

ALBERT J. FINER

IBLA 76-657

Decided September 27, 1976

Appeal from decision of the Nevada State Office, Bureau of Land Management, canceling oil and gas lease N-12661.

Set aside and remanded.

1. Oil and Gas Leases: Cancellation

Where an oil and gas lease offer when first filed is not accompanied by full payment of the first year's rental, but is deficient only \$ 20, not more than 10 percent of the required amount, and the lease is subsequently issued with a notice that the deficiency must be paid within 30 days under penalty of cancellation, the lease must be canceled pursuant to 43 CFR 3103.3-1 where the required deficiency payment is not submitted within the prescribed period.

2. Accounts: Refunds -- Oil and Gas Leases: Rentals

Where a noncompetitive oil and gas lease is canceled for failure of the lessee to make full payment of the first year's rental, the Department may return the rental pursuant to the repayment statute, 43 U.S.C. § 1374 (1970), in appropriate circumstances where the lessee has derived no benefit from the possession of the lease and there are no other factors militating against repayment.

APPEARANCES: Albert J. Finer, pro se.

## OPINION BY ADMINISTRATIVE JUDGE RITVO

Albert J. Finer has appealed from a decision dated May 21, 1976, of the Nevada State Office, Bureau of Land Management, canceling his oil and gas lease, Nevada-12661, for failure to submit additional rental to cure the deficiency in the original submission of his first year's rental.

A review of the record shows that Finer filed a noncompetitive oil and gas lease offer (Nevada-12661) on April 9, 1976, for 1152.18 acres within Sections 6 and 7, T. 25 N., R. 64 E., M.D.M., White Pine County, Nevada. At one place on the offer he apparently miscalculated the total area of the lease as 1112.27 acres and submitted the first year's rental in the amount of \$556.50, \$20.00 short of the correct full amount of rental due.

The Nevada State Office issued a decision dated April 13, 1976, notifying appellant of the deficiency, of the additional rental required, and that the offer had been approved as a lease as of that date. The decision specifically emphasized:

The rental deficiency of \$20.00 must be paid within thirty (30) days from receipt of this decision or the lease will be cancelled without further notice.

When the additional rental was not received within the required period the State Office canceled the lease in its entirety as of May 21, 1976.

Appellant claims on appeal "I through either my own inadvertence or some misplacement did not receive this letter consequently did not know an additional \$20 was due your office at this time." He asserts he does not think it is within the regulations to cancel the lease and penalize him by keeping the first year's rental.

[1] The governing regulation in this instance, 43 CFR 3103.3-1, clearly sets forth the mandatory rental requirements:

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.

The BLM sent the April 13 decision by certified mail, return receipt requested. The record shows that appellant acknowledged receipt of that decision April 17, 1976. He therefore was given more than adequate notice of the rental deficiency and the consequences of nonpayment.

Under the circumstances, appellant did not comply with the regulatory requirements and cancellation of the lease was mandatory.

[2] However, the question of whether appellant's payment of the first year's rental of \$556.50 is returnable is a matter left to the discretion of the Secretary of the Interior. The statutory authority for a refund is provided by section 204(a) of the Public Land Administration Act of July 14, 1960, 43 U.S.C. § 1374 (1970), as follows:

In any case where it shall appear to the satisfaction of the Secretary of the Interior that any person has made a payment under any statute relating to the sale, entry, lease, use, or other disposition of the public lands which is not required, or is in excess of the amount required by applicable law and the regulations issued by the Secretary, the Secretary, upon application or otherwise, may cause a refund to be made from applicable funds.

The Board has held in other situations, arising under the oil and gas simultaneous filing regulation, which specifically provides that rentals will not be returnable, that the rental may be repaid in appropriate circumstances under the repayment statute, *supra*. Charles J. Babington, 17 IBLA 435; J. V. McGowen, 9 IBLA 133 (1973). 1/ The over-the-counter filing regulation does not prohibit a refund of rental where a lease is canceled for failure to pay a deficit within the time allowed.

In the instant case appellant effectively held the lease only for 38 days. There is no evidence that he derived any benefit from the possession of the lease during that short

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1/ These cases involved a section of then current regulation dealing with the simultaneous filing procedures, 43 CFR 3112.4-1 (1972), which stated:

"Upon determination of the successful drawee for a particular leasing unit the first year's rental will not be returnable and will be earned and deposited in the U.S. Treasury upon execution of the lease on behalf of the United States."

period. Nor is there any indication of mala fides or other factors militating against repayment to appellant. J. V. McGowen, supra at 138.

Accordingly, we find the circumstances of the case such that the rental may properly be refunded.

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 remanded for appropriate action.

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Martin Ritvo  
Administrative Judge

We concur:

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Douglas E. Henriques  
Administrative Judge

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Frederick Fishman  
Administrative Judge

