

PARTNERSHIP ONE, INC.

IBLA 89-310

Decided March 15, 1991

Appeal from a decision of the Eastern States Office, Bureau of Land Management, rejecting competitive oil and gas lease offer MIES 39264.

Affirmed.

1. Oil and Gas Leases: Competitive Leases

The regulations governing competitive lease sales provide that the winning bidder must submit the minimum bonus bid, the first year's rental, and the administrative fee on the date of the sale. 43 CFR 3120.5-2(b). The balance of the bonus bid must be submitted within 10 working days after the competitive lease sale date (43 CFR 3120.5-2(c)), and failure to submit the balance within the prescribed period will result in bid rejection and forfeiture of monies previously tendered. 43 CFR 3120.5-3(a).

2. Administrative Authority: Estoppel--Estoppel--Federal Employees and Officers: Authority to Bind Government--Oil and Gas Leases: Competitive Leases

A party claiming reliance upon a misrepresentation by a Department employee must be ignorant of the true facts. When a party successfully bidding at an oil and gas lease sale receives a Receipt and Accounting Advice Statement indicating less than full payment of the monies owing, the bidder cannot claim ignorance of the fact that additional monies are due. BLM properly rejected the lease offer upon the bidder's failure to pay the balance of the bonus bid within 10 working days after the sale.

APPEARANCES: Patrick Lawton, Partnership One, Inc., Lansing, Michigan, for appellant.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

Partnership One, Inc. (Partnership One), has appealed from a February 27, 1989, decision of the Eastern States Office, Bureau of Land Management (BLM), rejecting competitive lease offer MIES 39264 because Partnership One had failed to pay the balance of its bonus bid within 10 working days after the competitive lease sale.

Partnership One was the successful bidder for four parcels including Parcel No. ES-201 (lease No. MIES 39264) at the Eastern States competitive oil and gas lease sale held on November 9, 1988. 1/ Partnership One's \$480 bid for Parcel No. ES-201 included the "Minimum Bonus Bid" of \$160 (\$2 per acre 2/) and a bonus bid of \$320. The BLM Form ES 3120-1 (October 1988) for the parcel indicates that \$355 3/ was due on the sale day, and that a balance of \$320 was due on November 25, 1988, which was 10 working days after the sale date. However, this form also shows the figure "\$675" in the blank following the statement "AMOUNT RECEIVED BY THE BLM ON DAY OF SALE."

The BLM Receipt and Accounting Advice Statement (No. 1497065) documenting the monies submitted for lease No. MIES 39264 contains four machine generated entries for payments of \$75, \$320, \$160, and \$120. However, a \$320 entry has been lined out and the figure \$20 has been interlined above the machine printed \$320 figure. At the bottom of the column, a handwritten entry has been made indicating a total of \$375. Initials appear beside the interlineation. The four machine entries represent the administrative fee (\$75), the bonus bid (\$320), the minimum bonus bid (\$160), and the first year's rental (\$120). The machine entries are dated November 9, 1988, but there is nothing in the record to indicate when the handwritten entries were made. It is clear, however, that the handwritten entry was to reduce the bonus bid payment from \$320 to \$20.

By letters dated February 1, 1989, 4/ Partnership One noted receipt of two of the four leases (ES-108 and ES-77) and asked why it had not received leases for the other two parcels. 5/ A telephone confirmation

1/ The other three parcels were identified as sales parcels Nos. ES-77 (80 acres), ES-108 (80 acres), and ES-200 (80 acres). It appears that Partnership One submitted a minimum (\$2 per acre) bid for the other three parcels.

2/ Parcel No. ES-201 embraces 80 acres of acquired land in the N $\frac{1}{2}$ NW $\frac{1}{4}$, sec. 21, T. 22 N., R. 16 W., Michigan Meridian, Manistee County, Michigan.

3/ The \$355 due was for a minimum bonus bid (\$160), first year's advance rental (\$120), and an administrative fee (\$75).

4/ Partnership One sent identical letters to BLM's Eastern States Office and to its Milwaukee District Office.

5/ One of the parcels addressed in the inquiry (Parcel No. ES-201) is the subject of this appeal. The record does not indicate the disposition regarding Parcel No. ES-200. However, the record also contains the Receipt and Accounting Advice Statement form for the payment for Parcel No. ES-200, and there is an entry error on that form as well. The machine entry for

report in the file indicates that BLM responded by telephone on February 6, 1989. The confirmation report states that: "[Partnership One] said he will send what documentation they have; copy of check etc. Their records indicate all monies were paid at the sale. [The BLM employee] informed [Partnership One] that [it] will still have the right to appeal our decision (lease offer rejected / monies forfeited)" ((Telephone Confirmation dated Feb. 6, 1989).

By decision dated February 27, 1989, BLM rejected Partnership One's lease offer for Parcel No. ES-201, and forfeited the monies submitted for that parcel. BLM noted that Partnership One had been the successful bidder for the parcel at the competitive lease sale and had paid \$375 for the parcel on the sale date. BLM explained that, pursuant to 43 CFR 3120.5-2(c), the bonus bid balance of \$300 was due within 10 working days from the sale date, and stated that, as of the date of the decision, the \$300 had not been received.

By letter dated March 2, 1989, 6/ Partnership One submitted copies of the bidder's receipt for Parcel No. ES-201 and Receipt and Accounting Advice Statement No. 1497065, and explained:

When paying up, we requested that we immediately pay our entire obligation, to avoid the ten day second payment. We gave the clerk a check for \$1440 at that time.

We were given receipts which individually indicated we paid our entire obligation * * *. On this we relied that we were paid-in-full.

