

Appeal from decision of the Colorado State Office, Bureau of Land Management, denying protest of issuance of simultaneous oil and gas lease to the applicant receiving second priority. C-33043.

Affirmed.

1. Evidence: Presumptions -- Oil and Gas Leases: Rentals

The legal presumption that administrative officials have properly discharged their duties and not lost or misplaced legally significant documents filed with them is rebuttable by probative evidence to the contrary. However, an affidavit that a lease rental check was enclosed in the same envelope together with other documents that were received by BLM must be corroborated by other evidence to establish filing where there is no evidence of receipt of the payment in the file.

2. Oil and Gas Leases: Applications: Drawings -- Oil and Gas Leases: First-Qualified Applicant -- Oil and Gas Leases: Rentals

Where an applicant for a noncompetitive oil and gas lease in the simultaneous filing program 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), his application is properly rejected under 43 CFR 3112.6-1(d).

APPEARANCES: James E. Nesland, Esq., Denver, Colorado, for appellant.

OPINION BY ADMINISTRATIVE JUDGE GRANT

R. E. Frasch appeals from the November 25, 1981, decision of the Colorado State Office, Bureau of Land Management (BLM), dismissing his

protest of issuance of oil and gas lease C-33043 to the second-drawn applicant for parcel CO-167. Appellant was the first-drawn applicant for that parcel in the May 1981 simultaneous oil and gas lease drawing. The record discloses that BLM issued a notice dated August 25, 1981, informing appellant that his application had received priority for an oil and gas lease for parcel CO-167. The notice called upon appellant to execute the lease forms and stipulations which were enclosed and to return them to BLM accompanied by payment of the first year's rental within 30 days of receipt of the notice. Appellant was further advised by the notice that failure to execute and return the forms or pay the required rental within 30 days would disqualify him from receiving the lease and result in consideration of the applicant with next priority.

Appellant received notice that his rental payment was due on August 31, 1981. Thus, the rental payment was required to be filed with BLM on or before September 30, 1981. Although BLM acknowledges receipt of the executed lease forms and stipulations, it contends that a remittance from appellant in payment of the first year's rental was never received. Consequently, BLM regarded appellant as disqualified to receive the lease and commenced processing the application of the second drawee. The lease was issued to the latter on October 30, 1981, with an effective date of November 1, 1981. Appellant's protest followed.

In his statement of reasons for appeal, appellant asserts that he mailed and the Colorado State Office received the first year's rental with the executed lease agreement as required by 43 CFR 3112.4-1. He argues that "the Colorado State Office, has no normal reliable practice regarding receipt of rental payments," and therefore, he contends, no presumption of regularity can arise to support a finding that the BLM office did not receive his rental payment. Finally, appellant argues that a hearing is required to establish whether the first year's rental payment was received if "the presumption of mailing" and the presumption of the regularity of the official acts of public officers are both established.

Frasch has supported his appeal with an affidavit made by Scott R. Baker, an attorney employed by appellant, who attests to the fact that on September 1, 1981, he mailed three executed lease forms, a cover letter, and a cashier's check in the amount of \$2,561 as payment of the first year's rental for oil and gas lease C-33043 to the Colorado State Office, BLM. Appellant has also included on appeal the affidavits of Donna Lord, Diane Vigil, and Ina Houdeshell, employees of the Colorado State Office, whose affidavits outline the procedure by which incoming documents are handled in the Colorado State Office.

Donna Lord, supervisor of the accounting docket center, Colorado State Office, states that oil and gas leases and accompanying documents, once received in the mailroom, are forwarded to the accounting docket center where they are processed in one of two ways:

- a. If accompanied by payment, the payment is processed, an accounting advice is prepared, and the envelope (if received) is disposed of.

b. If not accompanied by payment, all the documents received including the envelope (if received) are routed to the Division of Technical Services, Branch of Adjudication.

Diane Vigil states that the practice during her tenure as a mail clerk in the Colorado State Office, BLM, regarding receipt of oil and gas leases through the mails, was to route those envelopes which contained oil and gas leases and some form of payment to the cashier, accounting docket center. However, those envelopes received which contained leases with no form of payment were so noted and routed to the accounting docket center. Finally, the affidavit of Ina Houdeshell, a land law examiner in the Division of Technical Services, Branch of Adjudication, attests to the fact that in early September 1981, three copies of oil and gas lease C-33043 were placed in her in-box unaccompanied by an envelope or any other documents.

