

HENRIKAS BRAZAITIS

IBLA 87-521

Decided January 30, 1989

Appeal from a decision of the Wyoming State Office, Bureau of Land Management, rejecting oil and gas lease offer W-103267.

Reversed and remanded.

1. Oil and Gas Leases: Applications: Drawings--Oil and Gas Leases: Applications: Filing--Oil and Gas Leases: Applications: Sole Party in Interest

The regulation at 43 CFR 3112.5-1(b) (1987) prohibits any agreement, scheme, plan, or arrangement entered into prior to simultaneous oil and gas lease selection which gives any party more than a single opportunity of successfully obtaining a lease or interest therein. This regulation was not violated by filing an application bearing the name of an individual as applicant and listing 19 other parties in interest. In this case the filing service preparing the application customarily made the addresses of all parties in interest available to a lease broker, and prepared more than one application in this manner for the same parcel.

2. Oil and Gas Leases: Applications: Drawings--Oil and Gas Leases: Applications: Filing--Oil and Gas Leases: Applications: Sole Party in Interest

No violation of regulation 43 CFR 3102.1 (1987), limiting the holders of oil and gas leases to citizens of the United States, associations of such citizens, corporations, and municipalities, occurs upon the filing of an application bearing the name of a single individual as applicant and showing 19 names as other parties in interest when the 20 individuals are grouped at random by a filing service, which had entered into a service agreement with each individual.

APPEARANCES: Diane Slomowitz, Esq., Milwaukee, Wisconsin, for appellant; Lyle K. Rising, Esq., Office of the Regional Solicitor, Denver, Colorado, for the Bureau of Land Management.

## OPINION BY ADMINISTRATIVE JUDGE MULLEN

Henrikas Brazaitis has appealed from a decision of the Wyoming State Office, Bureau of Land Management (BLM), dated April 30, 1987, rejecting his offer for oil and gas lease W-103267. Appellant filed this offer after his application to lease Wyoming parcel 187 was drawn with first priority in the October 1986 drawing of simultaneously filed applications. The application shows Brazaitis as the applicant for parcel WY-187 and lists the names of 19 other individuals under the heading of "other parties in interest." United Petro Search Ltd. (UPS) is named on the application as giving filing assistance, and the words "Group #361" appear immediately to the right of the filing service's name.

BLM stated three reasons for rejecting Brazaitis' offer:

1. The methodology employed by UPS in organizing associations, in filing applications for associations, and in conducting business with associations gave UPS improper control over the activities of the associations, leading to obligations on the part of the associations to the benefit of UPS in violation of 43 CFR 3112.5-1(b)(1). 1/

2. The aforementioned acts gave UPS improper control over the activities of the associations, leading to multiple filings to the benefit of UPS in violation of 43 CFR 3112.5-1(b)(3). 2/

3. Group #361 was not a bona fide association and was, therefore, incapable of holding a lease under 43 CFR 3102.1. 3/

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1/ This regulation states:

"(b) Any agreement, scheme, plan or arrangement entered into prior to selection, which gives any party or parties more than a single opportunity of successfully obtaining a lease or interest therein is prohibited. Any application made in accordance with such agreement, scheme, plan or arrangement shall be rejected: Specifically:

"(1) Any agreement, scheme, plan or arrangement which obligates the applicant to transfer any interest in the lease, if issued, to a third party; or which gives the third party a right of first refusal for the lease, if issued; or which obligates the applicant to use the services of the third party when assigning or transferring any interest in the lease, if issued, is prohibited if such agreement, scheme, plan or arrangement exists between the third party and 2 or more applicants for the same parcel or if the third party files for the same parcel as the applicant."

2/ This regulation incorporates paragraph (b) of the preceding note and further provides: "(3) Filings by members of an association, including a partnership, or officers of a corporation, under any agreement, scheme, plan or arrangement whereby the association or corporation has an interest in more than a single filing for a single parcel are prohibited."

3/ This regulation states: "Leases may be acquired and held only by citizens of the United States; associations (including partnerships and trusts) of such citizens; corporations organized under the laws of the United States or of any State or Territory thereof; and municipalities."

In order to understand the basis for BLM's decision, a description of the UPS operation is in order. In the present case, Brazaitis and the other 19 parties in interest had responded to a UPS mail solicitation by indicating their desire to be included in BLM's simultaneous oil and gas lease drawing as one of a 20-member group. 4/ The parties were grouped at random by UPS.

