

A. G. GOLDEN

IBLA 75-413

Decided October 24, 1975

Appeal from a decision of the Montana State Office, Bureau of Land Management, disqualifying the offeror drawn first in a drawing of simultaneously filed oil and gas lease offers.

Affirmed.

1. Evidence: Burden of Proof -- Oil and Gas Leases: Applications:
Drawings -- Oil and Gas Leases: Rentals

The successful drawee in a drawing under the special simultaneous filing procedure for noncompetitive oil and gas lease offers is automatically disqualified if he fails to pay rental within 15 days from receipt of notice that such payment is due. A statement by such a drawee that he did not receive a notice and that his office records where his oil and gas records are contained lack any copy of the rental notice is insufficient to overcome the presumptive effect of evidence that Bureau of Land Management officials mail copies of the notice of rental, a notice of stipulations to be signed, and the stipulations in the same envelope, and it is clear the envelope containing the stipulations was received at the drawee's office.

APPEARANCES: A. G. Golden, pro se.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

A. G. Golden filed an oil and gas lease offer during a simultaneous filing period prescribed by 43 CFR Subpart 3112. His offer was drawn first for parcel number 500 in the drawing

held in January 1975 to determine the priority of the simultaneously filed offers. The Montana State Office, Bureau of Land Management (BLM), by letter of March 18, 1975, advised Golden that rental had not been paid, as required, within 15 days from receipt of notice, and he was thus automatically disqualified to receive the lease. It also informed him a lease had been issued to John D. Mohrle (who had been drawn as number 2 in the drawing). Golden protested against issuance of the lease (M 31045 (ND)) and appealed the BLM action. By decision of April 1, 1975, the BLM Office dismissed the protest and transmitted the case to this Board for action on the appeal.

[1] The regulations for the special simultaneous filing procedure for noncompetitive oil and gas offers provide that a lease shall 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. * * *" 43 CFR 3112.4-1. The drawee failing to submit the rental payment within the time allowed is automatically disqualified to receive the lease. 43 CFR 3112.4-1. Golden's contentions rest on whether there was compliance with this regulation.

The undisputed facts in this case are that BLM sent stipulations and a notice, dated February 7, 1975, that stipulations were required by certified mail to Golden. A certified mail return receipt card was signed for Golden by his secretary on February 12, 1975. The disputed fact is whether Golden also received the notice of rental due, also dated February 7. 1/ BLM personnel have stated in correspondence in the record that the rental notice and the stipulation notice were mailed together in the same envelope. They have indicated the office practice is to include stipulation notices and rental notices in one envelope, when stipulations are required. They also indicate an office practice to retain the original copy of the rental notice for the file and to transmit two carbon copies of the rental notice to the offeror. 2/

1/ Golden filed the lease rental payment with the BLM on April 2, 1975, within 15 days after receipt of the letter of disqualification, but long after 15 days from February 12, 1975.

2/ There is support for the BLM statement regarding the practice of sending carbon copies of the rental notice and retaining the original for the case file in the fact the record contains the original of the rental notice sent to the offeror drawing second priority, who did pay the rental timely.

Golden alleges that he was improperly disqualified. He admits receiving the stipulations required in connection with the lease, which he promptly executed and returned, but denies receipt of any notice regarding rent.

Golden's only showing to support his contention that he is the first qualified applicant for a lease to the parcel in question is his own uncorroborated statement. He asserts that he never received the notice of rental due and that he maintains files of his oil and gas lease records which contain a copy of the notice requesting stipulations and a copy of the stipulations, but no copy of a rental due notice. Although Golden denies receiving the rental notice, he gives no precise details of facts to support this conclusion. Also, he gives no explanation of why he did not inquire about the rental when he received the stipulations. This may only be inferred from his statements that he called BLM immediately after learning he was the successful drawee and BLM advised him payment of the rental was not necessary until he received a rental-due notice, and that he asked two recognized "federal lease brokers" how long before he should receive the rental notice and was told BLM personnel were "swamped" and he should be "patient."

At best then, appellant has shown an office practice of maintaining records from which a presumption might be drawn that copies of any document received would be in the records. The information from BLM also shows an office practice to include the notice of rental and the notice of the stipulations in the same envelope. Evidence of office practices may create a rebuttable presumption that the practice was followed in a specific factual situation. We have then a presumption that BLM officials properly discharged their official duties and included the rental notice in the envelope with the stipulation notice. Cf. United States v. Chemical Foundation, 272 U.S. 1, 14-15 (1926); Amoco Production Company, 16 IBLA 215, 220 (1974); 29 AM. JUR. 2d Evidence § 171 (1967). The sending of the notice in the mails in the usual course of business may be evidence of its subsequent receipt by the addressee. 1 Wigmore Evidence § 95 (3rd Ed. 1940); Myers v. Moore-Kile Co., 279 F. 233, 235-36 (5th Cir. 1922); see United States v. Vandersee, 279 F.2d 176, 181 (3d Cir. 1960). We have undisputed evidence that part of the contents of the mailed envelope were actually received, and only appellant's general denial, and the presumptive effect of his statement of his office practice to file documents, to counter the presumptive evidence that the rental-due notice was mailed to him at his address of record and received for him by his agent.

If we were to accept appellant's position, we would have to infer that neither appellant nor any agent of his erred in any way. Therefore, although BLM personnel report two carbon copies of the rental notice were sent, we would have to rule out any possibility that the carbon copies could have been discarded inadvertently by someone in appellant's office. This would preclude any possibility that someone overlooked the copies in the envelope, or that someone thought they were duplicates of the stipulation notice, or otherwise unnecessary to keep, or that someone did not take them out of the envelope before throwing it away. In addition to inferring complete freedom of error on the part of appellant and his agents, 3/ we would have to assume that a BLM employee or employees failed to follow the customary practice of that office to include the rental notice in the same envelope with the stipulation notice. We need not and shall not draw such inferences or make such assumptions from the facts in this record.

The greater weight of the presumptive evidence favors the conclusion that the notice of rental was received in appellant's office. Appellant has the burden of rebutting the presumptive evidence that he received the notice and has not successfully done so. 4/

3/ In drawing assumptions in appellant's behalf we would also have to assume appellant had no reason to inquire about the rental when he received the stipulation notice or otherwise take action to protect his rights. We note that appellant did not have to wait until notice of the rental to submit the payment. Payment prior to notice could have expedited lease issuance.

4/ In view of the conclusion reached in this decision, we need not discuss whether the assignee of the lease issued to John D. Mohrle is a bona fide purchaser. We note, however, that a bona fide purchaser of an interest in an oil and gas lease is afforded statutory protection (30 U.S.C. § 184(h) (1970)). Any decision that a lease should be canceled because it was not issued to the first qualified applicant must consider whether there is a bona fide purchaser who may be protected, and have interests in the lease deemed by the statute to be greater than an offeror to whom the lease should have been issued initially. See Southwestern Petroleum Corp. v. Udall, 361 F.2d 650, 655 (10th Cir. 1966).

Accordingly, 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.

Joan B. Thompson
Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

Anne Poindexter Lewis
Administrative Judge

