

KATHLEEN A. RUBENSTEIN

IBLA 78-549

Decided September 29, 1978

Appeal from a decision of the Montana State Office, Bureau of Land Management, rejecting appellant's offer in a simultaneous oil and gas lease drawing. M-40282.

Reversed.

1. Oil and Gas Leases: Rentals

The rent for oil and gas lease rights obtained in a simultaneous oil and gas lease drawing must be received in the proper office of the Bureau of Land Management within 15 days from the date of receipt of notice that such payment is due. Where there is no proof that service of the notice that payment is due was made upon offeror more than 15 days before the payment is received by the proper office of BLM, such payment will be deemed as timely made.

APPEARANCES: Kathleen A. Rubenstein, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Kathleen A. Rubenstein appeals from a decision of the Montana State Office, Bureau of Land Management (BLM), rendered June 22, 1978, rejecting her offer M-40282 in the simultaneous oil and gas lease drawing conducted in March 1978.

Appellant's offer was selected first and accorded first priority for oil and gas rights to Parcel MT-649.

The case file discloses that a notice was mailed to appellant by certified mail on April 7, 1978, informing appellant of her successful offer and of the requirement that she pay the first year's rent for the parcel within fifteen (15) days of receipt of the notice.

Although this notice was sent with a return receipt requested, no receipt was ever returned to BLM.

Thereafter, on May 23, 1978, BLM mailed a second notice and again requested that a return receipt be returned showing the date of appellant's receipt. No such receipt was ever returned to BLM.

On June 12, 1978, BLM received appellant's check for the first year's rent and also a number of stipulations which bear the signature of appellant under date of June 8, 1978.

BLM rejected appellant's offer as untimely inasmuch as it had not been received within 15 days from date of receipt of BLM's notice, but allowed appellant 30 days to furnish evidence of the date of receipt of the notice. BLM further notified appellant that it would make final its decision to reject appellant's offer if no evidence were forthcoming.

It is worthy of note that BLM bases its decision solely upon the alleged failure of appellant to pay rent within 15 days of receipt of the second notice; BLM does not rely for its decision on the first notice mailed April 7.

Rubenstein appeals from this decision and contends that the obligation to show the date of her receipt of the notice belongs to BLM. Appellant maintains that this is proper, because BLM chose the U.S. Postal Service as its agent for delivery of the notice and hence must bear the responsibility of the Postal Service's failure to furnish proof of receipt of the notice.

[1] The pertinent regulation, 43 CFR 3112.4-1, provides the law applicable to the facts at hand:

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.

We reverse the decision of BLM and do so without regard to the question of who has the burden of producing evidence of the date of appellant's receipt of the notice. As set forth above, BLM mailed its notice to appellant on Tuesday, May 23. Appellant's rental check was received by BLM on Monday, June 12.

If BLM's notice to appellant had been received by her on May 26, or thereafter, the rental check received by BLM on June 12 would be timely. The case file discloses that a certified letter mailed from

the BLM in Billings, Montana, on June 22, 1978, required 5 days to be delivered to Ms. Rubenstein in Denver, Colorado. If, therefore, the mails were operating in due course, the notice mailed by BLM on May 23 might not have been received by appellant before May 30 because of the Memorial Day holiday, Monday, May 29. The available evidence contradicts BLM's assertion that appellant's check was not received in a timely fashion.

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 reversed.

Douglas E. Henriques
Administrative Judge

We concur.

James L. Burski
Administrative Judge

Anne Poindexter Lewis
Administrative Judge

