

Appeal from a determination of the New Mexico State Office, Bureau of Land Management, rejecting appellant's offer for oil and gas lease NM-29641 (Okla.).

Affirmed.

1. Oil and Gas Leases: Applications: Drawings--Oil and Gas Leases: Noncompetitive Leases--Oil and Gas Leases: Rentals

A simultaneous oil and gas offeror is properly disqualified under 43 CFR 3112.4-1 from receiving lease when she fails to pay the first year's rental within 15 days of receipt of the notice that such payment is due.

2. Oil and Gas Leases: Applications: Drawings--Oil and Gas Leases: Rentals

Where the check submitted in payment of the first year's rental for an oil and gas lease offer is dishonored by the drawee bank due to error on the part of the drawer, the offer is properly rejected in accordance with 43 CFR 3112.4-1.

APPEARANCES: S. B. Christy IV, Esq., of Jennings, Christy, and Copple, Roswell, New Mexico.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

Appellant, Karen L. Brown, appeals from a determination of the New Mexico State Office, Bureau of Land Management (BLM), disqualifying her from oil and gas offer NM-29641 (Okla.) for failure to comply with 43 CFR 3112.4-1. Appellant's name was drawn first in a simultaneous drawing on December 20, 1976.

On February 15, 1977, a Notice of Rental Due was sent to appellant certified mail, return receipt requested at the address she inserted on the drawing entry card. The envelope in which the Notice was enclosed bears the notation that a first notice of delivery was left by the Post Office at addressee's home on February 19. A second notice was left there on February 24. The envelope is marked "return" with the date March 5, and bears other notations such as "unclaimed" and "return to sender, not deliverable." Appellant asserts the address on the drawing entry card was correct during the material period of time.

Appellant asserts she did not receive the notice requiring the first year's rental, and had no knowledge of the request for rental until approximately March 12, 1977. The Statement of Reasons recites that "promptly upon becoming first advised that the rental was required, and on April 4, 1977, appellant paid the first year rental . . . by her check." This check, dated March 16, 1977, was received by the BLM on April 5 and was returned for insufficient funds on May 2. Another check was issued, and was received by the BLM on May 12.

[1] Assuming arguendo, the attempts of the Post Office to deliver the Notice of Rental Due are insufficient notice under 43 CFR 3112.4-1 and 43 CFR 1810.2(b), appellant still had not made payment within 15 days of receipt of notice.

The first qualified drawee of a simultaneous oil and gas lease offer must submit the first year's rental payment within 15 days of receipt of notice that such payment is due. Failure to submit the payment within the prescribed time will result in automatic disqualification of the drawee, and the lease will be offered to the next qualified drawee. 43 CFR 3112.4-1. John Paul Pratt, 24 IBLA 110 (1976).

Here appellant makes seemingly inconsistent statements as to when she first became aware the rental payment was due. She admits knowledge of a request for rental on or about March 12. In paragraph 4 of the Statement of Reasons she asserts that "[p]romptly upon becoming first advised that the rental payment was required," the rental payment was paid on April 4. Purported payment was received by the BLM on April 5, by a check dated March 16, which was dishonored.

Viewing the case in the light most favorable to appellant, she did receive notice on March 12. Payment was not received within 15 days and appellant was disqualified under section 3112.4-1.

[2] In addition, payment by check was received by the BLM on April 5; however, this check was returned to the BLM on May 2 for

"insufficient funds." In a letter dated May 10, and received by the BLM on May 12, submitting a bank money order, appellant concedes the dishonoring of the check was due to confusion on her part.

The Board has held that a check dishonored by a bank will not be considered to be payment of a lease rental where no bank error is shown. Duncan Miller, 10 IBLA 27 (1973); Duncan Miller, 16 IBLA 379 (1974); see, Donald S. Childs, 19 IBLA 240 (1975); Wikoa, Inc., 22 IBLA 6 (1975). Here payment of the first year's rental payment actually was not made until May 12, while notice is considered to have been received on March 12, the most favorable date to appellant, the offer was properly rejected. 43 CFR 3112.4-1.

Therefore pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the determination appealed from is affirmed.

Frederick Fishman
Administrative Judge

We concur:

Joseph W. Goss
Administrative Judge

Anne Poindexter Lewis
Administrative Judge