

CHARLES M. BRADY

IBLA 77-522

Decided January 25, 1978

Appeal from decision of the Utah State Office, Bureau of Land Management, rejecting simultaneously filed oil and gas lease offer U-34714.

Affirmed.

1. Oil and Gas Leases: Rentals

A successful offeror in a BLM simultaneous filing procedure who fails to pay the first year's advance rental within 15 days from the receipt of notice that such payment is due will be disqualified as an offeror.

2. Oil and Gas Leases: Rentals

When BLM sends a notice of an advance rental obligation to the address of record of a successful offeror in a simultaneously filed oil and gas lease drawing and such notice is returned by the post office, the offeror is properly deemed to have "receipt of notice" under 43 CFR 1810.2

3. Administrative Authority: Generally

Reliance upon erroneous advice by Bureau of Land Management employees cannot confer upon an oil and gas lease applicant any rights not authorized by law.

4. Oil and Gas Leases: Rentals

An undocumented and unsupported assertion by an oil and gas lease offeror that his agents

made a timely tender of advance rental payment will be disregarded on appeal where BLM records indicate that no such tender was made within the period allowed for payment of the advance rental.

APPEARANCES: Irvin L. Masching, Esq., Gomier, Masching & Neville, Ltd., Dwight, Illinois.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

On September 17, 1976, pursuant to 43 CFR Subpart 3112, a notice of lands available for oil and gas filings was posted in the Utah State Office, Bureau of Land Management (BLM), including parcel number UT 1486, an aggregate of 520.08 acres in Uintah County, Utah, described as follows:

T. 14 S., R. 21 E., SLM  
Sec. 1, lots 1, 3, S1/2,  
NE1/4, SE1/4, NW1/4, S1/2

At a drawing held September 30, 1976, appellant Charles M. Brady's offer was drawn second, and, no lease being issued to the first-drawn offeror, a notice was sent to Brady on April 5, 1977, directing him to submit payment of first year's rental within 15 days of the receipt of notice. This notice was sent by certified mail to Brady's address of record, 5400 N. Brookline, Suite 206, Oklahoma City, Oklahoma 73112, but was returned to BLM on April 18, 1977, marked "addressee unknown."

It appears from the decision below that, on May 2, 1977, one Neva Henderson informally provided BLM with a new address for appellant Brady, but that Brady was unaware of the change of address request thus made by Ms. Henderson and that he had never authorized her to act on his behalf.

Whatever the relations between Brady and Henderson may have been, the above-described change of address request came too late to result in a timely advance rental payment by Brady. Although a check for rental payment was received from Brady on May 12, 1977, it was returned by BLM as untimely along with a notice stating that Brady was disqualified to receive the lease. Brady, acting through his attorney, submitted a letter of protest which was received by BLM on May 31, 1977, taking issue with the Bureau refusal to accept the rental payment. By decision of July 13, 1977, the Bureau affirmed its previous action and formally rejected Brady's offer. It is from that decision that Brady takes this appeal.

[1] The regulation which is dispositive of this appeal is 43 CFR 3112.4-1, which reads as follows:

## § 3112.4-1 Rental payment.

A lease will 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. The drawee failing to submit the rental payment within the time allowed will be automatically disqualified to receive the lease, and consideration will be given to the entry of the drawee having the next highest priority in the drawing. [38 FR 22230, Aug. 17, 1973]

[2] It is plain from the language of this section that Brady must be disqualified as an offeror if the April 5, 1977, notification to submit payment is deemed to constitute "receipt of notice" within the meaning of this regulation. In this connection, 43 CFR 1810.2 provides that,

(a) Where the regulations in this chapter provide for communication by mail by the authorized officer, the requirement for mailing is met when the communication, addressed to the addressee at his last address of record in the appropriate office of the Bureau of Land Management, is deposited in the mail.

(b) Where the authorized officer uses the mails to send a notice or other communication to any person entitled to such a communication under the regulations of this chapter, that person will be deemed to have received the communication if it was delivered to his last address of record in the appropriate office of the Bureau of Land Management, regardless of whether it was in fact received by him. An offer of delivery which cannot be consummated at such last address of record because the addressee had moved therefrom without leaving a forwarding address or because delivery was refused or because no such address exists will meet the requirements of this section where the attempt to deliver is substantiated by post office authorities.

Thus it appears that Brady, having been given the benefit of notice properly mailed to his address of record, was properly disqualified as an offeror on May 3, 1977, 15 days after the BLM notice was returned by the post office. 43 CFR 4.401(c)(3). We do not feel, moreover, that this result is unduly harsh or that it is in the least unreasonable. As we stated in Jack Koegel, 30 IBLA 143, 144 (1977),

This regulation is reasonable and necessary to expeditious administration of the Bureau's business. The conduct

of government business cannot be compelled to wait the pleasure or convenience of those persons who seek to deal with it. Failure to comply within mandatory time limits following service compels rejection of the offer.

(citing Robert D. Nininger, 16 IBLA 200 (1974), aff'd, Nininger v. Morton, Civ. No. 74-1246, (D.D.C., March 25, 1975)).

[3] Brady asserts on appeal that an employee of the Utah State Office, BLM, "set forth that there was a 15 day period in which to make payment after May 2, 1977," an occurrence which Brady argues should estop BLM from asserting a payment deadline prior to May 17, 1977. No legal authority is cited under which the BLM official in question might have granted such an extension or grace period, and we know of none in these particular circumstances. Reliance upon erroneous advice by Bureau of Land Management employees cannot estop the United States or confer upon an applicant any rights not authorized by law. United States v. Tippetts, 29 IBLA 348 (1977); see Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380, 384 (1947); Utah Power and Light Co. v. United States, 243 U.S. 289, 409 (1917); Parker v. United States, 461 F.2d 806 (Ct. Cls. 1972); Administrative Appeal of Joe McComas, 5 IBIA 125, 83 I.D. 227 (1976); Marathon Oil Company, 16 IBLA 298, 81 I.D. 447 (1974); Mark Systems, Inc., 5 IBLA 257 (1972). Cf. United States v. Wharton, 514 F.2d 406 (9th Cir. 1975). In the case before us, moreover, appellant could not possibly have relied upon the alleged erroneous advice or suffered any detriment thereby since, at the time the statement in question was allegedly made, appellant was already legally disqualified as an offeror for this lease. Appellant's claim of estoppel is without merit.

[4] Appellant, as a final ground for relief, sets forth the contention that the Bureau should have accepted payment from two "agents" who allegedly tendered the advance rental for lease offer U-34714 prior to the deadline date of May 2, 1977. The Bureau, on the other hand, states that the first of these two named agents, Ms. Neva Henderson, attempted merely to effect an address change for Appellant's benefit and that the second, one L. Bassi, is not on record as having made any overtures to BLM on behalf of Brady. Since no supporting letters, affidavits, or copies of the allegedly tendered checks are included in the record on appeal, we are compelled to assume that no formal tender of the advance rental was made by either of these "agents" and that the only tender of [\*\*8] advance rental was that which was made by Brady himself on May 12, 1977, some 10 days after the final deadline for such payment. 1/

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1/ We note, furthermore, that there is a marked factual dispute as to whether the would-be "agents" did, in fact, tender the advance rental payment, BLM denying that any such tender even took place.

Accordingly, pursuant to the authority vested in 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:

Newton Frishberg  
Chief Administrative Judge

Joan B. Thompson  
Administrative Judge

