

**Editor's note: Reconsideration denied by order dated May 24, 1973; Appealed -- dismissed, Civ. No. 73-1035 (D.D.C. Aug. 27, 1975)**

DUNCAN MILLER

IBLA 70-542

Decided February 22, 1973

Appeal from decision U-10997 of the Utah Land Office, Bureau of Land Management, canceling a noncompetitive oil and gas lease.

Affirmed.

Oil and Gas Leases: Cancellation -- Oil and Gas Leases: Applications Filing --  
Accounts: Payments

Where a noncompetitive oil and gas lease is issued to the successful applicant in a drawing of simultaneously-filed offers and the offeror's personal check in payment of the filing fee is returned by the drawee bank because the signature on the check does not conform to the signature card on file with the bank, a decision canceling the lease will be affirmed; and the fact that the bank, after consultation with its depositor, subsequently honored the resubmitted check will not serve to avoid the lease cancellation where no bank error is shown.

APPEARANCES: Duncan Miller, pro se.

OPINION BY MR. STUEBING

This is an appeal from the Utah Land Office decision of March 11, 1970, canceling noncompetitive oil and gas lease U-10997 on the ground that appellant's check for payment of the filing fee was returned by the bank on which it was drawn as uncollectible after the lease was issued, and that an uncollectible check does not constitute payment of the required filing fee.

Appellant filed simultaneous oil and gas lease offers for four parcels of land, including parcel No. 101, as identified in the February 1970 listing of lands available for simultaneous filings. He accompanied these filings with his personal check in the amount of \$40 to cover the filing fees. His offer was the first one drawn for parcel No. 101, and the subject lease, serial No. U-10997, was issued to him for that parcel on March 2, 1970, to be effective April 1, 1970. The check was later returned by the drawee bank as

uncollectible, as a result of which the Land Office issued its decision of March 11, 1970, in which it canceled the lease.

On March 10 the Land Office notified appellant that the check had been returned by the bank as uncollectible and requested a cashier's check, certified check, bank draft, or money order to replace it. By letter dated March 12, 1970, the bank wrote the Land Office as follows:

Our Bank returned to your office a check in the amount of \$ 40.00 on Mr. Duncan Miller. This check was sent back as signature irregular. Mr. Miller was notified by your office that the check was returned by us and has since instructed us to honor this check. Please re-submit the check for payment. \* \* \*

Following the filing of the appeal to the Director, Bureau of Land Management, in accordance with the procedure then in effect, the Bureau's Office of Appeals and Hearings wrote to the bank, noting that the check had ultimately been honored and inquiring whether the initial refusal to pay was due to error or oversight by the bank's employees.

The bank by letter of June 17, 1970, replied:

\* \* \* As you stated the check was returned due to the signature being irregular. The return of the check was not an error on the part of our employees, but rather, a precautionary measure. Our Bank policy is that all checks must be signed exactly as they are signed on the original signature cards. \* \* \*

On the date that we received the check for payment we were unable to contact Mr. Miller, so we returned the check. We later spoke with Mr. Miller and he assured us that this was a legitimate check to be paid against his account. He was not aware of our policy regarding the signature exactness. At this time, we wrote to the Utah land office on behalf of Mr. Miller to request that they re-submit the check for payment. \* \* \*

The intentions were honorable on the part of Mr. Miller and the Bank. \* \* \*

It is appellant's contention that because the only problem concerning the check pertained merely to the irregularity of the

signature, and since the check was subsequently negotiated, the lease should be reinstated.

The governing regulation provides that a \$ 10 filing fee must accompany an offer when filed, and it is retained as a service charge even though the offer should be rejected in whole or in part. 43 CFR 3123.2(a) (1970), now 43 CFR 3103.1-3 (1972). It is a debt due the United States. The Department has held that the submission with an oil and gas lease application of a check which is not honored, but is returned marked "Insufficient Funds", does not constitute a payment in support of the application. J. Martin Davis, et al., A-26564 (January 12, 1953). The refusal of a bank to honor a check submitted as payment of the filing fee requires rejection of a lease offer. Duncan Miller, 7 IBLA 343 (1972). Where the lease has issued prior to the return of the filing fee check by the bank as uncollectible, the lease is subject to cancellation, and the tender of a substitute check will not serve to avert or reverse cancellation of the lease. Charles F. Mullins, 6 IBLA 184 (1972).

