

EDWARD M. DIGNEO

IBLA 75-528

Decided September 4, 1975

Appeal from a decision of the New Mexico State Office, Bureau of Land Management, rejecting oil and gas lease offer NM 24745.

Affirmed.

1. Oil and Gas Leases: Applications: Drawings -- Oil and Gas Leases: Lands Subject to

When several offers for a noncompetitive oil and gas lease are filed for the same parcel during a simultaneous filing period and all are withdrawn after the drawing but before a lease is issued, the land is not thereby made available for an over-the-counter offer but must be included in a subsequent list of lands available for filing under the simultaneous drawing procedure.

APPEARANCES: Edward M. Digneo, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Edward M. Digneo appeals from an April 24, 1975, decision of the New Mexico State Office, Bureau of Land Management, rejecting his offer for a noncompetitive oil and gas lease NM 24745 because the lands were not available for an over-the-counter offer.

The lands that appellant offered to lease were included in oil and gas lease NM 15349 which terminated by operation of law for failure to pay rental due on or before June 1, 1973. Thereafter, in the November 1973 notice, these lands were posted as available for simultaneous filing of lease offers. Two offers

were filed and a drawing was held on December 6, 1973, to determine their priorities. On December 18, 1973, each offeror withdrew his offer. Appellant filed his over-the-counter offer on February 13, 1975.

Appellant contends the lands were available for over-the-counter filing when his offer was filed because the lands had been listed for simultaneous filing and the only offers filed during the simultaneous filing period had been withdrawn after the drawing but before issuance of a lease. A successful drawee's withdrawal of his offer after a drawing but before a lease is issued can be characterized as an act by which he disqualifies himself from receiving a lease. He may also achieve this result by failing to make timely payment of the first year's rental. 43 CFR 3112.4-1; see Duncan Miller, 17 IBLA 267 (1974). When a successful drawee withdraws his offer before a lease is issued, one may reasonably infer that he has no intention of making timely payment of the first year's rental. 43 CFR 3112.5-1 may be appropriately applied to such a situation. That regulation provides:

If the successful drawees for a particular leasing unit are unqualified to receive the lease for any reason, including timely payment of the first year's rental, the lands in the numbered leasing unit shall be included in a subsequent list of lands available for filing under the simultaneous drawing procedure.

[1] The regulation makes clear that when conflicting offers for a noncompetitive oil and gas lease are filed during a simultaneous filing period and all are withdrawn after the drawing but before a lease is issued, the land is not thereby made available for an over-the-counter offer but must be included in a subsequent list of lands available for filing under the simultaneous drawing procedure. Cf. 43 CFR 3112.1-1(b).

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.

Douglas E. Henriques
Administrative Judge

We concur:

Frederick Fishman
Administrative Judge

Martin Ritvo
Administrative Judge