[1] As appellant has recognized, there is a legal presumption of regularity which supports the official acts of public officers in the proper discharge of their official duties. Legille v. Dan, 544 F.2d 1 (D.C. Cir. 1976). It is presumed that administrative officials have properly discharged their duties and not lost or misplaced legally significant documents filed with them. H. S. Rademacher, 58 IBLA 152, 88 I.D. 873 (1981). A substantial volume of the public's business with the many offices of BLM is conducted by mail under circumstances which require as a matter of law or regulation that diverse documents, payments, or recordations be filed within a specified time. The considerations of public policy which mandate the Department's reliance on the presumption of official regularity in such cases are discussed in some detail in Bernard S. Storper, 60 IBLA 67, 70-71 (1981), appeal filed, Storper v. Watt, No. 82-0449 (D.D.C., Feb. 17, 1982). In the special context of the Federal oil and gas leasing program, we said in Lynda Bagely Doye, 65 IBLA 340, 344 (1982):

Without sufficient probative evidence to rebut the presumption of official regularity, we must affirm the decision of BLM, for to do otherwise would prejudice the right of the junior offeror, whose priority attaches eo instante upon failure of the applicant having first priority to qualify. Ballard E. Spencer Trust, Inc., 18 IBLA 25 (1974), aff'd, B.E.S.T., Inc. v. Morton, 544 F.2d 1067 (10th Cir. 1976). Because an oil and gas lease may be awarded only to the first qualified applicant, the requirements governing the qualification of applicants in the simultaneous leasing procedure are mandatory, and strict compliance therewith is enforced. 30 U.S.C. § 226(c) (1976); Don C. Bell II, Trustee, 42 IBLA 21 (1979), and cases cited therein. [Emphasis in original.]

Contrary to appellant's assertion, the affidavits of the BLM employees tend to confirm the existence of a procedure for handling incoming documents. When the mail is opened in the mailroom, the documents received are forwarded to the accounting docket center. In those cases where a check is received, a cashier in the accounting docket center prepares an accounting advice to reflect the payment. The documents received are then forwarded to the adjudicators for action. Although the executed lease forms and stipulations were received by BLM on September 4, 1981, neither the cover letter nor any evidence of the check, both of which are alleged to have been mailed in

the same envelope with the other documents, is found in the case file. This Board has held that uncorroborated statements, even where placed in the form of an affidavit, to the effect that a document was included in a mailing together with other documents that were received by BLM is insufficient to overcome the inference that the document was not filed arising from the absence of the document from the file. H. S. Rademacher, supra; Lawrence E. Dye, 57 IBLA 360 (1981); John Walter Starks, 55 IBLA 266 (1981).

Appellant has requested on appeal that the matter be referred to an Administrative Law Judge so that an evidentiary hearing might be conducted. In urging that this matter be referred for an evidentiary hearing, appellant cites Donald E. Jordan, 35 IBLA 290, 294 (1978), in which the Board recognized the legal presumption that "mail matter, properly addressed, stamped, and deposited in an appropriate receptacle, is duly delivered." However, that presumption does not arise in this case, as there is no issue concerning the due delivery of the envelope mailed for appellant by Mr. Baker. That mailing was duly delivered to BLM by the Postal Service, and therefore there is no need to resort to the legal presumption that the Postal Service fulfilled its proper function. See Legille v. Dan, supra. That presumption may not be extended to provide evidentiary support that the envelope contained all the documents which were supposed to be included. After examining the case file and the able brief submitted by counsel for appellant, we believe that no facts would emerge not previously brought out in the record. Therefore appellant's request for a hearing is denied.

[2] The requirement is clear that an applicant must file advance rental payment for the first year with BLM within 30 days of receipt of notice to do so. 43 CFR 3112.4-1(a). Appellant failed to do so, and BLM properly rejected his offer. 43 CFR 3112.6-1(d).

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.

C. Randall Grant, Jr.
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Edward W. Stuebing
Administrative Judge