had been determined by BLM to be defective. Though an appeal from that determination had been filed, it was subsequently withdrawn. With this notice, BLM also enclosed lease offer forms that were to be completed by Clancy and returned with the first year's rental payment within 30 days.

Clancy completed the lease offer forms and returned them in a timely manner with rental payment by personal check. He also accompanied these materials with the following "supplementary statement regarding MT 180":

Offeror, Christopher F. Clancy, is the sole party in interest in this Offer, and in the lease if it is issued. In the interest of full and complete disclosure, however, offeror would add the following supplemental information.

At the time the application on offeror's behalf on Parcel MT 180 was filed on January 14, 1982, by Leland Capitol [sic] Corporation, it was offeror's understanding that Leland was filing applications, consistent with all regulations, on behalf of a partnership of which offeror is a member. Money for applications was forwarded to Leland by partnership check, and offeror's service agreement with Leland was signed in the partnership name.

With respect to the specific assumption that applications would be filed for the partnership, and only with respect to this assumption, an oral understanding existed among the partners that if the partnership won a lease, it would be shared within the partnership.

In fact, however, Leland did not file for the partnership on this or other tracts, but rather filed individually on behalf of the offeror and other individuals in the partnership. In essence, the offeror was in some cases filed individually by Leland in competition with others in the partnership, including on Parcel MT 180. For the offeror, such individual entries created an unanticipated, and for some time unknown, factual situation, as to which no understanding or agreement of any kind for sharing with other parties, directly or indirectly, with partners or otherwise, applied. To the contrary, it is specifically understood among the partners that individual applications are solely the property and responsibility of the individual, with no interest whatever on the part of other partners. Neither the offeror, nor any of the partners who had originally, and mistakenly, assumed that applications were being filed for the partnership, have or allege to have any interests in any of the individual applications filed for others.

Had the entry for this parcel been filed for the partnership, as offeror had assumed, and been awarded priority, interest in the lease would have been shared within the partnership. But as the application was, in fact, filed on behalf of the individual offeror, no agreement or understanding, oral or otherwise, applied or applies to it, and neither the partnership, any member of it, or anyone else except the offeror has any interest in either the application or the lease, if issued. Offeror is the sole party in interest in MT 180.

The above supplementary statement caused BLM to request from Clancy a complete list of all general partners in Clancy's partnership and a copy of the aforementioned service agreement with Leland. Clancy complied by letter of December 22, 1982, stating that he, Ronald F. E. Hayes, John M. Hines, and Charles N. Favazzo were the general partners of the CHHF Investment Company. The requested service agreement recited an agreement between Leland and "Christopher F. Clancy dba CHHF Investment Company."

In this letter of December 22, 1982, Clancy noted that separate service agreements were signed with Leland by each of his other three partners. He described as an "unwitting mistake" his addition of the phrase "dba CHHF Investment Company" to his signature on the service agreement and explained this remark in this way:

[I]n fact, my agreement with Leland was as an individual. Leland treated it as an individual agreement and all the entries on my behalf were filed only as an individual.

It is important to note that Leland regarded these as individual agreements, and filed individual rather than partnership applications on my behalf, and on behalf of the other individuals in the partnership. This had the effect of negating the impression I had that entries would be filed on behalf of the partnership, and negated any agreement which existed only with regard to partnership entries. No partnership entries were filed on MT 180 or any other parcels to my knowledge.

Because I was entered as an individual, I had sole interest in my application, and no interest whatever in any of the applications filed on behalf of other individuals, whether in the partnership or not.

The file reveals that four applications, each bearing the name of one member of the CHHF partnership, were filed for parcel MT 180 in the January 1982 drawing. Each such application had been completed by Leland in a manner substantially similar to that described above. No application acknowledged the existence of other parties in interest. The record also clearly establishes, as shown below, however, that the inclusion of the phrase "dba CHHF Investment Company," was not an "unwitting mistake" as appellant was subsequently to argue but was rather an intentional act designed to underscore the intention of the four partners that they be filed as a partnership.

