

DALE A. SPIEGEL

IBLA 75-183

Decided March 26, 1975

Appeal from a decision of the Montana State Office, Bureau of Land Management, dismissing protest to the cancellation of noncompetitive oil and gas lease M-29965.

Case remanded.

1. Accounts: Payments -- Oil and Gas Leases: Cancellation

Where a noncompetitive oil and gas lease is issued to the successful applicant in a drawing of simultaneously-filed offers and the lessee's personal check in payment of the first year's rental is returned by the drawee bank because of uncollected funds, a decision cancelling the lease will be affirmed; and the fact that the bank, after consultation with its depositor indicated that it would honor the check upon resubmission will not serve to avoid the lease cancellation where no bank error is shown.

2. Oil and Gas Leases: Generally -- Oil and Gas Leases: Assignments or Transfers

Where an oil and gas lease is subject to cancellation but an assignment of the lease has been filed by one claiming protection as a bona fide purchaser in accordance with the statute and regulations, the cancellation of the lease will be stayed until it is determined whether the assignee is, in fact, entitled to take advantage of the statute and regulations affording protection to bona fide purchasers.

APPEARANCES: Dale A. Spiegel, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Dale A. Spiegel appeals from a decision dated September 10, 1974, of the Montana State Office, Bureau of Land Management, which dismissed Spiegel's protest of the State Office's August 23, 1974, decision declaring Spiegel's noncompetitive oil and gas lease M-29965 null and void.

In the July 1974 simultaneous filing period, Spiegel filed an oil and gas lease offer for Parcel 23 embracing 1704.12 acres in McCone County, Montana. The Montana State Office notified Spiegel by certified mail dated July 31, 1974, and received by Spiegel on August 2, 1974, that as a result of the simultaneous drawing he was entitled to the oil and gas lease requested in his offer; rental payment of \$852.50 was required within 15 days of receipt in accordance with 43 CFR 3112.4-1. 1/

A check dated August 8, 1974, drawn on the Central Bank and Trust Company, Denver, Colorado, was tendered by Spiegel in payment of the \$852.50 rental. A lease was signed on behalf of the United States on August 13, 1974, and oil and gas lease M-29965 issued to Spiegel effective September 1, 1974.

On August 19, 1974, Spiegel's rental check was returned unpaid to BLM by its bank with the notation "uncollected funds," as the reason for nonpayment.

Apparently having been notified that his original check had not been honored, on August 23 Spiegel tendered a bank draft for \$852.50 drawn by the Majestic Savings and Loan Association, Denver, Colorado. This remittance was refused by BLM and returned to Spiegel with a decision dated August 23, 1974, declaring oil and gas lease M-29965 null and void.

Spiegel protested this decision, resubmitted the Majestic Savings and Loan Association draft, together with a letter which an officer

1/ § 3112.4-1 Rental payment.

A lease will be issued to the first drawee qualified to receive a lease upon payment of the first year's rental. Rental must be received in the proper office of the Bureau of Land Management within fifteen (15) days from the date of receipt of notice that such payment is due. The drawee failing to submit the rental payment within the time allowed will be automatically disqualified to receive the lease, and consideration will be given to the entry of the drawee having the next highest priority in the drawing. [38 F.R. 22230, Aug. 17, 1973]

of the Central Bank and Trust Company wrote to Spiegel relative to the circumstances surrounding the nonpayment of the check. The letter concluded:

* * * I have on previous occasions and under similar circumstances approved payment of checks such as this one. However, on this particular occasion the matter was not brought to my attention and, instead, normal banking policy was adhered to and the check was returned for the reason "drawn on uncollected funds." Had it been brought to my attention, I'm confident that it would not have been returned. 2/

The State Office dismissed Spiegel's protest, based on the BLM opinion that the bank had not admitted any error in its return of the check. This appeal followed, together with a statement by appellant that he had disposed of the subject lease to a bona fide purchaser prior to receipt of notice of the lease cancellation.

Spiegel appealed on the basis that his check to BLM was returned unpaid because it was drawn against uncollected funds and not because of insufficient funds. He submitted a letter from his bank's attorney indicating that had BLM redeposited the check the bank would have honored it within the time span allowed by the July 31 decision.