Each group member would typically sign a service agreement with UPS in which UPS agreed to complete and file the member's application in a BLM drawing; to select the parcels indicated on the application (if the member had not done so); to provide the member with complete facts about his application; and to pay all statutory fees to BLM. The service agreement also set forth the member's understanding that he would be filed in one BLM drawing in a 20-member group and that his potential gain from a winning lease would be in direct proportion to that of other members in the group. 5/

The agreement also called for the member to enclose a fee in payment for UPS's services. Certification to BLM of the member's compliance with regulations addressing citizenship, age, acreage, etc. were also set forth in the service agreement. Brokerage provisions were limited to the statement that "Government regulations prevent UPS from representing its own group winners in the sale of their winning leases, but UPS will offer reliable recommendations of those who can effectively negotiate the sale on the group's behalf."

The "reliable recommendations" of UPS caused BLM to conclude that a violation of 43 CFR 3112.5-1(b)(1) had occurred. As set forth at footnote 1, this regulation proscribes "[a]ny agreement, scheme, plan or arrangement entered into prior to selection which gives any party or parties more than a single opportunity of successfully obtaining a lease or interest [6/] therein." One example of such agreement, scheme, plan, or arrangement is one which "obligates the applicant to use the services of [a] third party

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4/ The solicitations also refer to participation in 5-member and 10-member groups.

5/ For example, if a 20-member group wins a lease worth \$200,000 immediate cash, after expenses, each member would be entitled to \$10,000 plus his share of royalties, if production later is developed (Exhs. 1.2.4, #4A, case record).

6/ "Interest" is defined at 43 CFR 3000.0-5(1) to mean,

"an interest in a lease, but is not limited to, record title interests, overriding royalty interests, working interests, operating rights, options or any agreement covering such interests. Any claim or any prospective future claim to an advantage or benefit from a lease, and any participation or any defined or undefined share in any increments, issues or profits which may be derived, or which may accrue, in any manner from the lease based upon, or pursuant to any agreement or understanding existing at the time when the application or offer is filed, constitutes an interest in such lease. 'Interest' does not include stock ownership, stockholding or stock control in a lease offer or in a bid, except for purposes of | 3101.2 and Subpart 3102 of this title."

when assigning or transferring any interest in the lease \* \* \* if such agreement, scheme, plan, or arrangement exists between the third party and 2 or more applicants for the same parcel." Twenty-nine applications for parcel WY-187 were filed by clients of UPS, each of which named an applicant and other parties in interest recruited by UPS.

The record reveals that when an application prepared by UPS was selected with first priority in a BLM drawing, UPS recommended Resource Service Company (RSC) to the winning members for brokerage purposes. The only address appearing on the application was that of the applicant. However, UPS provided RSC with the addresses of all 20 members. 7/

Upon receiving the names and addresses of all group members, RSC attempted to contact them and persuade each to sign an exclusive agency agreement authorizing RSC to procure a purchaser of the rights of the group member in the lease to be issued. RSC charged 16 percent of the lease sale proceeds and retained a 1-percent overriding royalty for its services. RSC states that it cannot effectively broker a lease without the consent of all 20 interested parties. 8/

[1] We disagree with BLM that the above-described operation violates 43 CFR 3112.5-1(b)(1). That regulation proscribes, inter alia, any agreement, scheme, plan, or arrangement entered into prior to selection which obligates Brazaitis to use RSC when assigning or transferring lease W-103267. It is clear that any agreement between Brazaitis and RSC would arise, if at all, after selection, because RSC does not contact winning applicants or seek a contractual arrangement with them until after the simultaneous lease drawing. See Joshua Basin Partnership, 87 IBLA 179, 186 (1985). Moreover, the scheme created by UPS and RSC, whereby RSC is furnished the addresses of the group members and, hence, the first opportunity to approach such persons regarding the sale of the member's interest, does not itself obligate the members to use RSC's services. Assuming, arguendo, that the consent of all group members is necessary to broker a lease, the record reveals that UPS would release the addresses of all group members to the applicant upon written request. 9/ If the applicant made such request,

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7/ UPS states that it receives no financial or other benefit from RSC or any individual from the disposition of the lease interests of its clients (Affidavit of Patrick McGinnis at 2, filed as supplement to appellant's statement of reasons, Oct. 8, 1987). McGinnis further states that UPS does not handle the brokering of oil and gas leases at all, nor does it have any agreements with any other company to negotiate its clients' winning leases (Correspondence to Andrew L. Tarshis, BLM, Jan. 19, 1987, at 2).

