

DUNCAN MILLER

IBLA 70-100

Decided April 23, 1971

Oil and Gas Leases: Applications: Noncompetitive Leases

The validity of each oil and gas lease offer filed must be determined upon its own merits, and a deficiency in the rental remittance filed with one lease offer cannot be cured by an excess remittance filed with another lease offer.

Oil and Gas Leases: Applications: Noncompetitive Leases

A drawing entry card lease offer for a noncompetitive oil and gas lease is properly rejected where the offeror fails to tender the full first year's rental with the offer and the amount of rental tendered is deficient by more than ten percent of the proper amount due.

IBLA 70-100 : NM-A 9838 (Texas)
: :
DUNCAN MILLER : Noncompetitive oil and
: gas lease offer rejected
: :
: Affirmed

DECISION

Duncan Miller has appealed to the Secretary of the Interior from a decision dated October 1, 1969, whereby the Office of Appeals and Hearings, Bureau of Land Management, affirmed a decision of the New Mexico land office rejecting his noncompetitive oil and gas lease offer NM-A 9838 (Texas) filed pursuant to section 17 of the Mineral Leasing Act, as amended, 30 U.S.C. § 226 (1964).

Appellant's lease offer for Parcel No. 70 1/ was drawn at a June 6, 1969, drawing. The land office rejected his offer on June 30, 1969, because the advance rental he submitted with his entry card for the first year was deficient by more than 10 percent. Miller submitted \$80.00 while the amount required was \$182.00.

The record shows that Miller also submitted offers to lease nine other separate parcels made available by the listings for that month. The amounts tendered by appellant were excessive in five instances and correct in two instances, but the total deficiency for the ten offers was \$1036.00. Miller's checks for the nine unsuccessful offers were returned to him by the land office. On June 16, 1969, he resubmitted a \$160.00 check

1/ Parcel No. 70 in the simultaneous filing procedure consisted of three parcels of acquired land described by metes and bounds, containing a total of 364 acres in Houston County, Texas.

that he had originally submitted for Parcel No. 64 2/ to pay the deficient rental for lease offer NM-A 9838, thereby converting a deficient payment to an overpayment.

Appellant argued in the appeal below that since no third party is involved, the fact that the payment was not paid as prescribed by regulations was inconsequential error and ought not to deprive appellant of his statutory right to a lease. In this appeal he contends that the Bureau should not have accepted the filing fee, but because it was accepted, and by including his offer in the drawing, the Bureau waived any technical deficiencies and a "statutory right ensued."

The pertinent regulations require that the entry card be accompanied by separate remittances covering the filing fee of \$10.00 and the first year's advance rental (43 CFR 3112.2-1(a)(2)) 3/; that the filing fee will be retained as a service charge even though the offer should be rejected (43 CFR 3103.1-3) 4/; and that an offer deficient in the first year's rental by more than 10 per cent cannot be cured. (43 CFR 3111.1-1(e)(1)). 5/

Appellant has not complied with the regulations which are clear and explicit. As the rental submitted with the offer was deficient by an amount in excess of 10 per cent, the offer was properly rejected. The validity of each oil and gas lease offer must be determined on its own merits, and such a deficiency in one lease offer cannot be cured by an excessive remittance tendered with another offer, nor can the deficiency be cured by additional rental payments. Chester Carthel, A-30496 (March 10, 1966).

2/ Microfilm records of all the offers and checks submitted were taken and included in the record. Appellant does not contest this evidence.

3/ Formerly 43 CFR 3123.9(c)(2); Regulations of Chap. II, Title 43 were re-codified (35 F. R. 9502 et seq., June 13, 1970).

4/ Formerly 43 CFR 3123.2(a); note 3 supra.

5/ Formerly 43 CFR 3123.4(a); note 3 supra.

Appellant's contention that the acceptance of the filing fee by the Bureau was wrongful and that such acceptance coupled with the inclusion of his offer in the drawing constituted a waiver out of which a right was created is a gratuitous misstatement of the law, offered without foundation or citation of authority, and is contrary to the regulations, supra. The acceptance of the filing fee and inclusion of the offer in the drawing did not waive the deficiency in the amount of the rental and the offer remained as defective after the drawing as before. Duncan Miller, A-28946 (August 6, 1962).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior (211 DM 13.5; 35 F. R. 12081), the decision of the Bureau of Land Management is affirmed.

Edward W. Stuebing, Member

We concur:

Francis E. Mayhue, Member

Anne Poindexter Lewis, Member.

