

W. C. PALMER

IBLA 86-1510 Decided January 11, 1988

Appeal from a decision of the New Mexico State Office, Bureau of Land Management, rejecting oil and gas lease application NM 66710.

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: W. C. Palmer, pro se.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

W. C. Palmer has appealed from a decision of the New Mexico State Office, Bureau of Land Management (BLM), dated July 2, 1986, rejecting his noncompetitive application to lease for oil and gas.

Palmer's application for parcel 283 had been selected with first priority for the April 1986 simultaneous oil and gas filings. On May 23, 1986, BLM requested further information regarding the nature of Palmer's relationship with Max Wilson, Inc. (Wilson), of Roswell, New Mexico. Palmer responded that he did not have any contractual relationship or service agreement with Wilson but had merely purchased a list of tracts being offered for lease for a fee of \$40. BLM then issued its July 2, 1986, decision rejecting his application for noncompliance with 43 CFR 3112.2-4 and 43 CFR 3112.0-5, stating:

You did not indicate on your application that Max Wilson, Inc., provided you with filing assistance. Enclosed, find copy of check No. 1096 in the amount of \$2,665.00, submitted to BLM from Max Wilson, Inc., for the April filings and rentals, on your behalf. The filing of this check constitutes assistance to the participant (you).

In his statement of reasons for appeal Palmer objects to the BLM decision, stating that he had merely purchased a list of recommendations from Wilson for a nonrefundable fee of \$40 with no other charges being made by

Wilson had he elected not to participate in the drawing. Palmer explained that, under his arrangement with Wilson, if he wished to participate in the drawings, as he did in this case, he would prepare and complete the necessary forms, sign, and submit the forms to Wilson with a check in the proper amount made out to BLM.

Palmer's explanation of the details of how he submitted the incorrect amount to Wilson in this particular instance is as follows:

Unfortunately, the check of the undersigned which was made out to the Bureau of Land Management and submitted with the application in question (April 1986) was for the incorrect amount (did not include the three filing fees of \$75.00 per tract). Mr. Wilson kindly called this error to the attention of the undersigned and, inasmuch as time would not allow the undersigned to submit a new and corrected check made out to the BLM, Mr. Wilson kindly offered to submit the application with his check in the correct amount of \$2,665.00 (see enclosed photocopy of said check, dated April 18, 1986 and marked "EXHIBIT D"). The undersigned then made out a check to Max Wilson, Inc. in the same amount of \$2,665.00. Said check was dated and mailed to Max Wilson, Inc. on the same date (April 18, 1986) and a copy of said check is enclosed herewith and marked "EXHIBIT E". THE IMPORTANT THING TO NOTE HERE IS THAT THE UNDERSIGNED ONLY REPAID MAX WILSON, INC. FOR THE EXACT AMOUNT OF THE APPLICATION (\$2,665.00) AND THERE WAS NO CONSIDERATION (IN EXCESS OF THIS AMOUNT) PAID TO WILSON FOR THEIR KINDNESS IN THIS MATTER. [Emphasis in original.]

(Statement of Reasons at 2).

[1] The governing regulation 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." 43 CFR 3112.2-4. Further, the definition of "person or entity in the business of providing assistance to participants in the Federal simultaneous oil and gas leasing program," includes "those enterprises, commonly known as filing services, which sign, formulate, prepare or otherwise complete or file applications for oil and gas leases for consideration." 43 CFR 3112.0-5. [Emphasis added.]

In applying these regulations, the Board has upheld BLM's rejection of an application for failure to disclose filing service assistance where the firm used by the applicant both prepared (filled out) the application and paid the filing fee, leaving the applicant to sign, date, and mail the application. James D. Buergel, 88 IBLA 168 (1985). The Board has also affirmed rejection of an application prepared by a firm on applicant's behalf where the check in payment of the filing fee, although signed by the applicant, was drawn on the firm's account. John G. O'Leary, 86 IBLA 131 (1985).

Under the circumstances of the case at hand, although Palmer asserts that under the original arrangement with Wilson he purchased a list of tract recommendations and used Wilson as a conduit for his application to BLM, that relationship substantially changed when Wilson acted on Palmer's behalf by sending its own remittance for Palmer's filing and rentals to BLM. When Wilson acted to correct Palmer's application by submitting its own check to BLM (even though it was later reimbursed without additional remuneration for this service), it was clearly providing additional assistance to properly complete Palmer's application. This additional assistance made it necessary for Palmer to disclose Wilson's relationship as a filing service in accordance with 43 CFR 3112.2-4. Palmer must bear the consequences of the failure to properly complete the form by making such disclosure. The failure is a substantive defect. BLM properly rejected the application. See James D. Buerger, supra; John G. O'Leary, supra.

Accordingly, 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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Gail M. Frazier  
Administrative Judge

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John H. Kelly  
Administrative Judge