8/ Supplemental Affidavit of Fred Engle, Sept. 30, 1987, at 5; attachment to Reply Brief of appellant, filed Oct. 8, 1987.

9/ Any delay by UPS in releasing the addresses of the 19 other parties in interest would strongly suggest that it sought to provide RSC an advantage over all other brokers and buyers in arranging for lease sale. Such a release of information occurred in April 1987 pursuant to a written request by Stanley Burch, whose name appears as the applicant on an application for

a lease buyer or broker could presumably obtain the addresses of group members from the applicant, whose address was a matter of public record.

The most compelling reason, however, for concluding that the UPS-RSC scheme did not violate 43 CFR 3112.5-1(b)(1) is the fact that the addresses of the other 19 parties in interest were not necessary to effect a sale of lease W-103267. Any lease issued as a result of appellant's winning application would be issued to the applicant, Henrikas Brazaitis. Brazaitis, and Brazaitis alone, would hold record title, because, as set forth on the application, he alone was the applicant for parcel WY-187.

As the sole holder of record title, Brazaitis could negotiate the sale of record title. Thus, the addresses of the 19 other parties in interest were not essential for the assignment or transfer of lease W-103267. The advantage gained by RSC in being the first to contact the 19 other parties in interest is illusory.

The application of James Best for parcel WY-162, a photocopy of which is supplied by appellant, provides firm support for our conclusion. This application was prepared by UPS in a manner similar to the Brazaitis application, *i.e.*, the application named one applicant (Best) and 19 other parties in interest. After Best's application was selected with first priority, BLM issued a lease to Best. Best then assigned the lease to Joan Chorney, CNG Producing Company, and Shell Western E&P, Inc. (Shell), representing on the assignment form that he (Best) was the owner of 100 percent of the record title of the lease. BLM approved this assignment only months before issuing the decision on appeal. When RSC later contacted Shell, Shell responded that Best, and not the persons listed as other parties in interest on the application, held record title. As such, Shell, having received its title from the record title holder, notified RSC that it saw no need to negotiate a settlement with anyone.

Case law provides additional support for our conclusion that Brazaitis could assign or transfer lease W-103267 without the consent of the other 19 parties in interest. In William B. Brice, 53 IBLA 174 (1981), Brice appealed BLM's refusal to approve an assignment to him of a 50-percent interest in oil and gas lease W-0324367. This assignment had been made by Cheryl Diane Stranahan, whose name appeared on the winning drawing entry

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fn. 9 (continued)

parcel WY-189 in the October 1986 drawing. The record shows that Burch received the list of names and addresses within 9 days of his request. The BLM decision states, however, that Burch had tried several times to get this information and had reported his difficulty to BLM 3 months prior to receipt of the information. However, BLM's attempt to obtain written evidence of any earlier Burch inquiry was unavailing (Memorandum to file by Mary Jo Rugwell, BLM, Apr. 15, 1987). UPS states that it has no records of any oral contact by Burch in this regard (Statement of Reasons, July 27, 1987, at 33).

card under the heading "other parties in interest" and not as applicant. <sup>10/</sup> In the area set aside for the names of other parties in interest, Stranahan wrote, "Cheryl Diane Stranahan owns a interest in this offer to lease if issued." After this drawing entry card was selected with first priority but prior to lease issuance, the applicant <sup>11/</sup> and Stranahan filed a statement in compliance with then 43 CFR 3102.7, each person stating that he/she owned a 50-percent interest in lease W-0324367. Stranahan's statement included mention of an oral agreement with the applicant by which she asserted her interest. Only 5 days after this statement was filed, BLM issued lease W-0324367 in the applicant's name with no mention of Cheryl Diane Stranahan. A number of assignments of 100-percent record title followed before Brice sought BLM's approval of the assignment of a 50-percent interest from Stranahan. As noted above, BLM refused approval, and Brice appealed to the Board.

The Board affirmed BLM because of a longstanding Departmental policy to decline to adjudicate issues regarding the validity or effect of an assignment until the parties had the opportunity to settle their dispute privately or in court. The Board also explained why BLM originally issued the lease to the applicant alone:

The longstanding procedure in BLM is to issue a lease in the name(s) of the applicants only, as reflected on the face of the offer. If multiple applicants desire to have the lease issued to them as joint holders of the record title, each name must appear as "offeror" and each must execute the offer form and the lease itself when issued. In this instance, only the [applicant's] name \* \* \* appears on the face of the offer as "applicant," and only his signature authenticates the lease offer. Thus, it was appropriate to issue the lease in his name only as holder of the record title, notwithstanding the information that he had made an oral agreement with Cheryl Diane Stranahan to share the lease.

