

CHARLES F. MULLINS

IBLA 70-633

Decided June 15, 1972

Appeal from decision of Cheyenne, Wyoming, land office cancelling oil and gas lease W 24203.

Affirmed.

Oil and Gas Leases: Rentals -- Oil and Gas Leases: Applications --
Fees and Commissions -- Accounts: Payments

Accounts:

The regulations requiring that advance rental payment and filing fee must accompany the offer cannot be satisfied by a check returned by the bank as uncollectible; nor is a substitute check filed without adequate explanation sufficient to avert or reverse cancellation of the lease.

APPEARANCES: Charles F. Mullins, pro se.

OPINION BY MR. STUEBING

Charles F. Mullins has appealed from a decision of the Cheyenne, Wyoming, land office, Bureau of Land Management, dated June 4, 1970, cancelling his oil and gas lease, W 24203, issued pursuant to the Act of February 25, 1920, 41 Stat. 437, as amended, 30 U.S.C. § 181 (1970). The land office canceled the lease because the check in payment of the advance rental and filing fee submitted with the application, as required by 43 CFR 3103.3-1 (1972), formerly 43 CFR 3123.2(b) (1970), had been returned to the land office as uncollectible by the bank.

The land is situated in Sublette County, Wyoming, T. 31 N., R. 105, 106 W., 6th P.M. and compromises 640 acres. Charles F. Mullins and Thelma Sears Mullins filed their offer to lease for oil and gas on May 11, 1970, including a check in payment of the advance rental and filing fee. The check was deposited by the land office, which then issued the lease effective June 1, 1970.

Upon notification by his own bank that his check had been dishonored Mullins mailed a second check on May 21, 1970, to the Bureau of Land Management. On May 26, 1970, the land office

returned this check to Mullins stating that they could not identify the purpose of the payment. ^{1/} By June 1, 1970, the land office, having learned that the first check was uncollectible, cancelled the lease by decision dated June 4, 1970.

On appeal, Mullins contends that his rental payment was filed by his check dated May 21, 1970, and that he identified this check by a "contract reference number."

The single issue to be determined on appeal is whether Mullins has complied with the regulations by submitting the substitute check subsequent to the issuance of the lease. We find that Mullins has not complied with 43 CFR 3103.3-1 requiring that "[e]ach offer, when first filed, shall be accompanied by full payment of the first year's rental * * *"; nor has he satisfied 43 CFR 3103.2-1 which requires that a \$10 filing fee accompany the offer.

It is clear that the filing fee and advance rental must be filed with the offer. A check in payment of the advance rental and filing fee which is not honored, and returned bearing the stamp "Insufficient Funds" does not constitute payment. See J. Martin Davis et al., A-26564 (January 12, 1953); Duncan Miller, A-31095 (February 2, 1970).

The Bureau, however, will consider that a check has been properly filed if appellant can prove that the bank erroneously dishonored the check. Duncan Miller, 70 I.D. 113 (1963); Duncan Miller, A-29278 (May 13, 1963). Since appellant has failed to allege facts to show that he was not responsible for the fact that his check was uncollectible, we find that appellant has not complied with the regulation.

We may speculate that a different conclusion may have been reached had the appellant submitted his second check with an adequate explanation of its purpose. However, the land office, being unaware that the first check had been dishonored and was being sent back, quite properly regarded the second check as a double payment to the same lease account and returned it to the lessee. Subsequently, when the dishonored first check arrived, the land office found itself with an outstanding lease for which the rental had not been paid and, in those circumstances, cancellation of the lease was the appropriate action. The failure, in this case, to keep the offer in good standing by payment of the rental is attributable to the appellant, not the land office. See Sarkeys, Inc., 77 I.D. 207 (1970).

^{1/} It would appear that upon receipt of Mullins' second check the land office was as yet unaware that his first check had been dishonored.

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 Cheyenne, Wyoming, land office is affirmed.

Edward W. Stuebing, Member

We concur:

Joseph W. Goss, Member

Anne Poindexter Lewis, Member

