

KATHY L. PHILLIPS

IBLA 82-52

Decided June 17, 1982

Appeal from decision of Montana State Office, Bureau of Land Management, rejecting simultaneous oil and gas lease application. M 49547.

Affirmed.

1. Oil and Gas Leases: Noncompetitive Leases -- Oil and Gas Leases:
Rentals

Where an applicant for a noncompetitive oil and gas lease fails to submit the first year's advance rental within 30 days from receipt of notice to do so, as required by 43 CFR 3112.4-1(a), and there is insufficient evidence that the bank's failure to honor a check submitted timely to BLM in payment of the rental was due to bank error, the application is properly rejected.

APPEARANCES: Kathy L. Phillips, pro se.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

Kathy L. Phillips has appealed from a decision of the Montana State Office, Bureau of Land Management (BLM), dated September 28, 1981, rejecting her simultaneous oil and gas lease application for failure to submit timely the first year's advance rental, pursuant to 43 CFR 3112.4-1(a). Appellant's application was drawn with first priority for parcel MT 46 in the November 1980 simultaneous oil and gas lease drawing.

The rationale for the BLM decision was that "check #987 dated August 20, 1981, in the amount of \$440 drawn on the Littleton National Bank of Littleton, Colorado, was returned by the bank as uncollectible on September 21, 1981." In her statement of reasons for appeal, appellant contends that return of the check was due to an "error" on the part

of the bank. She encloses a letter from Heide Finnegan, Operations Manager, Littleton National Bank, dated October 7, 1981, which states:

Due to some confusion on the Phillips' account, a check was returned on 8/27/81 in the amount of \$440.00. * * * The following is a verification of their checking account. Date opened August 7, 1979[.] Average Balance \$620.00[.] This is a satisfactory account. We also have a savings account and a line of credit/VISA.

[1] The applicable regulation, 43 CFR 3112.4-1(a), provides, in relevant part:

The lease agreement, consisting of a lease form approved by the Director, Bureau of Land Management, and stipulations included on the posted list or later determined to be necessary, shall be forwarded to the first qualified applicant for signing, together with a request for payment of the first year's rental.

* * * * *

The executed lease agreement and the applicant's rental payment shall be filed in the proper Bureau of Land Management office within 30 days from the date of receipt of notice. [Emphasis added.]

On August 17, 1981, appellant received a notice from BLM requiring her to sign and return the enclosed lease forms and to submit the first year's rental payment (\$440) "within 30 days from receipt of this notice." On August 24, 1981, BLM received check #987 in the amount of \$440, payable to BLM and signed by appellant. The check was drawn on the Littleton National Bank.

Failure to submit timely the first year's advance rental with an executed lease agreement, in accordance with 43 CFR 3112.4-1(a), properly results in rejection of the offeror's simultaneous oil and gas lease application, pursuant to 43 CFR 3112.6-1(d). Theresa Jibilian, 57 IBLA 354 (1981). We have long held that no excuses for failure to submit timely the first year's advance rental will be permitted. Robert E. Bergman, 53 IBLA 122 (1981), and cases cited therein. Accordingly, where a check submitted in payment of the first year's advance rental is returned by the drawee bank, BLM may properly reject the offeror's application, as there has not been a proper payment made timely. Jose V. Lim, 44 IBLA 96 (1979); Karen L. Brown, 31 IBLA 239 (1977).

However, where the return of the check is shown to have been as a result of a confirmed bank error, the subsequent collection and payment of the check relates back to the time that the check was originally tendered to BLM. Jose V. Lim, *supra*, and cases cited therein.

In an order dated December 1, 1981, we noted that the record did not establish that the return of appellant's check was due to bank error and required appellant to submit additional evidence. Referring to the October 1981 letter from the Littleton National Bank, we stated:

The letter states that the return of appellant's check was due to "confusion" with appellant's account. However, the letter does not state whether such confusion was generated by the bank or by appellant. Furthermore, while the letter indicates that appellant's account had an average balance sufficient to cover the check, it leaves open the question whether the account had sufficient funds to cover the check at the time the check was presented for payment. [Emphasis in original.]

Order dated December 1, 1981, at 1.

On December 22, 1981, appellant submitted an additional letter, signed by Heide Finnegan, Operations Manager, Littleton National Bank, and dated December 18, 1981, which states:

On August 28, 1981 a check in the amount of \$440.00 and numbered #987 was presented for payment. [1/] The account balance on this day was \$60.59. Mrs. Phillips has indicated that there has been some difficulty with their payroll deposits.

On September 4, 1981 the Littleton National Bank did receive a wire transfer in the amount of \$1350.25, however, this wire should have been received on September 1, 1981. Attached you will find photo copies of original bank records showing the wire of 9/4/81, and a refund by The Littleton National Bank of service charges due to the wire being sent to a wrong bank. It is our understanding from Mrs. Phillips that the payroll should have been sent on approximately August 25 or 26.

Included with the letter were copies of bank records indicating the deposit on September 4, 1981, of \$1,350.25 to appellant's account and the crediting to that account on the same date of \$21. The credit slip states: "D/K Phillips -- wire transfer coming in, went to wrong bank."

Based on the evidence presented by appellant, we cannot conclude that the return of appellant's check was due to bank error. The December 18, 1981, letter from the bank indicates that check #987 was presented for payment "[o]n August 28, 1981, but it states that the wire transfer, was not due to be received until September 1, 1981. The

^{1/} We note that the Oct. 7, 1981, letter from this bank official stated that the check was "returned on 8/27/81," rather than Aug. 28, as stated in this letter.

letter also indicates that the wire transfer was expected by appellant to be sent "on approximately August 25 or 26." We presume that had the wire transfer been sent on either of those dates, it would have been received in time to cover check #987. There is no indication, however, that the wire transfer was sent on either of those dates. At best, the letter establishes that sufficient funds should have been on deposit in appellant's account on September 1, 1981; that funds were not received until September 4; that the delay resulted from the wire being sent to the wrong bank; and that the Littleton National Bank refunded service charges because of the wire being sent to the wrong bank. There is absolutely no evidence that the bank erred in refusing to honor appellant's check upon presentment on August 28.

Appellant has failed to establish that the return of her check in payment of the first year's advance rental was due to bank error. BLM properly rejected appellant's simultaneous oil and gas lease application.

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 affirmed.

Bruce R. Harris
Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

Douglas E. Henriques
Administrative Judge