In a letter dated January 4, 1983, to the spouse of the third-drawn applicant, BLM stated that it appeared that Clancy's application was in

compliance with the regulations; lease issuance was, therefore, proceeding. However, on January 13, 1983, BLM received a letter from counsel to Margot D. Arms, the third-drawn applicant, asking BLM to request from Clancy a copy of the CHHF partnership agreement. BLM so requested and Clancy again complied, including with this agreement a disclaimer of interest, dated November 10, 1982, by Hayes, Hines, and Favazzo in any application or lease filed by or on behalf of Clancy.

On February 28, 1983, Arms informed BLM that she intended to protest issuance of a lease to Clancy, which protest was received on March 7, 1983. Arms charged:

(1) The applicant failed to disclose the existence of other parties who held an interest in the lease application at the time the offer was filed;

(2) The applicant is a party to an arrangement, entered into prior to selection, which gave each of the parties thereto more than a single opportunity to obtain an interest in the lease; and

(3) The applicant failed to submit with his lease application a copy of the uniform agreement which was entered into between the applicant and a lease filing service (Leland Capital Corporation) as required by 43 C.F.R. § 3120.2-6, and the copy of the uniform agreement which was later submitted by the filing service was not a true and correct copy of the agreement actually entered into between the applicant and the filing service.

In response to this protest, BLM determined that the CHHF Investment Company owned or controlled an interest in more than one application for parcel MT 180, and that, consequently, Clancy's application was filed contrary to 43 CFR 3112.2-1(f) and 3112.6-1(c)(3) (1981). 1/

These regulations provide:

§ 3112.2-1 Simultaneous oil and gas lease applications.

\* \* \* \* \*

(f) No person or entity shall hold, own or control any interest in more than one application for a particular parcel.

§ 3112.6-1 Rejection of an application.

\* \* \* \* \*

(c) Prohibited agreements, schemes, plans or arrangements. Any agreement, scheme, plan or arrangement entered into prior to

1/ BLM further noted that a copy of a blank service agreement submitted by Leland with a list of its clients pursuant to 43 CFR 3102.2-6(b) was "somewhat different" from the signed agreement submitted by Clancy.

selection, which gives any party or parties more than a single opportunity of successfully obtaining a lease or interest therein is prohibited and any application made in accordance with such agreement, scheme, plan, or arrangement shall be rejected. Specifically:

\* \* \* \* \*

(3) Filings by members of an association (including a partnership) or officers of a corporation, under any arrangement, agreement, scheme, or plan whereby the association or corporation has an interest in more than a single filing for a single parcel are prohibited.

Protestant's first argument focused on neither of the above-quoted regulations, but rather on 43 CFR 3102.2-7(a) (1981). That regulation required the applicant to set forth on the lease application, or on a separate accompanying sheet, the names of all other parties who own or hold any interest in the application, offer, or lease, if issued. Arms maintained that these other parties were revealed by Clancy's supplementary statement in which he (Clancy) acknowledged that at the time that the application on his behalf was filed, it was his understanding that Leland was filing applications, consistent with all regulations, on behalf of the partnership of which offeror was a member. Arms emphasized that the money for the application was acknowledged by Clancy to have been forwarded to Leland by partnership check, and that an "oral understanding" existed among the partners that any lease for which a partnership application had been filed would be shared within the partnership. Thus, Arms contends that Clancy's position as a partner in the CHHF partnership, his specific intention to file on behalf of the partnership, and his use of partnership funds to file the application all combined to give the remaining partners an undisclosed "interest" in the lease application at the time the offer was filed.

In support of this argument, protestant stated that it is an established principle of partnership law that, unless a contrary intention appears, property acquired with partnership funds becomes partnership property. No indication of a contrary intent appeared, Arms contended. Furthermore, Arms claimed that a close examination of the CHHF partnership agreement revealed no authority whereby one partner might invest partnership funds for his own account and on his own behalf with no obligation to account to the partnership for any funds so used or any profits obtained therefrom. This was so, she noted, even though article 1.8 of the CHHF partnership agreement permitted each partner to engage or possess an interest in other business ventures similar to or competitive with the partnership and further provided that neither the partnership nor any partner would have any rights by virtue of the agreement in and to such independent venture or to the income or profits derived therefrom.

Protestant's second argument shared much in common with her first and was prompted by the fact that four applications, each bearing the name of one partner, were filed for parcel MT 180. If each partner had an interest in the application filed by another, then each partner, Arms argued, had more than a single opportunity to obtain an interest in parcel MT 180, contrary to 43 CFR 3112.6-1(c). BLM agreed with protestant that this regulation had been

violated but, as set forth in its decision of May 9, 1983, held that the partnership, not individual partners, owned or controlled an interest in more than one application for parcel MT 180.