The purpose of the regulation requiring disclosure of any outstanding interests in persons other than the applicant is in furtherance of BLM's ability to administer the provisions of the Mineral Leasing Act which relate to the eligibility of persons to hold such interests with regard to citizenship, acreage limitations, etc. Such disclosures of outstanding interests do not, and are not intended to, alter record title to the lease by the addition of the names of such parties as lessees. As noted above, if

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<sup>10/</sup> Prior to the present automated system, a person seeking to enter a BLM drawing filed a drawing entry card. In Brice, this card is referred to as an offer, and the person filing it is called the offeror or applicant. The card, although not machine readable, functioned much like the Brazaitis application at issue. See Duncan Miller, A-30708 (Nov. 16, 1966).

<sup>11/</sup> The applicant is Glen B. Stranahan, Jr. To avoid confusion, Mr. Stranahan is referred to herein as the applicant.

that is what the parties intend, they can accomplish their objective by filing the offer jointly, rather than by filing the offer in the names of one person and listing the name of another under "Other Parties In Interest" elsewhere on the form, as was done in this case.

53 IBLA at 178.

Upon judicial review, Brice was affirmed by the United States District Court for the District of Wyoming. Brice v. Watt, C81-0155K (D. Wyo. 1981). The Board's decision was further affirmed by the United States Court of Appeals for the Tenth Circuit in Brice v. Watt, No. 82-1455 (Oct. 4, 1983). After reciting the facts of the case, the Circuit Court concluded that Cheryl Diane Stranahan held no record title because she had not executed the offer form and been issued the lease.

Turning now to BLM's charge that the UPS-RSC scheme violated 43 CFR 3112.5-1(b)(3), we similarly find no merit to this charge. As set forth in footnote 2, this regulation proscribes any agreement, scheme, plan, or arrangement entered into prior to selection which gives any party or parties more than a single opportunity of successfully obtaining a lease or interest therein and, specifically, filings by members of an association, including a partnership, under any agreement, scheme, plan, or arrangement whereby the association has an interest in more than a single filing for a single parcel.

The record contains no clear statement of why BLM believes this regulation has been violated, although BLM does say that the "conveyance of implicit control by UPS of each of the 29 applications for parcel 187 is a violation of 43 CFR 3112.5-1(b)(3)." This regulation prohibits, inter alia, filings on a single parcel by more than one association member in such a manner that the association is regarded as having more than one opportunity to win the parcel. Thus, in Christopher F. Clancy, 85 IBLA 174, 184 (1985), where partnership funds were used to pay the filing fees for four applications, each of which described the identical parcel and bore the name of one distinct partner without reference to a partnership, the winning application was rejected as violative of this regulation. The Board held that each of the four applications was properly regarded as a partnership application and, hence, a multiple filing had occurred. See also Petroleum Shares, Inc., 51 IBLA 246 (1980), involving multiple filings by a corporation and one of its officers.

We do not see how the UPS operation led "to multiple filings to the benefit of United Petro Search" as charged by BLM. Whatever benefit the UPS-RSC scheme was designed to provide would go to RSC, and despite the similarities in method of operation, promotional literature, etc., we are not prepared to hold at this time that RSC and UPS are the same company. The record reveals no overlap in the officers, shareholders, and employees of these two companies.

Though we find no merit in BLM's conclusion that 43 CFR 3112.5-1(b)(3) has been violated, it should be clear that if any member of Group #361,

including appellant, were named on more than one application for parcel WY-187 (whether as applicant or other party in interest) a multiple filing has occurred. In such event, rejection of Brazaitis' application would be proper.

[2] As its third and final charge in the decision on appeal, BLM held that Group #361 was not a bona fide association and, as a result, a violation of 43 CFR 3102.1 had occurred. This regulation states that oil and gas leases "may be acquired and held only by citizens of the United States; associations (including partnerships and trusts) of such citizens;" corporations; and municipalities. In support of its charge, BLM relied on Satellite 8211104, 89 IBLA 388 (1985), aff'd, Satellite 8301123 v. Hodel, 648 F. Supp. 410 (D.D.C. 1986), wherein the Board examined at some length the definition of an association. The Board noted that an association did not have a precise meaning, but did in its common law meaning designate a group of individuals who have joined together to undertake a common enterprise using the methods and forms of a corporation but without a corporate charter.

