

Appeal from a decision of the Wyoming State Office, Bureau of Land Management, rejecting oil and gas lease application U-54478.

Affirmed.

1. Oil and Gas Leases: Applications: Drawings

BLM may properly reject a simultaneous oil and gas lease application where the applicant failed to disclose that he received the assistance of any person or entity in the business of providing assistance to participants in the Federal simultaneous oil and gas leasing program.

APPEARANCES: John G. O'Leary, pro se.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

John G. O'Leary has appealed from a decision of the Wyoming State Office, Bureau of Land Management (BLM), dated September 19, 1984, rejecting his noncompetitive application to lease for oil and gas. Appellant's application for parcel UT-332 had been selected with first priority for the September 1983 simultaneous oil and gas filings.

Appellant submitted an automated simultaneous oil and gas lease application, Part B, which had been signed by him and dated September 12, 1983. There was no entry in either the box titled "Full Name of Other Parties in Interest" or the box titled "Filing Service's Full Name, Address and Zip Code (if applicable)." The application identified one parcel and noted that a \$ 75 filing fee was being paid. Appellant listed his address as being in Studio City, California, but the personal money order submitted with the application was drawn on a North Miami Beach, Florida, bank.

During the course of its routine review of applications BLM noticed a similarity between the personal money order submitted by appellant and those filed by certain other applicants. After investigation, BLM determined that appellant had received assistance from a filing service and had failed to disclose this fact.

As noted in the BLM decision, the regulation, 43 CFR 3112.2-4, provides: "Any applicant receiving the assistance of any person or entity which is in the business of providing assistance to participants in the Federal

simultaneous oil and gas leasing program shall indicate on the lease application the name of the party or filing service that provided assistance." <sup>1/</sup> The BLM decision further states:

Federal Register Notice 48 FR 37656 published August 19, 1983 Stated: ". . . Pursuant to the final rulemaking of July 22, 1983 (48 FR 33648) . . . The Bureau of Land Management hereby gives notice that effective August 22, 1983, it will strictly enforce the provisions of . . . § 3112.2-4 which pertain to filing assistance. Amended § 3112.2-4 requires identification of any party rendering any type of assistance in the filing of an application submitted under Part 3112."

We have determined that Oil and Gas Properties, 1021 Ives Dairy Rd., North Miami, FL 33179 provided you assistance in filing your application. Your application, copy enclosed, failed to reflect that firm's name and address in the "FILING SERVICE'S FULL NAME, ADDRESS AND ZIP CODE (IF APPLICABLE)" block.

In his statement of reasons appellant concedes that Oil and Gas Properties, Inc., of North Miami, Florida, had provided assistance in the filing of the application and that "they failed to reflect their name, address and zip code in the application." Appellant further states:

According to their instructions [those of Oil and Gas Properties, Inc.], "Your only responsibility is to sign your name on Part B as it appears in Part A", I signed my name on Part B as it appeared on Part A and put the date in the appropriate place, \* \* \*.

From the time I signed an agreement with Oil and Gas Properties, Inc. on August 11, 1983, \* \* \* to the time I signed dated and mailed the Automated Simultaneous Oil and Gas Lease Application on September 12, 1983, I received no notification of Federal Register Notice 48 FR 37656 published August 19, 1983 and effective August 22, 1983 from the Bureau of Land Management or any State or Federal agency.

I do not believe that I was remiss in following the instruction I was given. I do believe, that since the rules were changed after I entered into agreement to participate in the Federal Government Simultaneous Oil and Gas Lease program [with Oil and Gas Properties, Inc.], I should not be punished by having my successful lease application rejected.

Appellant states that, although Oil and Gas Properties, Inc., was not identified on the application itself, the company was identified on the

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<sup>1/</sup> Part B instructions, which are found on the back of the form signed by appellant, also provide that "[i]f a filing service was used by the applicant in the preparation of this application, enter the name and address of that service."

check accompanying the application and received by BLM because the check was drawn against the company's account. Appellant contends, therefore, that there was no intent to deceive. A copy of appellant's check for \$ 75 is included in the case file. The check signed by appellant has the words "North Miami Beach, Florida" on the same line as, and directly preceding, the date. The only other distinguishing notation on the check is the Bank's name which reads: "CNB County National Bank of South Florida, North Miami Beach, Florida."

In reading the statement of reasons submitted by appellant, we are impressed by the apparent misunderstanding on the part of appellant regarding the relationship of the parties. Appellant had contracted with Oil and Gas Properties for certain services. These services included the preparation of automatic simultaneous oil and gas lease application Parts A and B. After Oil and Gas Properties had completed the form, all appellant had to do was "sign your name on Part B as it appears on Part A." 2/ It is obvious that appellant had neither filled out the Part B form nor read the instructions on the back of that form. Instead, he relied upon his agent, Oil and Gas Properties, Inc., to do so. The acts of Oil and Gas Properties, Inc., were such that it was then required to disclose its relationship as a filing service. Oil and Gas Properties, Inc., is an agent of appellant, acting on his behalf. 3/ The Oil and Gas Properties, Inc., error or failure to properly complete the form cannot be placed on the shoulders of BLM. See Thomas N. Gwyn, 82 IBLA 11 (1984).

The fact that appellant entered into the agreement with Oil and Gas Properties, Inc., prior to the amendment to the regulations and related notice of strict enforcement has no bearing on our determination. A party must comply with applicable regulations in order to qualify as an applicant. 4/ Although appellant was selected in the drawing and was the first applicant in priority, the failure to conform with applicable regulations resulted in appellant not being qualified as an applicant. See Howell Roberts Spear, 80 IBLA 150 (1984); United Ventures, 74 IBLA 31 (1973). The applicable regulations and the notice that the regulations would be strictly enforced were printed in the Federal Register. Appellant and his agent are deemed to have known what was contained in the Federal Register when it was published. 44 U.S.C. § 1507 (1982). See Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947).

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2/ This is a direct quote from the instructions furnished with the application by Oil and Gas Properties, Inc.

3/ The agreement between appellant and Oil and Gas Properties, Inc., states that "Oil and Gas Properties, Inc. is an independent advisory service not endorsed by any U.S. Government Agency." This a true statement. 4/ The amendment and subsequent notice did not, in fact, change the existing requirements applicable to this case. The definition of "any person or entity in the business" at the time appellant entered into an agreement with Oil and Gas Properties, Inc., (43 CFR 3100.0-5(d) (1982), and the subsequent regulation (43 CFR 3112.0-5, 48 FR 33678 (July 22, 1983), effective (Aug. 22, 1983)), both encompassed businesses who "complete" applications for another.

We conclude that appellant's failure to disclose that he received the assistance of a filing service is a substantive defect, which requires BLM to

reject the application. Although the fact that appellant received assistance from a filing service became apparent to BLM after the drawing, this is not a substitute for disclosure prior to the drawing. In light of the large number of individuals who make use of filing services to assist them in their participation in noncompetitive oil and gas lease filings, disclosure of use of such entities, in advance, is required to guard against illegal multiple filings by filing services who may, by virtue of their agreement with various individuals, hold an interest in more than one application. The identity of the filing service for unsuccessful as well as successful applicants is therefore necessary in order to protect against illegal practice. The Turner Association, 85 IBLA 374 (1985).

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.

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R. W. Mullen  
Administrative Judge

We concur:

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Franklin D. Arness  
Administrative Judge

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Will A. Irwin  
Administrative Judge.

