

J. V. McGOWEN

IBLA 72-1

Decided January 23, 1973

Appeal from decision (M 18645) by Montana Land Office, Bureau of Land Management, canceling oil and gas lease.

Set aside and remanded.

Oil and Gas Leases: Cancellation

Where an oil and gas lease has been canceled for failure to file the required statements of interest timely (i.e., within 15 days after the filing of the lease offer), and even though that requirement was completed prior to the effective date of the lease, the cancellation of the lease will be sustained.

Accounts: Refunds—Oil and Gas Leases: Rentals

Regulations which (1) prescribe execution of a lease and the earning of the rental, based upon an offer being drawn number one, (2) require a statement of interest to be filed within 15 days after the filing of the offer, (3) provide that failure to so file timely will result in cancellation of the lease and non-return of the rental, and (4) authorize return of the rental only if a "simultaneous" offeror withdraws his offer before the drawing is held, will not be deemed to preclude return of the rental in appropriate circumstances under the repayment statute, 43 U.S.C. § 1374 (1970).

APPEARANCES: J. V. McGowen, pro se.

OPINION BY MR. FISHMAN

J. V. McGowen has appealed from a decision dated June 15, 1971, in which the Montana Land Office, Bureau of Land Management, canceled oil and gas lease M 18645 because all parties indicated to have an interest in the lease had not timely complied with the regulatory requirements, 43 CFR 3102.7. 1/

1/ This section reads as follows:

"§ 3102.7 Showing as to the sole party in interest

"A signed statement by the offeror that he is the sole party in interest in the offer and the lease, if issued; if not he shall

On May 24, 1971, J. V. McGowen filed drawing entry card 376-6446 for a tract containing 2,079.26 acres in T. 33 N., R. 27 E., P.M., Montana, shown as Parcel 29 in the May 1971 list of lands posted in the Montana Land Office as available under the oil and gas lease simultaneous filing procedures. The entry card indicated that Gene Spivey had a 50 percent interest in the offer and lease, if issued. The card was not accompanied by a separate statement signed by McGowen and Spivey setting forth the nature and extent of the interest of each in the offer, the nature of the agreement between them, if oral, and a copy of such agreement if written, nor was there any evidence showing that Spivey was qualified to hold any interest in the lease.

Such statements were required to be filed in the Land Office not later than 15 days after filing of the lease offer (drawing entry card), 43 CFR 3102.7. The fifteenth day after May 24, 1971, was June 8, 1971. The drawing entry card of McGowen was drawn first for Parcel 29, and on June 7, 1971 (the fourteenth day), an oil and gas lease, effective as of July 1, 1971, was executed on behalf of the United States.

The required statements relating to the oral agreement between McGowen and Spivey and to the qualifications of Spivey to hold interests in leases under sec. 27 of the Mineral Leasing Act, as amended, 30 U.S.C. § 226 (1970), were received in the Land Office on June 14. Because the statements were received after the 15-day period provided by the regulations, the Land Office canceled the lease.

Appellant concedes that he is technically in violation of the cited regulation, but attributes part of the problem to misinformation afforded him by his agent that the 15-day period commenced from notice that his lease offer had been accepted. He asserts that

(fn. 1 continued)

set forth the names of the other interested parties. If there are other parties interested in the offer a separate statement must be signed by them and by the offeror, setting forth the nature and extent of the interest of each in the offer, the nature of the agreement between them if oral, and a copy of such agreement if written. All interested parties must furnish evidence of their qualifications to hold such lease interest. Such separate statement and written agreement, if any, must be filed not later than 15 days after the filing of the lease offer. Failure to file the statement and written agreement within the time allowed will result in the cancellation of any lease that may have been issued pursuant to the offer. Upon execution of the lease the first year's rental will be earned and deposited in the U.S. Treasury and will not be returnable even though the lease is canceled." [Emphasis supplied].

he and Spivey tried to comply as quickly as possible after they were notified by their agent that their drawing entry card had been drawn as having first priority for a lease. He further asserts that he had filed numerous drawing entry cards in the same fashion during the past two years, without any word of caution from the Land Office that he was not correct in his submissions.

In essence, the appellant is requesting either that the rental be returned to him or that the lease be held to be valid. Thus, the first issue presented is whether the lease should be permitted to stand.

In Dominic J. Repici, et al., 2 IBLA 14 (1971), this Board held that failure to submit timely the separate statement of interest and qualification required cancellation of an oil and gas lease. Repici is fully consistent with previous court and administrative decisions concerning the late filing of statements of interest. See Harvey v. Udall, 384 F.2d 883 (10th Cir. 1967); Jesse B. Graner, A-30899 (March 29, 1968); Charles D. Landre, et al., A-30837 (September 15, 1967); K. L. Bickel, A-30555 (June 24, 1966). Cf. William B. Collins, 4 IBLA 8 (1971), relating to an over-the-counter noncompetitive oil and gas offer. It is unfortunate that appellant was apparently misled by certain individuals as to the required time for filing, but the regulation admits of no waiver for good faith. This conclusion brings to the fore the issue of whether the rental of \$1,040 should be returned to appellant if the lease is not permitted to stand.

As indicated earlier, 43 CFR 3102.7 is seemingly preclusive of return of the rental. Similarly, 43 CFR 3112.5-3(a) provides:

If an applicant withdraws his entry card prior to the drawing or if his offer to lease is rejected, the advance rental will be returned to him.

The following, 43 CFR 3112.4-1, is also seemingly preclusive of return of rental:

Upon determination of the successful drawee for a particular leasing unit, the first year's rental will not be returnable and will be earned and deposited in the U.S. Treasury upon execution of the lease in behalf of the United States.