Satellite involved an oil and gas lease application filed in the name of an association. Upon examining the articles of association, the Board found that the articles lacked evidence of mutual assent by the association members and failed to contain provisions for operating as an association or conducting financial affairs. Because of these deficiencies, the Board found that the applicant was unable to function as an association and was, therefore, not separate and independent of the filing service which created it. These findings caused the Board to conclude that 43 CFR 3112.2-1(d) (1982) had been violated, a regulation forbidding the applicant from using the address of a filing service in filing an oil and gas lease application. This conclusion followed because the address used on the application was that of an "association" member who was also an officer of the filing service corporation.

In the instant case, BLM examined the service agreement between group members and UPS and found that it contained no provision for meet-ings, for conducting the group's financial affairs, or for any method by which members could contact one another to carry out the group's business. Of major importance to BLM was the fact that the service agreement ran between individual clients and UPS; no agreement existed among the association members, BLM found, and no separate agreement existed between the association and UPS. In BLM's view, the association was purely the creature of UPS, and the only affinity among its members was that provided by UPS when it arbitrarily made up the pools. Because group members could not function on their own as an association, BLM reasoned, UPS in collusion with RSC exercised control by default and thereby assumed an interest in the group's application.

In analyzing the instant facts in light of Satellite, BLM seems to have assumed at the outset that the application bearing Brazaitis' name was an application by an association. As noted above, the space on the application calling for the applicant's name and address contained the name and address of an individual, Henrikas Brazaitis, and not, as in Satellite, the name of

an association, e.g., Satellite 8211104. Though this fact is not dispositive, we further observe that the application lists 19 individuals as other parties in interest. 12/ If this application were an association application, would these 19 names be properly entered as other parties in interest?

In TXP Operating Co., 99 IBLA 355, 357 (1987), we stated that "technically, the basis for requiring disclosure of partners or members of an association is not that they are 'parties in interest.'" And in The Turner Association, 85 IBLA 374, 376 n.4 (1985), we noted that a dichotomy exists between "other parties in interest" and "members of an association." Indeed, the instructions 13/ for the application bearing Brazaitis' name and the regulations 14/ appear to preserve this dichotomy. We find that the entry of the group members' names as other parties in interest is further evidence that the subject application was not intended to be an association application.

Moreover, upon reading the pleadings of appellant, it is clear that counsel for Brazaitis does not view the subject application as an association application. Counsel acknowledges that while the application was made "on behalf of" Brazaitis, 15/ the application was, in fact, filed by Brazaitis and the 19 other parties in interest, i.e., by multiple nonassociation citizens, and not as an association. 16/ As such, these 20 citizens were and are entitled to be issued a lease in their names as citizens, counsel argues.

Although the distinctions between Satellite and the instant case are plain, 17/ appellant's contention that the subject application was made by 20 citizens suggests a basis for BLM's citation to Satellite in the present

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12/ Regulation 43 CFR 3000.0-5(k) (1987) states: "'Party in interest' means a party who is or will be vested with any legal or equitable rights under the lease. No one is a sole party in interest with respect to an application, offer or lease in which any other party has an interest."

13/ On the reverse side of the Part B oil and gas lease application, Form 3112-6a (April 1984), BLM directs: "OTHER PARTIES-IN-INTEREST-See 43 CFR 3112.2-3. All other parties who own or hold any interest in this application, or the offer or lease which may result, must be named in the space provided on the Part B or on a separate accompanying statement. Filings by associations, including partnerships, must be accompanied by a complete list of individuals who are members thereof."

14/ See 43 CFR 3102.5 (1987).

15/ Statement of Reasons, July 27, 1987, at 21.

16/ Reply Brief of appellant, Oct. 8, 1987, at 13, 21, and 23.