The Department has held that checks timely submitted with an oil and gas lease offer for the advance rental, and with a request for a five-year extension of an oil and gas lease for the filing fee and advance rental, which checks were erroneously dishonored by the drawee bank after the date of filing, are considered to have been paid within the prescribed time. See Duncan Miller, A-29278 (May 13, 1963); Duncan Miller, 70 I.D. 113 (1963).

However, we cannot view the instant case as one which should be treated in the same manner as a case involving bank error. The bank did nothing irregular, and it has categorically denied that its refusal to honor the check was the result of any error by its employees. It was the failure of the appellant to conform to his bank's standards which caused the difficulty, delay and administrative expense which followed. Regardless of whether the appellant's failure to properly draft an acceptable negotiable instrument was attributable to deliberation or negligence, it was still solely his fault. Banks have their own proper requirements, just as the Government does, and the bank's determination that Miller's check did not meet those requirements can hardly be equated with "bank error."

A signature which cannot be recognized, whether because it is illegible or because it fails to conform to an established standard, is attributable to the signatory, and he may not shift the blame to the recipient. See R. C. Bailey, et al., 7 IBLA 266 (1972).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the opinion decision appealed from is affirmed.

Edward W. Stuebing, Member

We concur:

Newton Frishberg, Chairman

Joseph W. Goss, Member

Douglas E. Henriques, Member

Martin Ritvo, Member

Joan B. Thompson, Member

We dissent:

Anne Poindexter Lewis, Member

Frederick Fishman, Member

Anne P. Lewis, dissenting:

For the reasons stated below I disagree with the rationale and conclusion of the majority that a noncompetitive oil and gas lease should be canceled for failure to pay timely the filing fee where the bank involved first questioned the signature on the check but later honored the original check and there was no other reason the check could not be honored except doubt over the signature.

As is stated in the majority opinion, it is true that ordinarily it is a hard and fast rule of the Department in situations such as the instant one that the bank's failure to honor the check paying the filing fee for lack of funds in the account results in cancellation of the lease for nontimely payment. Duncan Miller, 7 IBLA 343 (1972). See also Charles F. Mullins, 6 IBLA 184 (1972).

But it is equally indisputable that an exception to that rule has been established. This is where the bank acted in error. Duncan Miller, A-29278 (May 13, 1963); Duncan Miller, 70 I.D. 113 (1963). The present case is not exactly the same as the "bank error" cases. Nor is it the same as the above case in which honoring the check at the time of its first presentment was clearly not possible because of lack of funds in the account. Where does the instant case fall?

In my opinion, it is not sufficiently different from the "bank error" cases to refuse to apply those as precedent. Thus, the file herein states only that the check was returned by the bank as "signature irregular," and the bank described the return of the check as "a precautionary measure." The bank further states that the intentions on the part of the appellant and the bank "were honorable," and that the bank is hopeful that the Department will not allow this incident to reflect on the good credit standing of Mr. Miller."

In these circumstances, I think the present case, where the bank was taking "a precautionary measure," viewed in the light of the rest of the circumstances - such as no evidence of bad faith, no evidence of insufficient funds in the bank, and where the identical check was later presented again and was honored - is more fairly and logically grouped with the "bank error" cases. Therefore, I would accept the check as timely payment of the filing fee and I would not cancel the lease for nonpayment of such fee.

Frederick Fishman, dissenting:

I heartily agree with Member Lewis' dissent.

The crucial element in this case is the basis on which the bank refused to honor appellant's check. The bank stated in part:

\* \* \* On the date we received the check for payment we were unable to contact Mr. Miller, so we returned the check. We later spoke with Mr. Miller and he assured us that this was a legitimate check to be paid against his account. He was not aware of our policy regarding the signature exactness \* \* \*. [Emphasis supplied]

The rationale for accepting an offer where payment was refused because of bank error is that the appellant was without fault. From the bank's letter quoted in part above, it seems clear that the bank had no rule or regulation requiring the same make of signature on a check as on the signature card. It was merely a "policy" which, the bank indicated, had not been communicated to the appellant. Although using the same signature as that appearing on the signature card concededly would be a drawer's normal practice, the aberration in signature was not violative of the bank's rules and regulations.

I believe that the "bank error" concept is applicable in this case, since the appellant is free from fault. The lease should be permitted to stand.

