

BERNARD SILVER
FREDERICK L. SMITH

IBLA 86-1550

Decided August 17, 1988

Appeal from a decision of the Eastern States Office, Bureau of Land Management, rejecting noncompetitive oil and gas lease offer ES 35275(Mich).

Reversed.

1. Oil and Gas Leases: Applications: Generally--Oil and Gas Leases: Applications: Filing

Departmental regulation 43 CFR 3111.1-1(a) requires that an over-the-counter noncompetitive oil and gas lease offer be made on a current form approved by the Director, or on unofficial copies of that form in current use. Copies must be exact reproductions on one page of both sides of the official approved form and must be manually signed in ink and dated by the offeror or the offeror's duly authorized agent or attorney in fact. An original and two signed copies of each offer to lease must be filed in the proper BLM office. An oil and gas lease offer which is not properly filed in accordance with these requirements must be rejected pursuant to 43 CFR 3111.1-1(f).

2. Evidence: Credibility--Oil and Gas Leases: Filing

Where an applicant submits evidence which supports a conclusion that two signed copies of his noncompetitive lease offer were timely filed as required by the regulations in 43 CFR 3111.1-1(a), a decision rejecting that offer for failure to comply with the applicable regulation by filing only one signed copy of the lease offer will be reversed.

APPEARANCES: Bernard Silver and Frederick L. Smith, pro sese; Mary Katherine Ishee, Esq., Office of the Solicitor, Alexandria, Virginia, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

Bernard Silver and Frederick L. Smith have filed an appeal from a decision by the Eastern States Office, Bureau of Land Management (BLM), dated

July 3, 1986, rejecting their over-the-counter noncompetitive oil and gas lease offer, ES 35275(Mich). The decision stated: "The offer was filed in this office incomplete. One copy failed to show evidence of having been signed." 43 CFR 3111.1-1(a).

The record shows that a simultaneous over-the-counter noncompetitive oil and gas lease offer was filed on September 10, 1985, by appellants for land in T. 15 N., R. 13 W., Michigan Principal Meridian, within the Manistee National Forest, Newaygo County, Michigan. Appellants' offer received first priority in a drawing held December 3, 1985. See 43 CFR 1821.2-3. When BLM reviewed appellants' lease offer file, it contained one, rather than two, executed copies of the lease offer form. Thus, BLM issued its decision rejecting appellants' lease offer. In response to BLM's decision, appellants initially wrote to BLM and enclosed a properly executed copy of their lease offer, which was time and date stamped as received by BLM on September 10, 1985, at 7:30 a.m., explaining that a search of their records revealed that the properly executed copy of the lease offer was returned by the BLM clerk when their lease offer was submitted for filing. BLM refused appellants' request to reconsider its decision in light of the submission, and appellants filed a timely appeal. 1/

In their statement of reasons appellants contend that they properly filed their lease offer:

The facts in this case are irrefutable. On September 10, 1985, Mr. Silver tendered four copies of an offer to lease certain lands in Michigan, to a clerk manning the window of the Cashier's Office at the ESO [Eastern States Office]. Three of the copies were fully completed and executed by us, while the fourth, although fully completed as the others, was not an executed copy, as our practice in these matters was to have the clerk return the fourth copy to Mr. Silver, bearing the time and date stamp for our files. All four copies were seen to be stamped at 7:30 A.M. At precisely the moment the third of the three executed copies received the stamp, the subject offer was filed complete (emphasis supplied). The second definition of the transitive verb filed in the American Heritage Dictionary (1975 ed.) is given as "To enter (a legal document, for example) on public record or official record." The fact that the clerk in question afterward handed Mr. Silver one of the three executed and time-stamped copies for his retention instead of the requested fourth and unexecuted copy is not relevant. By that moment the three fully completed and executed copies had been filed in accordance with 43 CFR 3111.1-1(a).

