

ESTATE OF ISIDOR DEEMAR

IBLA 81-721

Decided April 13, 1982

Appeal from decision of the Eastern States Office, Bureau of Land Management, holding for rejection simultaneous oil and gas lease offer. ES 15459.

Reversed and remanded.

1. Oil and Gas Leases: First Qualified Applicant--Rules of Practice: Generally

Where a BLM state office decision requires supplemental filings within a specified period of time by a priority applicant for an oil and gas lease to be issued through the simultaneous filing system, in order to avoid subsequent BLM action to reject the lease offer, the rights of applicants drawn with subsidiary priority do not vest unless and until BLM takes action to reject the offer. Where the filings are subsequently received before the rights of applicants drawn with a subsidiary priority have intervened, the delay in filing may be waived pursuant to 43 CFR 1821.2-2(g).

2. Applications and Entries: Inheritability--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: Irving R. Deemar, executor, for the Estate of Isidor Deemar.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

The estate of Isidor Deemar, by Irving R. Deemar, executor, appeals from a March 20, 1981, decision of the Eastern States Office, Bureau of Land Management (BLM), which held for rejection oil and gas lease offer ES 15459. Isidor Deemar obtained first priority for this parcel in the September 1975 oil and gas drawing. BLM does not dispute that Deemar timely paid the required \$459.50 initial rental for the 918.41 acres in ES 15459. By letter dated June 28, 1977, the Director of the Eastern States Office, BLM, responded to an inquiry from Deemar, stating that it would defer final action on this lease application pending land-use planning for the area, part of the Warrior Coal Field. The letter noted that the surface of these lands is in private ownership, while the oil and gas was reserved to the United States. This letter also pointed out that the annual rental had risen to \$1 per acre and concluded, "[a]dditional rental must be paid before the lease may issue, however, it will be requested at a later date." ^{1/} After corresponding with surface owners (1978), preparing an environmental assessment record (No. YF-923-09-20, issued August 20, 1979), and contacting the Alabama Historical Commission (1980), BLM finally contacted Deemar.

By decision dated November 14, 1980, BLM required Isidor Deemar to pay \$459.50, citing 43 CFR 3103.3, and to execute protective stipulations and file a qualifications statement. The decision concluded: "Thirty days from receipt hereof is allowed to comply with this decision. Failure to do so will result in this office taking action to reject the offer(s)." On January 2, 1981 (39 days after receipt), BLM received the signed stipulations accompanied by a letter from the applicant's son, Irving R. Deemar, who said that his 86-year old father had overlooked the November 14, 1980, notice due to hospitalization for extreme medical difficulties. Irving Deemar's reply letter also stated, "I will see that my father mails you the \$459.50. He paid this amount years ago." Irving Deemar's certification of qualifications, dated January 10, 1981, was filed January 12, 1981. On March 2, 1981, unknown to BLM, Isidor Deemar died.

On March 20, 1981, BLM issued a second decision. After summarizing the November 14, 1980, decision and Irving Deemar's response, this decision states:

Isidor Deemar must provide this office with evidence showing just cause why the requirements of the November 14, 1980, decision were not timely met, and must submit the additional rental of \$459.50. If such evidence and rental are not filed in this office within 30 days of receipt of this decision, the offer of Isidor Deemar for ES 15459 will be rejected and closed without further notice.

On behalf of his father's estate, Irving R. Deemar appeals. ^{2/}

^{1/} The additional rental was required because the rental rate for noncompetitive oil and gas leases was raised from 50 cents per acre to \$1 per acre, effective Feb. 1, 1977. See 42 FR 1032 (Jan. 5, 1977).

^{2/} The file does not indicate when this Mar. 20, 1981, decision was received. In his notice of appeal, dated May 8, 1981, Irving Deemar states that the

On appeal, Irving R. Deemar submits copies of the death certificate for Isidor Deemar and the certificate indicating Irving R. Deemar's appointment as executor of his father's estate and notes submission of a cashier's check for \$495.50 additional rental (rather than the \$459.50 required). He asks that the late filings be excused. In a subsequent letter he details at some length his father's final medical difficulties.

[1] In certain circumstances 43 CFR 1821.2-2(g) 3/ permits the consideration of late filing of documents or late payment. Such filings cannot be considered where "[t]he rights of a third party have intervened." 43 CFR 1821.2-2(g)(2). Because the Deemar oil and gas lease offer was drawn from simultaneous filings it is necessary to determine whether the rights of the second drawee have forestalled use of the remedial provisions of 43 CFR 1821.2-2(g), thus preventing acceptance of any supplemental filings. See F. Peter Zoch, 60 IBLA 150 (1981).

In F. Peter Zoch, supra, the Board considered a New Mexico State Office decision which informed the appellant that "[i]n the event of noncompliance with this decision within the time allowed, this offer to lease application will be considered finally rejected and closed." (Emphasis added.) We held that the effect of BLM's decision in Zoch was such that, upon the passage of the last day in which the filing could be made, the priority right of the number two offeror vested and served to forestall utilization of the remedial provisions of 43 CFR 1821.2-2(g) to a late submission.

In the instant case, however, BLM concluded its November 14, 1980, decision differently. The appellant was allowed 30 days to comply, and informed that "Failure to do so will result in this office taking action to reject the offer(s)." (Emphasis added.) BLM obligated itself to take further action to reject Isidor Deemar's offer. That further action consisted of the March 20, 1981, decision holding the offer for rejection. Because this language required further action of BLM, the decision was not final and, thus, the rights of number two did not vest.

[2] When BLM did act to reject this offer on March 20, 1981, Isidor Deemar had already died. The occurrence of the death triggered the regulatory procedure set out in 43 CFR 3102.2-8. That section contemplates that

fn. 2 (continued)

decision was received "approximately eight days ago and therefore I am filing this appeal in a timely manner."

3/ 43 CFR 1821.2-2(g) reads:

"(g) When the regulations of this chapter provide that a document must be filed or a payment made within a specified period of time, the filing of the document or the making of the payment after the expiration of that period will not prevent the authorized officer from considering the document as being timely filed or the payment as being timely made except where:

"(1) The law does not permit him to do so.

"(2) The rights of a third party or parties have intervened.

"(3) The authorized officer determines that further consideration of the document or acceptance of the payment would unduly interfere with the orderly conduct of business."

any necessary action be taken by an executor or administrator. The regulation is designed to provide reasonable protection of the interests of the heirs of a successful offeror in unusual situations like the one before us. Estate of F. J. Bradshaw, 44 IBLA 107 (1979). The regulation affords the executor of an estate a reasonable time to make any necessary payments. Lamar M. Richardson, Jr., 42 IBLA 333 (1979).

Here, after the executor obtained authority to do so, he tendered payment. BLM should accept the appropriate payment, institute the proceedings required by 43 CFR 3102.2-8, and allow the executor to submit the collateral information that 43 CFR 3102.2-8 requires. Estate of F. J. Bradshaw, supra. As this Board stated in Lamar M. Richardson, Jr., supra at 336-37, "[T]here is no time constraint in the regulations for filing such substitute offer to lease * * *." Assuming the executor acts with reasonable dispatch to complete the filings required by 43 CFR 3102.2-8, 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 Eastern States Office is reversed and the case remanded for appropriate action.

James L. Burski
Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

Douglas E. Henriques
Administrative Judge

