

W. W. PRIEST
MICHAEL MANDUCA

IBLA 81-20
81-58

Decided June 30, 1981

Separate appeals from decisions of the Montana State Office, Bureau of Land Management, dismissing protests against rejection of various oil and gas lease offers. M 48498, etc.; MTA-Sims-002; MTA-Sims-010.

Reversed and remanded.

1. Accounts: Payments -- Oil and Gas Leases: Applications: Filing -- Oil and Gas Leases: Competitive Leases -- Payments: Generally

A bank personal money order is an acceptable form of payment in satisfaction of the filing fee to accompany simultaneous oil and gas lease offers according to 43 CFR 3112.2-2.

2. Oil and Gas Leases: Applications: Generally -- Regulations: Interpretation

Regulations should be so clear that there is no basis for an oil and gas applicant's noncompliance with them.

APPEARANCES: W. W. Priest and Michael Manduca, pro sese.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

W. W. Priest and Michael Manduca separately appeal from September 12, 1980, decisions of the Montana State Office, Bureau of Land Management (BLM), which dismissed their individual protests against BLM's rejection of their July 1980 simultaneous oil and gas

lease offers. ^{1/} BLM excluded both sets of drawing entry cards (DEC's) from the drawing because it found the accompanying form of payment unacceptable under 43 CFR 3112.2-2, which states in pertinent part: "The filing fee shall be paid in U.S. currency, Post Office or bank money order, bank cashier's check, made payable to the Bureau of Land Management." While Priest and Manduca submitted the proper amount, each used as their form of payment a bank personal money order.

Both appellants assert that the remittances were indeed, in the form of a bank money order, which complies with the terms of 43 CFR 3112.2-2. Appellant Priest insisted that the same form of payment had been accepted for the July 1980 filings in the Eastern States, Wyoming and New Mexico State offices. Appellant Manduca has submitted a copy of his remittance card and a letter from Citibank which stated that Manduca's remittance was in the form of "Citibank's official money order." Appellants both basically insist that the remittances they submitted are covered by the term "bank money order," a term not defined in the regulation.

[1] The nature of and differences between bank money orders and bank personal money orders within the context of 43 CFR 3112.2-2 was recently examined by this Board in Charles J. Rydzewski, 55 IBLA 373, 88 I.D. (1981). Therein, we noted:

A bank money order has been defined as "an instrument issued by an authorized officer of a bank and directed to another, evidencing the fact that the payer may demand and receive upon indorsement and presentation to the bank the amount stated on the face of the instrument; such an instrument is paid from the bank's funds and liability for payment rests solely on the issuing bank." 2 Anderson, Uniform Commercial Code, § 3-104:20 (2d ed. 1971). A personal money order issued by a bank for a consideration accepted as adequate by the bank is a purchase of the credit of the bank and constitutes a means of establishing or transmitting that credit so that once issued to the purchaser it is no longer revocable by the bank. 10 Am. Jur. 2d, Banks § 545 (Supp. 1980). Thus, it would appear that the payee of a money order issued by a bank may be assured that funds to cover the instrument have been transferred to the bank.

Id. at 376-77, 88 I.D. at . We would note that both appellants herein actually submitted bank personal money orders.

As this Board noted in Rydzewski, however, an essential difference between the normal bank money order and the bank personal money order lies in the fact that the latter, unlike the former, entails no liability until acceptance and thus is subject to a stop payment order.

^{1/} Priest filed offers on seven parcels: MT-13, MT-36, MT-41, MT-87, MT-88, MT-133, MT-134. Manduca also filed for seven parcels: MT-8, MT-36, MT-37, MT-41, MT-42, MT-104, MT-133. Appellant Manduca's remittance also included filing fees for three parcels for another individual, Pia Manduca, who did not join his appeal.

See also Ross L. Kinnaman, 48 IBLA 239 (1980). The question is whether this difference precludes acceptance of appellants' submissions.

[2] The 1980 amendments of 43 CFR 3112.2-2 were issued, at least partially, in response to an audit report concerning remittances for filing fees which had proved to be uncollectible. The audit report suggested that personal checks no longer be an acceptable form of remittance. It is clear that in adopting the 1980 changes, it was contemplated that only guaranteed remittances of specific types would be acceptable for future filings. This is shown in the comments accompanying the promulgation of this amendment to the effect that guaranteed remittances were the only acceptable type for payment of the filing fees (see 45 FR 35159). But, as this Board has had occasion to note, intent is not necessarily "coincidental with result in legal draftsmanship" Georgette B. Lee, 3 IBLA 272, 276 (1971).

The applicable regulation, 43 CFR 3112.2-2, does not specify what kinds of bank money orders are acceptable forms of remittance, and which are not. From a reading of the regulation, it is not clear whether the words "bank money order" are used in a generic sense, which could include bank personal money orders, or as a term of art, which could exclude bank personal money orders. A regulation should be sufficiently clear that there is no basis for an oil and gas applicant's noncompliance with it. Charles J. Rydzewski, *supra*; Bill J. Maddox, 34 IBLA 278 (1978); A. M. Shaffer, 73 I.D. 293 (1966); William S. Kilroy, 70 I.D. (1963); Donald Ingersoll, 63 I.D. 397 (1956). See Johnson v. Udall, 292 F.Supp. 738, 750 (C.D. Cal. 1968). Even were we to assume that the Department had meant to exclude bank personal money orders from the term "bank money order," it should have so stated in the regulation itself. Mary I. Arata, 4 IBLA 201, 78 I.D. 397 (1971); A. M. Shaffer, *supra*. Absent a clear directive of which all individuals could be charged with constructive knowledge, we will not enforce a prohibition against bank personal money orders under 43 CFR 3112.2-2.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are reversed and the case files are remanded for further action consistent with this decision.

James L. Burski
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Bruce R. Harris
Administrative Judge

