

LAWRENCE L. KRICK

IBLA 85-302

Decided May 22, 1986

Appeal from a decision of the Wyoming State Office, Bureau of Land Management, rejecting simultaneous oil and gas lease application. C-39620 and C-39622.

Reversed and remanded.

1. Oil and Gas Leases: Applications: Filing

BLM may not reject a simultaneous oil and gas lease application for failure to disclose the name of the entity which provided assistance to the applicant, pursuant to 43 CFR 3112.2-4, where the entity merely provided parcel recommendations and cannot be said to have "formulated" the application within the meaning of 43 CFR 3112.0-5.

APPEARANCES: Lawrence L. Krick, pro se.

OPINION BY ADMINISTRATIVE JUDGE KELLY

Lawrence L. Krick has appealed from a decision of the Wyoming State Office, Bureau of Land Management (BLM), dated January 3, 1985, rejecting his simultaneous oil and gas lease application (C-39620 and C-39622).

Appellant's lease application was drawn with first priority for parcels CO-160 and CO-162 in the August 1984 simultaneous oil and gas lease drawing. By notice dated October 23, 1984, BLM requested appellant to disclose, within 15 days of receipt of the notice, the nature of his relationship with the National Energy Consultants Corp. (National Energy) of Hollywood, Florida, and provide a copy of any service agreement with National Energy. On November 6, 1984, appellant filed with BLM a copy of his "Advisory Agreement" with National Energy, a parcel recommendation letter, 1/ and other documents.

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1/ That letter, dated Aug. 7, 1984, from National Energy and addressed "Dear Client" states:

"Enclosed please find your new filing cards for the August 1984 filing period. \* \* \* It is important to note, all applications must be filled out in pencil, as indicated, and sign your name in pen. Keep in mind, all filing cards and [application fees] must be into the B.L.M. by 4:00 P.M., August 21, 1984."

In its January 1985 decision, BLM rejected appellant's lease application for failure to disclose on Part B of his lease application form (Form 3112-6a (April 1984)) that National Energy had provided assistance to appellant in filing his application "by providing you specific parcel recommendations," in violation of 43 CFR 3112.2-4. 2/

In his statement of reasons for appeal, appellant contends his simultaneous oil and gas lease application should not be rejected because National Energy acted only as an "expert advisor" and did not itself prepare the application for filing. Thus, appellant questions whether National Energy rendered "assistance" to appellant in filing his lease application.

[1] The applicable regulation, 43 CFR 3112.2-4, provides that:

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.

Failure to comply with 43 CFR 3112.2-4 properly results in rejection of the lease application, under 43 CFR 3112.5-1(a). William Reppy (On Reconsideration), 91 IBLA 191 (1986); William Reppy, 90 IBLA 80 (1985); Carl S. Matuszek, 86 IBLA 124 (1985).

In Ronald Valmonte, 87 IBLA 197 (1985), we concluded on facts virtually identical to those herein that merely providing parcel recommendations to a lease applicant did not constitute "assistance" within the meaning of 43 CFR 3112.2-4, thus requiring the disclosure on the lease application of the name of the entity providing that assistance. We based this conclusion on the fact that while at one time the regulation which defined the term "any person or entity in the business of providing assistance to participants in the Federal simultaneous oil and gas leasing program" (43 CFR 3100.0-5(d) (1982))

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fn. 1 (continued)

The letter also indicates four parcel recommendations, which were the only parcels noted on appellant's lease application.

2/ BLM explained that:

"One of the critical criteria in determining whether assistance falls under the ambit of 'filing service assistance' is the degree of choice in parcel selection exercised by the client. Where assistance is limited to providing evaluations of parcels, and where the client exercises complete choice regarding which parcels, how many parcels, etc., are selected, we would not consider that 'filing service assistance.' Where, however, that degree of choice is not provided, where the assistance consists of a finite list of recommended parcel numbers, there is the clear implication that there is little or no choice on the part of the client, and that is a sufficient criterion for determining 'filing service assistance.'"

(Emphasis in original.)

covered entities which "offer advice on formulation or preparation [or] mail, deliver [or] receive mail," this phrase was deleted in the revised and repromulgated regulation (43 CFR 3112.0-5 (48 FR 33678 (July 22, 1983))). The latter regulation provides that the term currently means:

[T]hose enterprises, commonly known as filing serves, which sign, formulate, prepare or otherwise complete or file applications for oil and gas leases for consideration. All other services such as general secretarial assistance or general geologic advice whether or not it is specifically related to Federal lease parcels or leasing, are excluded from this definition. [Emphasis added.]

Id. In Valmonte, we concluded that the Department, by amending the regulation, had clearly meant to exclude entities which provided advice in the form of parcel recommendations to lease applicants, despite contrary language in the preamble to the amended regulation and an August 19, 1983, Federal Register notice, cited by BLM herein.

The advisory agreement in the present case is virtually identical to the agreement in Valmonte. Under the agreement, appellant agrees to pay National Energy \$ 7,200 for 30 "recommendations." The agreement states the fee is for "advisory services;" National Energy will, "[e]ach filing period, \* \* \* forward to the Client parcel recommendations;" and filing fees are "to be borne by Client." In addition, the August 1984 letter to appellant noted above indicates National Energy provided appellant with a blank lease application form and an envelope addressed to BLM, in addition to the parcel recommendations. <sup>3/</sup> There is no evidence of any other filing assistance provided by National Energy. In Valmonte, we concluded on similar facts that the entity therein could not be said to have either signed, formulated, prepared or otherwise completed or filed the applicant's lease application, under 43 CFR 3112.0-5. <sup>4/</sup> The same is true in the present case.

Therefore, we conclude BLM improperly rejected appellant's lease application where appellant was not required to disclose the name of National Energy on his lease application under 43 CFR 3112.2-4. Glen E. McCuiston, 89 IBLA 228 (1985).

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<sup>3/</sup> A memorandum to the file, dated Jan. 2, 1985, by a BLM adjudicator, with reference to all applications in the August 1984 lease drawing "identified as having been submitted by" National Energy, also states: "Each applicant submitted his own check with his application."

<sup>4/</sup> In Valmonte, we expressly rejected the position taken by the dissent that the entity purportedly providing "assistance" had formulated the application because the applicant, by virtue of the parcel recommendations, was presented with no choice over parcel selection. We stated the fact the applicant had chosen to apply for all of the recommended parcels "should not be permitted to obscure the fundamental reality that this was his free choice." Ronald Valmonte, supra at 202.

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 reversed and the case is remanded to BLM for further action consistent herewith.

John H. Kelly  
Administrative Judge

We concur:

James L. Burski  
Administrative Judge

Will A. Irwin  
Administrative Judge.