We note that there is no gainsaying the fact (and appellant no longer disputes it) that the original intent of the parties was to file a single application as a partnership. Counsel for appellant's brief on this point is most informative and we set it out in extenso:

Two steps were immediately undertaken by the partners of CHHF to pursue an investment through Leland in the oil and gas leasing system. Ronald Hayes draw a partnership check in the amount of \$18,000, out of the \$50,000 funded by the Bank of New England, for payment of filing fees which would cover the maximum number of tracts at the lowest cost per tract. At the same time, John Hines was instructed to review the contracts or service agreements submitted by Leland for execution by each of the partners individually. Hines, whose responsibility with Cabot, Cabot & Forbes as Director and Senior Vice President involves supervision of the legal affairs of the investment firm, was designated to ensure that the contracts with Leland were in order and ready for execution.

Hines, however, immediately found a problem with the submitted service agreements. He noted that, "among other boilerplate provisions," the service agreement contained a certification that the Leland customer would be "sole party in interest" to any application filed on the customer's behalf by the company. As Hines testifies in his affidavit, he was "somewhat confused, because the service agreements, while made out in the names of each of us individually, were understood by me to involve filings on behalf of the new partnership." Concerned that Leland had perhaps misunderstood the specific intent of the partners that the partnership be the entity entering applications, Hines raised the matter with Hayes.

Up to this time, neither Hayes nor Hines had any doubt whatsoever that Leland understood that the partners were investing in the oil and gas leasing system through CHHF Investment Company, as a partnership. In fact, a mailgram received from Leland, confirming receipt of an oral communication from the partnership that it would, in fact, invest in the program, specifically welcomed the partners' "company" to the list of current Leland clients. Nonetheless, Hayes and Hines concluded that Leland should be phoned to determine why the service agreements had been submitted for individual execution by each of the partners in their respective names.

This telephone call was placed to a Mike Gercey of Leland, who will continue to occupy a major role in this case. Gercey reassured Hayes and Hines that there was no misunderstanding whatever: while the service agreements with Leland would be executed by each of the partners individually, "it was the partnership for which applications would be made on particular tracts

in the program." Hines, who (while not himself an attorney) was accustomed to some care in dealing with any matters of a legal nature, was not satisfied to leave the matter there. He testifies specifically that:

Since I considered myself responsible to my partners for accurate, lawful filings, I chose to leave no further ambiguity on this point and advised Gercey that we would revise each service agreement by adding the notation "d/b/a CHHF Investment Company" at both the top and on the signature line of the agreement, and thereby clarify the nature of our partnership interest.

Id.

Hayes, who was also a party to this conversation, confirms Hines' account, and recounts that "Gercey agreed that this [addition of the d/b/a notation] was appropriate clarification of our intention to file as a partnership." On August 11, 1981, the agreements signed by each of the partners, each containing two separate d/b/a "CHHF Investment Company" notations, were returned to Leland.

On only one subsequent occasion did either Hayes or Hines, who continued to handle legal and accounting affairs for the partnership, raise any additional issues of a technical nature with Leland. Specifically, following the January 1982 drawing, the partners began to receive rejected application cards relating to the various tracts. Generally speaking, these cards were not reviewed or processed in any way, but simply set aside. Hines and Hayes did notice at one point that the application cards, as distinguished from the service agreements, were executed in the names of each partner as individuals. There was no mention of the partnership on those cards. Moreover, each of the cards contained an ambiguous reference to "enclosures" filed by Leland with MBLM. Hayes then phoned a Leland representative to inquire about the "enclosures" filed by Leland "and I was advised that Leland had filed copies of the service agreements together with a list of clients." Hayes was once again assured that the paper work necessary for lawful participation in the program had been done properly by Leland. As Hines testifies:

As a result of the call, I was reassured that CHHF was the party in interest on the applications, and that full disclosure had been made to BLM by Leland. In view of our thorough previous conversation with Leland on this matter, and the revised service agreements, which were apparently the "enclosures," I concluded that I had to accept the repeated assurances of Leland in view of the expertise that they possessed and that we were paying for.

