

WILLIAM H. BEVIS

IBLA 80-285

Decided January 13, 1981

Appeal from decision of the Wyoming State Office, Bureau of Land Management, rejecting oil and gas lease offer W-69465 for failure to pay advance annual rental timely.

Affirmed.

1. Oil and Gas Leases: Applications: Generally--Oil and Gas Leases: Applications: Drawings--Oil and Gas Leases: First Qualified Applicant--Oil and Gas Leases: Rentals
When, in a drawing of simultaneously filed oil and gas lease offers, the first-drawn offeror is notified to submit the first year's advance rental, that rental must be received by the proper office within the prescribed 15 days. Where the offeror has failed to submit a signed check for the advance rental within the time allowed, he is properly disqualified to receive the lease.
2. Notice: Generally--Regulations: Generally

All persons dealing with the Government are presumed to have knowledge of duly promulgated regulations.

APPEARANCES: Craig R. Carver, Esq., Denver, Colorado, for appellant.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

William H. Bevis filed a simultaneous noncompetitive oil and gas lease offer drawing entry card (DEC) for parcel No. WY 4218 in the

August 1979 drawing in the Wyoming State Office, Bureau of Land Management (BLM), which card was drawn with first priority. The card was filed through a leasing service, Stewart Capital Corporation. The record address for the offeror on the DEC was Stewart Capital's office address, 115 S. LaSalle Street, Room 2435, Chicago, Illinois.

On October 5, 1979, BLM sent Bevis a notice at the LaSalle Street address that he was entitled to a lease on this parcel, and that he was required to pay the first year's annual rental within 15 days of receipt of his notice or he would automatically be disqualified to receive the lease under 43 CFR 3112.4-1.

The record shows that Bevis received this notice by the leasing service on October 9, 1979. Thus the annual rental was due no later than October 24, 1979, 15 days later. On October 15, 1979, BLM received a rental check from Bevis, dated October 10, 1979, for \$640, but it was returned because it was unsigned. This unsigned check was returned directly to Bevis at his home address, 3137 Lisa Court, Tallahassee, Florida. BLM did not receive the replacement check until October 29, 1979, 5 days after the deadline allowed by the regulation. On December 18, 1979, BLM issued its decision disqualifying the lease offer because of failure to submit the first year's advance rental within the time allowed.

[1] BLM properly rejected appellant's offer. The requirements of 43 CFR 3112.4-1 are clear, and the penalty for failing to meet them is explicit: "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 payment is due. The drawee failing to submit the rental payment within the time allowed will be automatically disqualified to receive the lease, * * *." (Emphasis supplied.) This requirement is strictly enforced by the Department. Donald E. Jordan, 41 IBLA 60 (1979); Milton Knoll, 38 IBLA 319 (1978); Gavino San Diego, 36 IBLA 300 (1978); Susan Dawson, 35 IBLA 123 (1978), aff'd Dawson v. Andrus 612 F.2d 1280 (10th Cir. 1980); Charles M. Brady, 33 IBLA 375 (1978); and cases cited. Appellant's correct payment was not received by BLM until October 29, 1978, or 5 days too late. Accordingly, BLM properly determined that appellant was disqualified to receive the lease and rejected the offer.

Appellant argues that BLM's return of the check to the drawee's home address rather than to the address of record was the cause of the late submission and, therefore, the regulation 43 CFR 3112.4-1 should not be strictly enforced resulting in disqualification of the lease offer. Appellant contends that direct notice to his home address of the unsigned check rather than notice to his filing service has worked a hardship because the filing service would better know the importance of the deadline and the effect of a late submission. Appellant also contends that because BLM did not mail the crucial notice to his last record address as per 43 CFR 1810.2(a) his failure to make the timely rental payment is excusable.

These arguments are without merit. An unsigned check is a non-negotiable instrument and is not acceptable payment for the advance rental. Richard V. Bowman, 19 IBLA 261, 264 (1975) and authorities cited therein. Appellant was obligated to send in proper payment in the first instance. The original notice clearly stressed the need for timely payment on pain of rejection of the lease offer, citing the pertinent regulation, 43 CFR 3112.4-1. Appellant must bear the consequences of his oversight in failing to assure himself that the initial rental check was signed before he mailed it to BLM. Bureau personnel had no affirmative duty to take any special measure to save appellant from the possible consequences of his own negligence. Richard V. Bowman, supra. In these circumstances it was immaterial that the unsigned check was returned to appellant's home address rather than to the address of Stewart Capital.

[2] Appellant argues, essentially, that they employed Stewart Capital because Stewart was aware of the rules, regulations, and laws which bear on noncompetitive oil and gas lease offers and would have insured timely payment. All persons dealing with the Government are presumed to have knowledge of duly promulgated regulations. 44 U.S.C. §§ 1507, 1510 (1976); Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947); Phyllis Wood, 46 IBLA 309 (1980); Bernard P. Gencorelli, 43 IBLA 7 (1979); Juan Munoz, 39 IBLA 72 (1979). Appellant cannot claim ignorance of these requirements as an excuse for noncompliance.

In addition, appellant's error cannot be waived in the face of intervening rights of the No. 2 and No. 3 drawees. Milton Knoll, supra at 325. This Board has repeatedly considered the intervening rights of the second and third drawees in similar situations, and in a recent case of C. Panos, 42 IBLA 326 (1979), we reiterated that:

Appellant's contention based on the arguendo assumption that if the payment did arrive late the authorized officer could nevertheless have accepted it and issued the lease to appellant is without merit. The regulation, 43 CFR 3112.4-1, plainly states, "The drawee failing to submit 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" The disqualification, being automatic, thus affords no latitude for any exercise of discretion. Moreover, this automatic disqualification advances the priority of the next drawee and precludes implementation of 43 CFR 1821.2-2(g), because the rights of a third party have intervened eo instante, upon failure of the first drawee to submit payment timely. Robert D. Nininger, 16 IBLA 200 (1974), aff'd Nininger v. Morton, Civ. No. 74-1246 (D.D.C. filed March 25, 1975), wherein the Court stated the following conclusion of law: "* * * The regulations 1810.2(b) and 3112.4-1, Title 43, Code of

Federal Regulations, are mandatory and apply to the plaintiff. Said regulations do not permit the consideration of excuses for failure to remit payment. [Emphasis in original.]

See also Ballard E. Spencer Trust, Inc. v. Morton, 544 F.2d 1067, 1070 (1976), where the Court said, "Giving an unqualified first-drawn entrant additional time to file does infringe on the rights of the second-drawn qualified offer."

Donald E. Jordan, 35 IBLA 290, 295 (1978).

Accordingly, 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 Wyoming State Office is affirmed.

Anne Poindexter Lewis

Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

Edward W. Stuebing
Administrative Judge

