

JAMES D. BUERGEL

IBLA 84-650

Decided August 19, 1985

Appeal from a decision of the Wyoming State Office, Bureau of Land Management, rejecting simultaneously filed oil and gas lease application U 54444.

Affirmed.

1. Oil and Gas Leases: Applications: Generally -- 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: Stanley R. Byrd, Esq., Seattle, Washington, for appellant.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

An appeal has been filed by James D. Buergel from the May 17, 1984, decision of the Wyoming State Office, Bureau of Land Management (BLM), rejecting his simultaneous oil and gas lease application for Utah Parcel UT-298 selected with first priority in the September 1983 filing.

Appellant submitted an automated simultaneous oil and gas lease application, Part B, which had been signed by him and dated September 13, 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.

Apparently, during the course of its routine review of applications, BLM determined that appellant had received assistance from a filing service and had failed to disclose this fact.

The applicable regulation, 43 CFR 3112.2-4, cited in the BLM decision 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." ^{1/} 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, did provide assistance in the filing of his application and that he failed to reflect its name, address, and zip code on the application. Appellant attached a copy of the letter he received from the filing service. It states:

Please find enclosed the appropriate applications, one (1) recommended parcel numbers and a cashiers check in the amount of \$75.00, made payable on your behalf to the Bureau of Land Management for the September U.S. Government Simultaneous Oil & Gas Acquisitions program.

* * * * *

* * * Your only responsibility is to sign your name on Part B, in the lower right corner, as it appeared on Part A. Please put the date in the appropriate place in front of your signature. Place Part B, along with the cashiers check, in the manilla [sic] envelope, affix the proper postage and mail it in time to insure that the package arrives at its destination on or before the deadline date.

Appellant does not dispute his failure to identify his filing service. Rather, appellant contends that he reasonably relied on the advice of his filing service to sign only his name on the application. Appellant asserts that since the regulation at 43 CFR 3112.2-4 and a notice of intent to strictly enforce the provision (48 FR 37656 published Aug. 19, 1983, and effective Aug. 22, 1983) became effective after June 17, 1983, when appellant entered into his agreement with the filing service, in the interest of

^{1/} 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."

justice BLM should allow the application by waiving or suspending this administrative rule and regulation. Appellant's counsel argues, "It is not reasonable to expect that one in the position of Mr. Buerger would even have been aware of the notice published in the Federal Register."

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 automated simultaneous oil and gas lease Part B applications. After Oil and Gas Properties, Inc., had completed the form, all appellant had to do was "sign [his] name on Part B * * * as it appeared on Part A." (September 13, 1983, letter of instruction recommending application for Parcel UT-298.) It is obvious that appellant had not filled out the Part B form; instead, he relied upon his agent, Oil and Gas Properties, Inc., to do so. The acts of Oil and Gas Properties, Inc., in completing the application and preparing the remittance with the proper amount to cover the filing fees, qualified it as a filing service within the meaning of 43 CFR 3112.2-4. Since Oil and Gas Properties, Inc., was a filing service, appellant as the applicant, was, in accordance with the 43 CFR 3112.2-4, required to identify that company on the application. Failure to properly complete the form cannot be placed on the shoulders of BLM. See John G. O'Leary, 86 IBLA 131 (1985); 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. ^{2/} Although appellant was selected with first priority in the drawing 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); Mac A. Stevens, 83 IBLA 164 (1984); James Neil Fletcher, 78 IBLA 330 (1984). The publication of the final regulations at 49 FR 33675 (July 22, 1983), and the strict enforcement notice at 48 FR 37656 (Aug. 19, 1983), required every applicant to identify any party who gave assistance in preparing an application.

^{2/} 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. But see Ronald Valmonte, 87 IBLA 197 (1985), reaching a contrary result where completion of Part B and the submission of a remittance were the sole responsibility of the appellant.

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

Gail M. Frazier
Administrative Judge

We concur:

Bruce R. Harris
Administrative Judge

Franklin D. Arness
Administrative Judge