Both Hayes and Hines understood, assuming as they did the filing of the service agreements with MBLM, that the association

of each of their names with "CHHF Investment Company" was a matter of record. Neither Hayes nor Hines, however, ever saw the enclosures to verify that they were the revised service agreements. [Emphasis in original.]

(Statement of Reasons at 17-21 (citations to exhibits, footnote, and affidavits omitted)).

Contrary to all of the partners' expectations and instructions, it is clear that Leland Capital did not file applications on behalf of the partnership but proceeded, on its own volition, to file multiple individual offers on various parcels.

As is evident from Clancy's "supplementary statement," Clancy now maintains that the application bearing his name was individual in nature. This result obtains, he argues, because the original intent of the partners that there be filings on behalf of the partnership was, in effect, superseded by Leland's "unwanted, uninstructed, but nonetheless, very real filing" of the applications on behalf of the partners as individuals. In appellant's view, this act by Leland removed the application from the realm of partnership affairs.

Clancy contends that this Department's case law, specifically, Raymond J. Stipek, 74 I.D. 57 (1967), and Lawrence C. Harris, 63 IBLA 132, 89 I.D. 185 (1982), undermines BLM's conclusion that a multiple filing has occurred. In Stipek, a corporation president and vice president, both of whom were 50 percent shareholders and directors, each filed an offer in his own name for the same parcels of land in a BLM drawing. The corporation, which was organized for the purpose of acquiring, holding, and disposing of oil and gas leases, did not file. Relying upon McKay v. Wahlenmaier, 226 F.2d 35 (D.C. Cir. 1955), BLM found that neither officer could escape from the fiduciary relationship which he bore to the corporation and, accordingly, the corporation was considered to have an interest in any offer filed by either officer. BLM held, therefore, that the corporation had more than one chance of acquiring an interest in a lease, contrary to regulation. On appeal, the Secretary reversed BLM, holding that the mere existence of a fiduciary relationship between the officers and their corporation would not create a corporate interest in the filings made by the officers. The critical question, the Secretary wrote, is whether the officers breached their fiduciary duty so as to create a corporate interest in their offers. He found that no such duty had been breached because the corporation had not filed an offer in its own right.

Harris also involved filings by multiple officers of a corporation for the same parcels of land. The officers, who were also substantial stockholders, claimed to have used their personal funds for all application fees. In no case did the corporation file for the same parcel as its officers, even though one of its purposes was to acquire and hold oil and gas leases. Moreover, the stockholders had expressly acknowledged the right of the corporate officers to operate independently of the corporation in oil and gas leasing. On appeal, this Board reaffirmed the Stipek rationale and held that the corporation did not have any interest in the offers of its officers. The fact that the officers had on occasion assigned leases won by them to their corporations did not remove this case from the Stipek precedent.

Clancy contends that the lawful, individual nature of his application is supported by the following facts, all of which were deemed relevant in Stipek and Harris:

(1) The general partnership agreement fully and explicitly authorizes individual investments by any of the participating partners, including investments in areas which might also be attractive to the partnership;

(2) no separate "partnership" application was filed;

(3) formal recognition by the partners of Clancy's individual interest was reached promptly and without controversy, as soon as the individual nature of Clancy's application was learned;

(4) the understanding reached by all concerned that Clancy's application was individual in nature, and that none of the other partners held any interest in it, has been formally confirmed by a sworn waiver;

(5) the recognition by other partners in CHHF that Clancy held only an individual interest was consistent not only with the general partnership agreement, but also with their course of dealings with one another as individual investors associated with one another through Cabot, Cabot & Forbes for many years.

With respect to Arms' argument concerning the use of partnership funds, Clancy contends that whether realty purchased with firm funds is individual or partnership property is a question of fact depending upon the intention of the parties. Clancy agrees with protestant that section 8(2) of the Massachusetts Uniform Partnership Act is applicable to the operation of CHHF. That section states: "Unless the contrary intention appears, property acquired with partnership funds is partnership property." This contrary intention, appellants claim, must be derived from consideration of the overall conduct of the parties in regard to the acquisition. In appellants' view, a rebuttable presumption is created by section 8(2).