1/ BLM's denial of the request was communicated to appellants by telephone on July 29, 1986. After the appeal was filed BLM requested the Board to remand the appeal to allow it to provide a formal written response to appellants request for reconsideration. Because it was apparent from the motion that BLM had no intention of changing its position, the Board, in an order dated Oct. 21, 1986, denied BLM's motion, concluding that remand would serve no useful purpose.

BLM argues that it was appellants' responsibility to see that the correct number of properly executed forms was filed, and that BLM has no obligation to screen forms for compliance with the regulations, or to inform an offeror that the forms are not properly executed. Additionally, counsel argues that "BLM has no way of knowing whether the document that BLM returned to appellants was signed as of September 10, 1985, the date appellants tendered their lease application to BLM."

[1] The regulations governing the filing of over-the-counter offers are found at 43 CFR Subpart 3111. 43 CFR 3111.1-1(a) provides in pertinent part:

(a) An over-the-counter noncompetitive offer to lease shall be made on a current form approved by the Director, or on unofficial copies of the form in current use. *
* * Copies shall be exact reproductions on 1 page of both sides of the official approved form without additions, omissions or other changes or advertising. The original copy of each offer shall be filled in by typewriter or plainly printed in ink, manually signed in ink and dated by the offeror or the offeror's duly authorized agent or attorney-in-fact, and shall be accompanied by a nonrefundable filing fee of \$75 and the first year's rental. The original and 2 copies of each offer to lease, with each copy showing evidence of having been signed, shall be filed in the proper BLM office.

Unless an original and two signed copies of the lease offer are filed as required by this provision, 43 CFR 3111.1-1(f) requires mandatory rejection of an offer.

[2] The casefile forwarded to the Board contains an original and three copies of appellants' lease offer, two of which are completed and properly executed. One of the executed copies is attached to appellants' request for reconsideration filed July 7, 1986. It has a BLM time and date stamp which shows that it was received by BLM on September 10, 1985, at 7:30 a.m. That is same date and time which is stamped on the unexecuted copy of the lease offer form. The question before us is whether appellants' lease offer was properly filed in accordance with the applicable regulation.

In New Mexico & Arizona Land Co., 99 IBLA 190 (1987), the Board considered a BLM decision which rejected an over-the-counter oil and gas lease offer because appellant filed only one executed copy of the lease offer form. In that case, the appellant submitted an original and two copies of a lease offer form for filing, along with a photocopy of the front page of the form to be time date stamped and returned for its records. BLM however retained the photocopy and returned the properly executed copy to the appellant. On appeal, appellant submitted the executed copy with the BLM time date stamp to establish that it properly filed its lease offer. Citing our holding in Robert G. Lynn (On Reconsideration), 73 IBLA 288 (1983), we found that even though the completed copy was returned to appellant, the evidence established that it was submitted for filing along with the original and one copy. Thus, we held that appellant's lease offer was properly filed in compliance with 43 CFR 3111.1-1(a).

Appellants have submitted a properly executed copy of their lease offer form bearing a BLM time and date stamp to evidence that their lease offer was properly filed. The record before us contains a properly executed original and two executed copies of the lease offer form bearing the BLM time and date stamp September 10, 1985, at 7:30 a.m. While BLM points out that it cannot be determined whether the second executed copy of the lease offer was in fact signed as of September 10, 1985, it presents no evidence for consideration which contradicts appellants' assertions that the second copy was executed when date stamped and returned to them by BLM. A comparison of the signature line shows that the signatures on the second executed copy are signed in the same order, and with the same two distinct colors of ink as the signatures appearing on the executed copies retained by BLM on September 10, 1985. Considering the record before us, we conclude that the preponderance of the evidence supports a finding that appellants did file their lease offer in compliance with 43 CFR 3111.1-1(a). See New Mexico & Arizona Land Co., supra; Robert G. Lynn (On Reconsideration), supra.

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 reversed.

Gail M. Frazier
Administrative Judge

I concur:

Anita Vogt
Administrative Judge
Alternate Member