17/ Among these distinctions are the following: the applicant in Satellite bore an association's name (Satellite 8211104), rather than an individual name, and claimed on appeal to be an association; each Satellite group included an officer of the filing service which recruited the group members; and the officer's address appeared on the application.

appeal. Section 1 of the Mineral Leasing Act, 30 U.S.C. | 181 (1982), provides that deposits of oil or gas shall be subject to disposition "to citizens of the United States, or to associations of such citizens, or to any corporation organized under the laws of the United States." In Solicitor's Opinion, M-36434 (Sept. 12, 1958), overruled to extent inconsistent with Turner C. Smith, 66 IBLA 1, 89 I.D. 386 (1982), the Regional Solicitor, Denver, construing section 1, stated:

[T]he practice of the Department ever since the act was passed has been to issue leases where more than one person or corporation have joined in an application (offer), to such applicants (offerors) and to treat them as being equally interested in the lease and jointly and severally liable. Edward Lee and Viola Conklin, [18/] 51 L.D. 299 [1925]. In other words, such applicants have

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18/ Edward Lee & Viola Conklin was decided only 5 years after the Mineral Leasing Act was enacted and for this reason may be an accurate guide to the intent of Congress. Technically, Lee does not construe section 1 but rather section 27 of the Act, which provided that "no person, association, or corporation shall take or hold, at one time, more than three oil or gas leases in any one State, and not more than one lease within the geologic structure of the same producing oil or gas field." (Emphasis added.) The appeal raised the question whether Lee and Conklin, who already held "jointly" an oil and gas permit on a known geologic structure, could have held a second permit covering the same structure. First Assistant Secretary Finney stated:

"It is presumed, nothing to the contrary appearing, that Lee and Conklin are persons united and acting together by mutual consent or compact for the purpose of prospecting the land covered by permit 046103, and that such is their relationship as to application 046573. Prima facie they are a single entity, to wit, an association. As such, they are applying for a second permit covering the geological structure upon which they now hold a prior like permit, which is forbidden by section 27.

"Even if each of them is considered as falling within the category of a 'person' within the meaning of the act, his case is no better, for the reason that as a person each would have obtained directly one permit on the structure, and he may not take or hold a second, no matter what may be the acreage he may hold as his sole and separate interest."

In 1946 and 1960, section 27 of the Act was amended to provide that

"no lease held, owned, or controlled in common by two or more persons, associations, or corporations shall be deemed to create a separate association under the preceding paragraph of this subsection [setting forth acreage limitations] between or among \* \* \* those who hold, own, or control the lease in common, but the proportionate interest of each such party shall be charged against the total acreage permitted to be held, owned or controlled by such party under this chapter."

30 U.S.C. | 184(e)(2) (1982).

The legislative history for this change provides:

"In recognition of the necessity of the operators to aggregate their capital in many instances in order to drill the deep wells now required to find new reserves, the term "association" has been defined to exclude mere

been treated as "associations" and they have been so dealt with. In the early years "associations" of persons were formed and prospecting permits were issued in the name adopted by such an association. However, whether specifically so designated or not, multiple persons were so treated and the group was charged with full acreage and each individual was charged with his proportionate share.

Thus, if as appellant contends, the subject application is made by 20 citizens, BLM's consideration of the application as an association application is consistent with longstanding Departmental practice.

Our review of the record reveals that the subject application is neither an association application, as BLM maintains, nor an application by 20 non-association citizens, as appellant maintains. It is an application by a single citizen, Henrikas Brazaitis. As noted above, only the name of Henrikas Brazaitis appears in the applicant's box on the application. If a lease issues, only Brazaitis would receive record title. No association name, such as Satellite 8211104, appears in the applicant's box on the application. Names of 19 persons whom BLM would regard as association members appear as other parties in interest, a category of persons typically distinct from association members. No mention of an association is contained in any promotional literature or service agreement, although mention is made of membership in a randomly selected 20-member group. In addition, not one of the 20 persons named as parties in interest in the application claims to be a member of an association.

Because we find that the subject application is not an association application, the standards set forth in Satellite, e.g., mutual assent, operating provisions, etc., are not applicable to the instant application. BLM's holding to the contrary is incorrect. 19/

In summary, we hold that the application in the name of Henrikas Brazaitis did not violate 43 CFR 3112.5-1(b)(1), 43 CFR 3112.5-1(b)(3), or 43 CFR 3102.1. BLM's holdings to the contrary must be reversed. If a lease should issue, it will issue to Henrikas Brazaitis, and record title would vest solely in Henrikas Brazaitis.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the

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fn. 18 (continued)

operating contracts and tenancies in common, to the end that each party to such contract, and each tenant in common, will be charged with but his percentage of the acreage in the lease rather than the entire acreage thereof."

S. Rep. No. 1392, 79th Cong., 2d Sess. 3 (1946).

19/ In light of our holding, appellant's request for a hearing is denied.

Wyoming State Office is reversed and the case is remanded for lease issuance, all else being regular.

R. W. Mullen  
Administrative Judge

I concur:

Will A. Irwin  
Administrative Judge