In order to determine whether there existed undisclosed parties in interest in the application bearing Clancy's name, we look first to the term "interest." Regulation 43 CFR 3100.0-5(b) (1981) defines it in this way:

Any claim or any prospective or future claim to an advantage or benefit from a lease, and any participation or any defined or undefined share in any increments, issues or profits which may be derived from or which may accrue in any manner from the lease based upon or pursuant to any agreement or understanding existing at the time when the application or offer is filed, is deemed to constitute an "interest" in such lease. [Emphasis added.]

The underscored language requires, therefore, that we focus our attention upon the time when the application was filed in order to detect a violation of 43 CFR 3102.2-7(a).

Both parties agree that section 8(2) of the Massachusetts Uniform Partnership Act is a correct statement of the law applicable to the CHHF partnership. In order to harmonize this statute and the regulation, it is necessary

to examine whether at the time the application at issue was filed any "contrary intention" appeared that would alter the general rule that property acquired with partnership funds is partnership property.

Clancy concedes that when Leland filed "individual entries" in BLM's January 1982 drawing, such entries created an unanticipated, and for some time unknown factual situation. (Supplementary Statement at 2, Nov. 10, 1982.) The record is clear, as set forth above, that Clancy and his partners intended that Leland would file applications on behalf of the partnership. John Hines, Clancy's partner, questioned Leland's representative, Mike Gercey, on this very point upon reading certain boilerplate language in Leland's service agreement certifying that the signing party would be the sole party in interest. Hines states:

7. After some discussion with Ronald Hayes on this point, it was agreed that we should place a telephone call to Leland Capital where we reached Mike Gercey. Gercey went to some lengths to explain to us that we should have no concern on this score. He further stated that while service agreements with Leland would be executed by each of the partners individually, it was the partnership for which applications would be made on particular tracts in the program. Since I considered myself responsible to my partners for accurate, lawful filings, I chose to leave no further ambiguity on this point and advised Gercey that we would revise each service agreement by adding the notation "d/b/a CHHF Investment Company" at both the top and on the signature line of the agreement, and thereby clarify the nature of our partnership interest. Gercey agreed to this approach, and indicated that it fully clarified the intent.

Affidavit of John Hines, June 29, 1983, at 3.

The only expression of a contrary intent at the time of filing the application at issue appears to be the application itself. As noted above, that application bears only Clancy's name as applicant, and no mention of the partnership or other parties in interest appears thereon. On the basis of the evidence assembled, it is clear that Leland's attempt to file an application for each partner as an individual was beyond the scope of its authority. In short, the only expression of a contrary intent at the time of filing was the unilateral, unauthorized action of Leland of which the partners were wholly unaware and which was directly contrary to their instructions. <sup>2/</sup> We hold that such expression is inadequate to "supercede" the intention of the partners. The applications acquired with partnership funds remained partnership assets. The CHHF partnership, therefore, held an undisclosed interest in each of the four applications submitted by Leland for parcel MT 180 in violation of 43 CFR 3102.2-7(a) (1981).

The actions of the partners after the filing of these applications, specifically, the disclaimer of interest signed by Clancy's three partners, do not change the result. The regulation 43 CFR 3100.0-5(b) (1981) requires that we focus on the interests in an application at the time it was filed. The attempt by the partners to alter these interests was simply too late.

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<sup>2/</sup> See also Imre Prepeliczay, 22 IBLA 13 (1975), where the unauthorized action of an agent caused a multiple filing in violation of regulations.

As the holder of an interest in four applications for parcel MT 180, the CHHF Investment Company also violated regulations 43 CFR 3112.2-1(f) and 3112.6-1(c)(3) (1981) prohibiting any entity from owning an interest in more than one application for a particular parcel. Rejection of the application bearing Clancy's name may, thus, rest on two related violations of the regulations. For the reasons given above, BLM's decision must be affirmed. 3/ On remand, BLM may proceed to examine the application of the third-drawn 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 of the Montana State Office is affirmed as modified.

James L. Burski  
Administrative Judge

We concur:

Edward W. Stuebing  
Administrative Judge

Franklin D. Arness  
Administrative Judge

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3/ We note that appellant has requested that the Board order a fact-finding hearing pursuant to 43 CFR 4.415. Inasmuch as the facts which the Board considers to be crucial in determining the outcome of this appeal are not in dispute, but, rather, are taken from appellant's narrative, this request must be denied.

