

Board of Oil and Gas Review

Division of Oil and Gas

Department of Natural Resources, State of Ohio

THE VALLEY VIEW GOLF CLUB, INC.)

Appellant)

v.)

DONALD L. MASON, CHIEF,)
Division of Oil and Gas,)
Ohio Department of Natural Resources,)

Appellee)

APPEAL NO. 437

CHIEF'S ORDER NO. 91-25

Appearances:

For Appellant:

Donald L. Leach, Jr., Esq.
Buckingham, Doolittle, & Burroughs
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For Appellee:

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Assistant Attorney General
Environmental Enforcement Section
Division of Oil and Gas
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Columbus, OH 43224

Facts

Valley View Golf Club, Inc. ("Valley View") is an Ohio Corporation. Valley View annually filed its financial statements with the Division of Oil and Gas, Ohio Department of Natural Resources ("Division"). From 1986 to 1989, the financial statements were annually approved by the Chief.

In 1990, Valley View's filed its financial statement dated September 30, 1990. The Chief rejected the statement as insufficient to demonstrate financial responsibility. The September 30, 1990 financial statement demonstrated that Valley View's net financial worth was \$524,752.00.

Statement of the Case

On January 30, 1991, the Chief issued Order 91-25. That order declared the September 30, 1990 financial statement did not prove financial responsibility. The Order declared that Valley View had "failed to show proof of financial responsibility" as required by Ohio Revised Code 1509.07. The Chief ordered Valley View to execute and file a surety bond. In the alternative, the Valley View was to deposit cash or certificates of deposit as mandated by that Section.

This Board granted Valley View a stay of the Chief's Order. The Board heard the case on January 27, 1992.

Issue

Whether the Chief acted lawfully and reasonably in determining that Valley View failed to demonstrate financial responsibility as required by Ohio Revised Code Section 1509.07.

The Law

Ohio Revised Code Section 1509.07 requires owners to post a bond, cash or certificates of deposits to assure performance of the owner's obligations under Chapter 1509 and its related rules. In lieu of such posting, owners may file financial statements to demonstrate financial responsibility. The financial statements are filed with the Division. If the financial statement is approved by the Chief, then the Owner does not have

to post other security. Ohio Revised Code 1509.07 grants the Chief discretion as to whether it will initially accept the financial statement in lieu of such other security. After the Chief has accepted the financial statements, he may require updates to the statements. If the owner cannot demonstrate financial responsibility, then the Chief must order that owner to execute a bond.

The relevant language of Section 1509.07 is as follows:

[I]n lieu of such bond, the chief may accept proof of financial responsibility consisting of a sworn financial statement showing a net financial worth within this state equal to twice the amount of the bond for which it substitutes and, as may be required by the chief, a list of producing properties of the owner within this state or such other evidence showing ability and intent to comply with the law and rules concerning restoration and plugging as may be required by rule of the chief. The chief may at any time require updating of the documents filed and shall, upon determining that an owner for whom the chief as accepted proof of financial responsibility in lieu of bond cannot demonstrate financial responsibility, order that the owner execute and file a bond or deposit cash or certificates of deposit as required by this section for the wells specified in the order within ten days of receipt of the order.

Discussion

Ohio Revised Code Section 1509.07 establishes financial responsibility as a "net financial worth within this state equal to twice the amount of the bond for which it substitutes." The Chief correctly states that the legislature granted the Chief the initial discretion to accept financial statements in lieu of the bond or other security. The legislature, however, has established that standard of financial responsibility. The language of the section clearly requires the net financial worth of Ohio assets to equal twice the bond for which it substitutes. It does not state that the net financial worth must equal *not less than* twice the amount of the bond.

The section allows the Chief to require "[a] list of producing properties of the owner within this state or such other evidence showing ability and intent to comply with the laws and rules concerning restoration and plugging as may be required by rule of the chief." However, the Chief presented no such rules. This Opinion, therefore, does not address whether such rules could alter the financial responsibility standard set by the legislature or whether such rules could limit only the evidence by which the owner would prove the legislative standard. Because no such rule was presented, this Board and the Chief are limited to considering

the standard established by the legislature. If the Chief finds the standard to be inadequate, then, the Chief must seek higher standards from the legislature.

Valley View's corporate net financial worth in Ohio was \$524,752.00. That financial worth exceeds the legislative standard of twice the amount of the bond for which it substitutes. Thus, Valley View has demonstrated financial responsibility. The action by the Chief, therefore, is unlawful.

Even if the Chief had the authority to establish the standards for financial responsibility, the Chief unreasonably determined that Valley View failed to demonstrate financial responsibility. Ohio Revised Code Section 1509.07 allows the Chief to reject the subsequent financial statement if he determines that "[a]n owner *cannot demonstrate financial responsibility.*"

For four years, the Chief had accepted the financial statements of Valley View as sufficient to demonstrate financial responsibility. The September 30, 1990 financial statements showed net financial worth that was significantly less than those demonstrated in prior years. However, the net financial worth was nearly 35 times the value of the required bond. Valley View testified that the financial statement was prepared and presented in accordance with the historic practice of the Division.

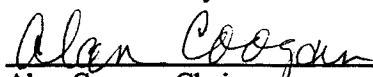
The Chief admits that Valley View's net financial worth exceeds twice the amount of the bond. The Chief presented no rule that establishes new standards by which the Division would determine financial responsibility. The Division published no notice of the modification of the financial responsibility standards. Though the change of standards was not published, Valley View was not given the opportunity to resolve the Chief's objections to its financial statements. That is, they were not allowed *to demonstrate financial responsibility.*

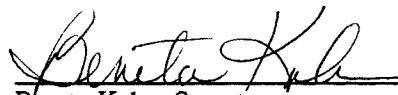
Valley View has far exceeded the standard established by the legislature. To change the standards by which financial responsibility is determined without establishing and publishing rules is unreasonable. To further refuse to allow the owner to demonstrate financial responsibility when the evaluation standards were previously unknown to the public is also unreasonable and possibly unlawful.

The Chief's action is unlawful and unreasonable. The Chief may reject a subsequent financial statement when the owner cannot demonstrate financial responsibility. However, the presented net worth is nearly 17 times greater than the legislature's standard. Therefore, the Chief's rejection of the financial statements is unlawful. Also, the Chief evaluated the financial statements on standards not established by the legislature or by the Division rules. The Chief had not published the modification of the standards and did not allow Valley View to address those modifications after the financial statements were rejected. Therefore, the Valley View financial statement demonstrates financial responsibility. To conclude otherwise is unreasonable.

Based on these findings of fact, the Board of Oil and Gas Review *AFFIRMS* this Appeal. This Board


OVERRULES Adjudication Order No. 91-25.



Alan Coogan, Chairman


Benita Kahn, Secretary

ABSTAIN

William G. Williams

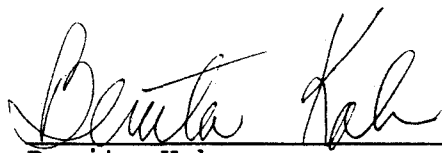

Gail Ignatz-Hoover


James H. Cameron

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing was served on Donald L. Leach, Buckingham, Doolittle & Burroughs, 88 East Broad Street, Suite 1750, Columbus, Ohio 43215 and Ray Studer, Assistant Attorney General Division of Oil and Gas, 4435 Fountain Square, Bldg. A, Columbus, Ohio 43224 by regular U.S. Mail, postage prepaid this 24th day of July, 1992.



Benita Kahn