

JOE L. FRAZIER

IBLA 73-82

Decided June 29, 1973

Appeal from decision of New Mexico State Office, Bureau of Land Management, rejecting oil and gas offer.

Affirmed.

Oil and Gas Leases: Applications: Drawings -- Oil and Gas Leases: Generally

An oil and gas lease offer drawn first in a simultaneous filing is properly rejected under 43 CFR 3103.3-1 and 3111.1-1(e) (1) where the offer is deficient in the first year's rental by more than ten percent.

APPEARANCES: Joe L. Frazier, pro se.

OPINION BY MR. GOSS

Joe L. Frazier has appealed from a decision of the New Mexico State Office, Bureau of Land Management, dated August 1, 1972, which rejected his noncompetitive oil and gas lease offer, NM 16321.

Appellant's lease offer for Parcel No. 44, covering 80 acres described as the N 1/2 SE 1/4 sec. 22, T. 6 S., R. 25 E., N.M.P.M., was filed in a simultaneous drawing of oil and gas lease offers on May 22, 1972. Although appellant's offer was drawn first at a public drawing held June 5, 1972, the offer was rejected for the reason that it was deficient in the first year's rental by more than ten percent.

The Departmental regulations, 43 CFR 3103.3-1, provide:

Each offer, when first filed, shall be accompanied by full payment of the first year's rental based on the total acreage if known, and if not known, on the basis of 40 acres for each smallest legal subdivision. An offer deficient in the first year's rental by not more than 10 percent will be approved by the signing officer

provided all other requirements are met. The additional rental must be paid within 30 days from notice under penalty of cancellation of the lease. (Emphasis added.)

A deficiency of not more than ten percent is listed in 43 CFR 3111.1-1(e) (1) as a curable defect.

The amount of the rental submitted by appellant with his entry card was \$ 20.00. The full amount of rental required on 80 acres is \$ 40.00. As the State Office correctly ruled, the rental deficiency exceeds the ten percent deficiency permissible under the regulations.

Appellant does not take issue with the Bureau's ruling, and admits that "[i]t was either my fault or your fault \* \* \*." He states that he sent the payment in a letter with three other money orders and indicates that the payments must have been mixed up either by himself or by Bureau employees.

The Department has long been aware that occasionally a check becomes detached from the offer with which it is filed. In such event, however, if the land office is unable to match the right lease offer and check or checks, the burden must necessarily fall upon the offeror to make a satisfactory showing that his lease offer was accompanied by the requisite filing fee and rental payment. Chester Carthel, A-30496 (March 10, 1966).

From appellant's admission we must conclude he is unable to show that adequate rental was tendered. Accordingly, the lease offer must be rejected. Chester Carthel, *supra*.

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

Joseph W. Goss, Member

We concur:

Anne Poindexter Lewis, Member

Newton Frishberg, Chairman

<http://hearingsandappeals.doi.gov/>