

JOAN L. HARRIS AND JONATHAN T. AMES

IBLA 78-335

Decided September 25, 1978

Appeal from a decision of the Utah State Office, Bureau of Land Management, rejecting oil and gas lease offer U 39630.

Set aside and remanded.

1. Oil and Gas Leases: Rentals--Notice: Generally

Where BLM sends by certified mail a notice to an offeror at his record address, pursuant to 43 CFR 3103.3-1, that the first year's rental is due within 15 days of receipt of the notice, and the letter is returned to BLM marked "moved left no address" by the post office, and it is established that the nondelivery by the post office was erroneous, the rejection of the lease offer will be set aside and the notice will not be considered to have been served on the offeror pursuant to 43 CFR 1810.2(b).

APPEARANCES: Jonathan T. Ames, pro se.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

On January 17, 1978, Joan L. Harris and Jonathan T. Ames filed an oil and gas lease offer (U 39630) with the Utah State Office, Bureau of Land Management (BLM), for certain lands in Garfield County, Utah.

Appellants were the first qualified applicants drawn for oil and gas lease offer U 39630. A letter dated February 7, 1978, was sent by certified mail to the address given by appellants, 2001 Jefferson St., Napa, California 94558. The letter was not delivered. It was returned to the Utah State Office February 15, 1978, stamped by the

post office "moved left no address." In the appeal, Ames stated that the post office "did not give us rightful notice of winning this parcel."

A letter from appellants, accompanied by a money order for \$40, both dated February 18, 1978, was received by BLM on March 3, 1978. The letter indicates that appellants were aware of the existence of the certified letter but were unsure of its contents. A second letter dated February 21, 1978, states that the postman did not deliver the notice, but appellant had the certified number from the notice of February 7, 1978. This second letter is not dated as received by the BLM.

On March 9, 1978, the BLM sent a request for a return receipt to the post office, and returned appellants' remittance because it was not timely received. On March 22, 1978, BLM received a copy of the delivery reminder or receipt from the post office which was stamped "moved left no address" and checked "returned to sender."

On July 20, 1978, we wrote to Mr. Ames and Ms. Harris at the same Jefferson Street address requesting more detailed information regarding the nondelivery of the notice and how they learned they had won the parcel. Mr. Ames answered that the postman was told by the secretary that Harris was out of town, at which point the postman said Harris would have to come to the post office to pick up the letter. When Harris returned, about 2 days later, the post office had already returned the letter to BLM. Mr. Ames also enclosed a signed statement from the secretary giving essentially the same information. Because appellants had filed together for only one parcel, Mr. Ames states that "it was a good guess that the certified letter related to a selection in our favor." He adds that he called the Utah State Office "on or about February 18, 1978," the date of the remittance and letter received by BLM on March 3, 1978. Taking these statements as true, the earliest he or Ms. Harris had actual knowledge of being the first-qualified drawee on the parcel was "on or about February 18, 1978."

43 CFR 1810.2(b) states that an offer of delivery by certified mail which cannot be consummated because the addressee has moved without leaving a forwarding address or because delivery is refused or because no such address exists will serve as notice where the attempt to deliver is substantiated by the post office.

This Board has held that a document which is sent by certified mail to an individual at his record address is considered to have been served on him at the time of return by the post office of the undelivered certified letter, such constructive service being equivalent in legal effect to actual service of the document. James W. Heyer, 2 IBLA 318 (1971).

We have also repeatedly held that failure to pay the first year's rental within 15 days of receipt of notice, as required by 43 CFR 3112.4-1, is not excused by an asserted delay by the post office, Carma M. Pooley, 29 IBLA 304 (1977); Helen E. Ferris, 26 IBLA 383 (1976); John Paul Pratt, 24 IBLA 110 (1976). In Mar-Win Development Co., 20 IBLA 383 (1975), the Board stated that even assuming the post office was negligent in delaying the mail, that was no basis for relief in a case involving a lease offer. In those cases the post office served, in effect, as the agent of the offeror in transmitting the rental.

On the other hand, where the post office has been the agent, in effect, of BLM for transmitting the notice, its negligence has precluded effective legal notice. Thus, a case which is closely analogous to this held that where none of the three circumstances listed in 43 CFR 1810.2(b) exists (i.e., appellant has not moved without leaving a forwarding address, refused delivery, or no such address exists), the fault for non-delivery of the notice of deficiency in the first year's rent must rest with the post office. Jack R. Coombs, 28 IBLA 53 (1976). There the notice was returned to BLM marked unclaimed and the appellant was able to prove that he had left a forwarding address and that other mail was forwarded.

The issue here is whether there was legal notice given. The post office was used as BLM's agent, in effect, in transmitting the notice. Appellants' lease offer was rejected because the rental was not received within 15 days from February 15, 1978, the time of return to BLM by the post office of the notice that the rental was due. Appellants received this Board's letter requesting additional information at the address used for the notice. The uncontradicted statements of Mr. Ames and the secretary indicate that none of the three circumstances set forth in regulation 43 CFR 1810.2(b) and Coombs, supra, existed in this instance. It is evident that at the time the post office returned the letter marked "moved left no address," the Jefferson Street address was a proper business address of the appellants and remains so.

We take official notice of the regulations in the Postal Service Manual, Chapter 1, Subchapter 160, Part 168, dealing with certified mail, incorporated by reference under 5 U.S.C. § 552(a), in 39 CFR 111.1. These regulations require a carrier to leave a notice of the certified mail if he cannot deliver the certified letter for any reason. The letter is to be held at the post office. If not called for within 5 days, a second notice is to be issued. If the letter is not called for or redelivery requested, it is to be returned to the sender at the expiration of the period stated by the sender or after 15 days if no period is stated. Mr. Ames states the letter was not held at the post office, nor was any notice of attempted delivery left with the secretary. The letter was dated February 7, 1978. It is marked as returned to the Utah State Office February 15, 1978, thus substantiating Mr. Ames' statements.

Taking the statements submitted with this appeal as true, it appears that the postman would not leave the letter with the secretary in Ms. Harris' office although he was advised she would return in a few days. Thus, from these statements and the indication on the envelope, it appears there was no delivery to the address of record by the postman under post office procedures. As indicated before, under 43 CFR 1810.2(b), ordinarily delivery of a certified letter to the address of record will constitute proper notice to the addressee. Robert D. Nininger, 16 IBLA 200 (1974). However, assuming the facts as stated by appellants, it is apparent that the postal service erred in its handling of the certified mail from BLM. Therefore, we conclude that the February 15 date cannot be considered as the date of service of the notice under 43 CFR 1810.2(b) since the notice was not refused, the address was proper, the return of the notice by the post office for the reason given was not correct, and the post office did not follow its own required procedures for handling certified mail. Within 15 days after receiving the telephone information that their offer was first drawn, appellants tendered the rental payment. Therefore, if all else be regular, the payment shall be considered as being timely and a lease should issue to appellants. 1/

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 case is remanded to BLM.

Joan B. Thompson
Administrative Judge

We concur.

Frederick Fishman
Administrative Judge

Anne Poindexter Lewis
Administrative Judge

1/ If the BLM feels that a further investigation is warranted into the facts of this case to assure that the facts were as stated by appellants and that there are no countervailing considerations, the offer would be suspended during that time.

