

WIKOA, INC.

IBLA 75-575

Decided September 4, 1975

Appeal from decision of Eastern States Office, Bureau of Land Management, denying reinstatement of oil and gas lease ES 11466, terminated by operation of law for failure to pay annual rental on or before the due date.

Reversed.

1. Oil and Gas Leases: Reinstatement -- Oil and Gas Leases: Rentals

Where it is alleged that a bank erroneously dishonored a check drawn thereon, and an official of the bank admits that payment was refused by mistake, the error of the bank will not vitiate the otherwise proper payment of rent.

APPEARANCES: Robert Koch, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

WIKOA, Inc., appeals from a decision of the Eastern States Office, Bureau of Land Management, dated May 1, 1975, which notified it that oil and gas lease ES 11466 had terminated by operation of law for failure to pay the annual rental on or before the April 1 anniversary date as provided in 30 U.S.C. § 188(b) (1970) and 43 CFR 3108.2-1(a).

Appellant's check for the rent was received at the Eastern States Office on March 24, 1975, but the check was returned by Security National Bank, Denver, Colorado, as an uncollectible item. The Eastern States Office thereupon determined that the rental had not been paid, and the lease therefore terminated.

With its notice of appeal, appellant enclosed a letter signed by a Vice President of Security National Bank explaining why the check had been dishonored:

On March 31st [the date on which the check was presented for payment] Wikoa, Inc., in various accounts with this bank, had sufficient funds to pay the \$280.00 item. * * * Security National Bank had previously been requested to transfer into the Wikoa account or to call the Wikoa office upon presentation of checks which would not clear the account. Obviously, in this instance that was not done.

[1] Where it is alleged that a bank erroneously dishonored a check drawn thereon, and an official of the bank admits that payment was refused by mistake, the error of the bank will not vitiate the otherwise proper payment of rent. George E. Conley, 9 IBLA 302 (1973); Duncan Miller, 70 I.D. 113 (1963). We regard the letter from the bank as an admission of error. See Duncan Miller, A-29278 (May 13, 1963).

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 set aside and the lease may be reinstated, all else being regular.

Douglas E. Henriques
Administrative Judge

We concur:

Frederick Fishman
Administrative Judge

Anne Poindexter Lewis
Administrative Judge