There are then two issues. First, whether in the light of the language of those regulations the rental is returnable under the repayment statute; second, if the statute so permits, whether in this instance a refund should be made.

The statutory authority for a refund is provided by section 204(a) of the Public Land Administration Act of July 14, 1960, 43 U.S.C. § 1374 (1970), as follows:

In any case where it shall appear to the satisfaction of the Secretary of the Interior that any person has made a payment under any statute relating to the sale, entry, lease, use, or other disposition of the public lands which is not required, or is in excess of the amount required by applicable law and the regulations issued by the Secretary, the Secretary, upon application or otherwise, may cause a refund to be made from applicable funds.

The current repayment statute is a replacement of statutes which imposed greater restrictions on the Secretary's authority to allow refunds. 2/ Beard Oil Company, 77 I.D. 166 (1970). Nevertheless even under the less generous statute the Department allowed repayment in circumstances somewhat similar to those in the appeal. In some cases it authorized repayment of fees paid in connection with an application for a permit to prospect for oil and gas under the Act of February 25, 1920, now as amended, 30 U.S.C. §§ 181, et. seq. (1970).

An application for permit was rejected for conflict with other entries. The Department held that repayment of the filing fee was allowable under the Act of March 26, 1900 (35 Stat. 48), notwithstanding the fact that the regulations governing the payment of such fees provided that they should be considered as earned and credited in equal parts as the compensation of certain officers of the Land Office. John J. Kotkin, 49 L.D. 344 (1922).

Two years later the Department considered whether a deposit required under the instructions regulating coal leases under coal leasing provisions of the Act of February 25, 1920, supra, should be considered as forfeited in case of default by the lessee in complying with the requirements connected with the lease.

2/ 43 CFR 1822.0-3 provides:

"The repayment of moneys received by the Government and covered into the United States Treasury, in connection with the disposal or attempted disposal of the public lands, is authorized by section 3262 [sic] and 2363, Revised Statutes (43 U.S.C. 689, 690). The general laws providing for the return of such moneys are contained in the act of June 16, 1880 (21 Stat. 287; 43 U.S.C. 263) and the act of March 26, 1908 (35 Stat. 48) as amended by the act of December 11, 1919 (41 Stat. 366; 43 U.S.C. 95-98), and as supplemented by the act of June 27, 1930 (46 Stat. 822; 43 U.S.C. 98a)."

Department ruled:

In my opinion, repayment of such deposit can be made in a proper case. It was held by the Department in the case of John J. Kotkin (49 L.D., 344), that an application for an oil and gas prospecting permit under the act of February 25, 1920, supra, is a filing of the character contemplated as within the scope of the provisions of the repayment act of March 26, 1908 (35 Stat., 48), and repayment of the filing fee paid in connection with such application was allowed notwithstanding the fact that the regulations in connection therewith provide that same should be considered as earned when paid and to be credited in equal parts on the compensation of the register and receiver. It was further held in said case that said act made no provision for the forfeiture of moneys paid in connection with such an application, nor did it directly or indirectly repeal or modify any provision of the general repayment statutes.

No valid reason is seen why an application for a coal lease under section 2 of the act would not also be a filing within the contemplation of said repayment statutes, and the regulations of April 1, 1920 (47 L.D., 489, 494), declaring a forfeiture of the deposit made by the successful bidder in case of his default, should not be considered as effectually preventing repayment in a case where repayment would be warranted under the act of March 26, 1908, were it not for such regulations. In the case submitted by you it appears that the bid was rejected because of the lessee's failure to complete his bid, which failure was caused without fault on his part, but by reason of matters over which he had no control. The bid made under the application is a part thereof, the whole transaction merging into a contract when the bid has been fully complied with and the lease duly issued. If the applicant fails to comply with the terms of the bid and same is rejected, without fraud or fault on the part of the applicant, the application becomes one rejected within the contemplation of the act of March 26, 1908, and an application seeking repayment of the deposit made should be given proper consideration under said repayment act. The regulations governing bids under the coal lease provisions of said act of February 25, 1920, to the effect that in case of default on the part of a bidder, the deposit will be forfeited and disposed of as other receipts under the act, was intended for administrative

purposes to direct by such regulations the manner in which the receivers of public moneys are to account for the same to the Government, and in no manner was it intended thereby to foreclose or deny the right of an applicant under the repayment laws to seek repayment of the deposit made.

Instruction, July 25, 1924, 50 I.D. 589 (1924)

These cases make it clear that the mere fact that a regulation in terms states that a payment is "earned" or is "forfeited" does not mean that repayment may not be considered under the provisions of a repayment statute.

The question then is whether the repayments sought should be granted. The present statute, supra, leaves that determination to the discretion of the Secretary. In the exercise of his discretion, the Secretary may examine the circumstances of each lease to ascertain whether the rentals should be refunded.

This Board, while holding that a refund of rentals could be made where a lease was issued to other than the first qualified applicant as a result of a mistake of law or fact not attributable to the lessee, warned that a refund might not be made if the cancellation of the lease is due to some fault of the lessee himself, or if he stands to benefit through any kind of arrangement with parties seeking the cancellation of the lease. Beard Oil Company, supra, 169.

The record is barren of any indication of mala fides or other factor militating against repayment to appellant. We believe such repayment is proper and it is so ordered.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the case is remanded for appropriate action.

Frederick Fishman, Member

We concur:

Martin Ritvo, Member

Anne Poindexter Lewis, Member