BLM accounting procedures instruct its offices not to redeposit any check returned by its depository bank as "uncollectible" as there is no obligation on BLM to reprocess such a remittance. However, a check given to BLM in payment of a debt which is refused payment when first presented to the bank on which it is drawn but which is later paid without having been returned to BLM will be deemed to have been timely paid. Cf. Darling v. Lewellen, A-30885 (June 13, 1968).

But in this case the unpaid check was returned to BLM. Under its established procedures BLM considers any returned check, whatever the reason for the nonpayment, as not constituting payment

2/ A subsequent letter of September 20, 1974, by Attorney for the bank explained that the bank received a deposit from Spiegel on August 8 (the same date of the rental check drawn by Spiegel), drawn on United Bank of Denver payable to Dale A. Spiegel made by Keba Oil and Gas Company, which check was subsequently collected. However, "normal banking policy requires that the people at the bank allow a clearing time from date of deposit to collect the proceeds of the deposit." The letter went on to explain this difference between their rejection because of "uncollected funds" and an "uncollectible" check.

for the item for which it was presented, recognizing full well that the nonpayment may result in automatic cancellation or termination of rights or privileges.

It is true that the BLM may consider that a payment has been properly made if appellant can show that the bank erroneously dishonored the check for such payment. Duncan Miller, 70 I.D. 113 (1963).

This the bank did not do. Although it went to great pains to explain the difference between "uncollectible" and "uncollected" funds, and it assured appellant that had the bank's officers realized the situation, they would have made special consideration outside the normal banking procedures, at no time did the bank, in effect, agree to become the obligor for the payment of the check. See Commercial Bank v. First National Bank, 86 So. 342 (1920). Where the lease has issued prior to return of the rental 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. Duncan Miller, 10 IBLA 27 (1973); Charles F. Mullins, 6 IBLA 184 (1972).

Nor does appellant's subsequent tender of the draft drawn by Majestic Savings change the decision. In order to meet the terms and conditions of the regulations, appellant was specifically notified of the requirement to pay the first year's rental within 15 days of receipt of notice. This notice was received on August 2, 1974, by appellant's agent; the second check was not tendered until August 23, 1974. Since the 15 days had expired, the check was properly refused and returned by BLM. We do not pass upon what the result would have been, had proper payment been tendered within the 15-day period. If there were no more to the case, the cancellation would be affirmed as proper.

However, we have the allegation of appellant that he had transferred the lease to a bona fide purchaser prior to the time he received notice that the lease had been cancelled.

The Act of September 21, 1959, 73 Stat. 571, as amended by the Act of September 2, 1960, 74 Stat. 781, 30 U.S.C. § 184(h) (1970), provides that the right to cancel an oil and gas lease shall not apply so as to adversely affect the title or interest of a bona fide purchaser of any lease, which lease was acquired and held by a qualified person or corporation in conformity to the provisions of the Mineral Leasing Act, 30 U.S.C. § 181 et seq. (1970), even though the holding of the person from which the lease was acquired may have been cancelled for a violation of the statute or regulations.

[2] Appellant contends he assigned the lease to a bona fide purchaser who in turn assigned to a second bona fide purchaser. The record contains an assignment from Spiegel to Keba Oil & Gas Co., dated August 21, 1974, and filed with BLM for approval on September 9, 1974. The assignment has not been approved or disapproved. Validity of the assignment executed during the period when the BLM records reflected the existence of the lease must be determined. The case will be remanded to BLM for initial consideration of these matters. The cancellation of the lease is suspended until a final determination of these matters.

In considering whether an assignee of an oil and gas lease was a bona fide purchaser and entitled to protection in accordance with the bona fide purchaser provisions of the Mineral Leasing Act, as amended, supra, the basic question is whether he in good faith and for value acquired his interest without notice that the lease was subject to cancellation. Southwestern Petroleum Corporation, 71 I.D. 206, 213, (1964), aff'd, Southwestern Petroleum Corp. v. Udall, 361 F.2d 650 (10th Cir. 1966). If the assignment to Keba is regular in all respects and Keba demonstrates it was a bona fide purchaser thereof, Keba must be afforded the opportunity to take advantage of the statute and regulations.

Accordingly, 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 further action consistent herewith.

Douglas E. Henriques
Administrative Judge

We concur:

Martin Ritvo
Administrative Judge

Frederick Fishman
Administrative Judge