In fact, our total obligation [for all four parcels] was \$1740, (355 x 4 = 1420, plus \$320 due ten days later). The [BLM] receipt is erroneous; and we have not been issued the lease.

A check for the \$300 difference was enclosed, and Partnership One stated its belief that, given the circumstances, lease No. MIES 39264 should be issued.

After receiving the BLM decision, Partnership One filed a notice of appeal and statement of reasons. In its statement of reasons it repeats its allegations that it intended to pay its entire obligation on the sale date, that it had believed that it had paid the necessary amount, and that it was given a receipt indicating on its face that the entire amount had

fn. 5 (continued)

the first year's rental, shown as \$1.20, was lined out and \$120 was interlineated below that figure. A handwritten total indicating the sum of the corrected numbers is also shown.

6/ Partnership One wrote this letter before it received BLM's Feb. 27, 1989, decision. The return receipt for the decision indicates that the decision was delivered on Mar. 7, 1989.

been paid. Partnership One contends that it relied on that receipt, and that "[t]he resulting mistake was mostly attributable to said [BLM] receipt." Partnership One asserts that, once it discovered the error, it made all reasonable efforts to correct it, and encloses copies of all its correspondence with BLM in support of this assertion. It concludes that it should be issued lease No. MIES 39264.

[1] The regulations governing competitive leases 7/ provide that a winning bidder must submit the minimum bonus bid, the total amount of the first year's rental, and the administrative fee on the date of the sale. 43 CFR 3120.5-2(b). The balance of the bonus bid must be submitted within 10 working days after the sale date. 43 CFR 3120.5-2(c). Failure to submit the balance of the bonus bid within the allowed 10 working days "shall result in rejection of the bid and forfeiture of the monies submitted under § 3120.5-2(b)." 43 CFR 3120.5-3(a).

[2] Partnership One admits that it did not make full payment of its bonus bid on the sale date or within the 10 working days from the date of the auction. It argues, however, that strict application of the regulation would be inappropriate in this case because its failure to timely submit a portion of its bonus bid stems directly from its reliance on the BLM receipt indicating full payment on the sale date. Partnership One urges this Board to find that, when BLM issues an erroneous receipt showing payment of the full amount due and owing, BLM has an affirmative obligation to inform the payor of the error and that further funds are owing, and afford the payor an opportunity to avoid the forfeiture of the moneys paid and loss of the lease. However, the facts presented by Partnership One do not conform to this argument.

All copies of the Receipt and Accounting Advice Statements in the case file contain the handwritten change striking out the \$320 entry and substituting \$20 in its place. This is true for both the copies in the lease file kept by BLM and the documents Partnership One submitted with its statement of reasons. Thus there is no evidence that Partnership One ever received a copy of Receipt and Accounting Advice Statement No. 1497065 showing anything other than partial payment.

Partnership One's argument is similar to estoppel. This Board has adopted the elements of estoppel described in United States v. Georgia-Pacific Co., 421 F.2d 92, 96 (9th Cir. 1970). Two of the important elements set out in that case are that the party asserting the estoppel must be ignorant of the true facts and must detrimentally rely on the conduct of the party to be estopped. Georgia-Pacific Co., supra, quoting Hampton

7/ These regulations were promulgated to implement the provisions of section 5102(a) of the Federal Onshore Oil and Gas Leasing Reform Act of 1987, P.L. 100-203, 101 Stat. 1330-256 (Dec. 22, 1987), which amended section 17(b) of the Mineral Leasing Act, 30 U.S.C. § 226(b) (1988), and became effective June 17, 1988. See 53 FR 22814 (June 17, 1988).

v. Paramount Pictures Corp., 279 F.2d 100, 104 (9th Cir. 1960). See, e.g., Gulf States Petroleum, Inc., 113 IBLA 55, 58 (1990); Elaine S. Stickelman, 108 IBLA 392, 397 (1989); Terra Resources, Inc., 107 IBLA 10, 13 (1989); Enfield Resources, 101 IBLA 120, 124 (1988).

Under these standards, there are two obvious reasons for denying the relief sought. First, Partnership One has submitted no evidence of an error on the copy of the Receipt and Accounting Advice Statement No. 1497065 tendered to it. Albeit, there was an error in the machine entry. That entry was corrected. If the corrected receipt was delivered to Partnership One, it clearly showed that additional funds were owing. Partnership One, as the bidder for the parcel, knew or ought to have known the amount of its bonus bid for this parcel. With the receipt showing payment of only \$20 of that amount, Partnership One cannot claim ignorance of the fact that an additional \$300 was owing. As manually corrected, this receipt correctly reflects the amount actually tendered, and cannot be used as a basis for a contention that Partnership One was somehow misled by the receipts it received. Clearly, Partnership One knew or ought to have known that it had not paid its entire bonus bid obligation on the sale date. Cf. Celeste C. Grynberg, 74 IBLA 180, 184 (1983).

Assuming arguendo that Receipt and Accounting Advice Statement No. 1497065 had been issued without the corrections, and all evidence indicated that Partnership One reasonably believed that it had tendered full payment on the day of the sale, we would affirm BLM's rejection of the lease offer for Parcel No. ES-201, and forfeiture of the monies submitted for that parcel. The regulations clearly state that the balance owing must be paid within 10 days. Partnership One was made aware of the "error" no later than February 6, 1989, but did not submit the \$300 owing until March 10, 1989. Even if we were to find an equitable and justifiable reason for suspending the period for making payment until the bidder is placed on notice that additional funds are owing, there would be no reason to also extend the subsequent period for making payment beyond the 10 days provided by the regulation.

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.

R. W. Mullen
Administrative Judge

I concur:

James L. Byrnes
Administrative Judge