

ESTATE OF F. J. BRADSHAW

IBLA 78-633

Decided November 20, 1979

Appeal from decision of the Wyoming State Office, Bureau of Land Management, denying oil and gas lease W 64552.

Reversed and remanded.

1. Applications and Entries: Inheritability -- Oil and Gas Leases:
Generally -- Oil and Gas Leases: First-Qualified Applicant

Where an applicant with first priority dies after filing an oil and gas lease application but prior to issuance of the lease, his personal representative, heirs, or devisees are entitled to the lease provided there is filed an offer to lease in compliance with 43 CFR 3102.8.

APPEARANCES: James A. Holtkamp, Esq., Van Cott, Bagley, Cornwall & McCarthy, Salt Lake City, Utah, for appellant.

OPINION BY ADMINISTRATIVE JUDGE GOSS

The Estate of Franklin J. Bradshaw, by Walker Bank & Trust Company, Administrator, appeals from the August 15, 1978, decision of the Wyoming State Office, Bureau of Land Management (BLM), which disqualified Bradshaw to receive oil and gas lease W 64552.

Bradshaw obtained priority for this parcel in the June 1978 simultaneous oil and gas drawing. 43 CFR 3112.4-1 requires that rental be received in the proper office within 15 days of receipt of the notice that the payment is due. The notice was received July 17, 1978. therefore, the rental check was due on or before August 1, 1978. On July 21, 1978, BLM received a rental check from Bradshaw, but returned it because the figure amount and the written amount did not agree. Bradshaw was killed on July 23, 1978. BLM received a replacement check submitted for the estate on August 7, 1978.

Bradshaw was held to be disqualified because "a negotiable check for the advance rental was not received here within the 15 days allowed by regulation 43 CFR 3112.4-1."

On appeal, the following arguments were presented. Despite the rigid language in the regulation, this Board has recognized a few situations where unforeseen circumstances beyond the control of the applicant justified reversal of the disqualification of a lease offer. E.g., Charles P. Ricci (On Reconsideration), 34 IBLA 186 (1978) (bank error), and Jack R. Coombs, 28 IBLA 53 (1976) (postal error). Appellant herein alleges that Utah law requires letters testamentary to be issued before an estate administrator has legal authority to issue a check on behalf of the estate. No one was so authorized until July 31, 1978, when Walker Bank and Trust Company was appointed administrator and received the letters testamentary. The bank issued the check immediately. Appellant submits that the hiatus between Mr. Bradshaw's death and the appointment of an administrator should not be counted in the 15-day limit specified by 43 CFR 3112.4-1, that the intent of the regulation is to afford the successful oil and gas lease applicant a full 15 days within which to submit the initial rental, and that if the hiatus is subtracted, the submission was timely.

Departmental regulation 43 CFR 3102.8 authorizes:

If an offeror dies before the lease is issued, the lease will be issued to the executor or administrator of the estate if probate of the estate has not been completed * * *. [Emphasis added.]

Section 3112.4-1 states:

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.

[1] The BLM decision held that F. J. Bradshaw was disqualified to receive a lease because he had not made payment by the 8th day after his decease. It is correct that he was disqualified, but the reason therefor was his intervening death, and not the deceased drawee's failure to make payment. Lamar M. Richardson, Jr., 42 IBLA 333 (1979).

Section 3112.4-1 contemplates a full 15 days within which a winning applicant is capable of responding to the notice of rental due.

To hold that the 15 days had expired under the circumstances here would thwart the intent of section 3112.4-1 and make impossible the reasonable protection of heirs under section 3102.8.

The occurrence of the death terminated the regulation's timetable for required actions by Bradshaw, and instituted the different regulatory procedure set out in section 3102.8. that section clearly contemplates that any necessary action be taken by an executor or administrator. It would not be unusual that an executor or administrator would not even be deemed qualified before expiration of the 15-day payment period set forth in section 3112.4-1. Section 3112.4-1 must therefore be read as qualified by section 3102.8, which is the specific section providing for the unusual situation before us. The interests of the heirs of the successful offeror are to be protected, and the administrator is intended to have a reasonable time in which to make payment.

Here, when the administrator obtained authority to do so, it promptly tendered the corrected amount. BLM should accept the check, institute the proceedings required by 43 CFR 3102.8, and allow the administrator to submit the collateral information required by 43 CFR 3102.8. As stated by the Board in Lamar M. Richardson, Jr., supra at 336-37, "[T]here is no time constraint in the regulations for the filing such substitute offer to lease * * *." Assuming the administrator acts with reasonable dispatch, within any appropriate deadlines imposed by BLM, the payment should be held timely.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the State Office is reversed and the case remanded for appropriate action.

Joseph W. Goss
Administrative Judge

We concur:

Newton Frishberg
Chief Administrative Judge

Douglas E. Henriques
Administrative Judge

