

KENNETH R. LEWIS

IBLA 82-622

Decided January 13, 1983

Appeal from decision of Montana State Office, Bureau of Land Management, rejecting simultaneous oil and gas lease application. M 51353.

Affirmed.

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

A simultaneous oil and gas lease application is properly rejected where the rent is not paid within 30 days of notice to do so as required by 43 CFR 3112.4-1(a) because applicant's draft for the payment, although timely tendered, is dishonored by the drawee.

APPEARANCES: Kenneth R. Lewis, pro se.

OPINION BY ADMINISTRATIVE JUDGE GRANT

Kenneth R. Lewis has appealed from a decision of the Montana State Office, Bureau of Land Management (BLM), dated February 24, 1982, rejecting his 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 7 in the May 1981 simultaneous oil and gas lease drawing. The lease contained 347.51 acres thereby requiring advance rental of \$348.

The rationale for the BLM decision was that "check #3 * * * dated January 15, 1982, was drawn on the Union Cash Management Fund, Inc., Irving Trust Company, New York, New York. The check was returned by the bank because it was not valid if drawn for less than \$500." In his statement of reasons for appeal, appellant states that after receiving the BLM decision of February 24, 1982, he contacted the money market fund upon which his clerk

was drawn and was informed, and he now acknowledges, that the agreement he signed with Union Cash Management Fund provides that checks drawn for less than \$500 would not be honored. ^{1/} It appears from a photocopy of the returned draft in the case file that the words "Not Valid If Drawn For Less Than \$500" are printed on the face of the draft immediately below the blank line for the drawer to enter the amount of the draft.

On January 12, 1982, appellant received a notice from BLM requiring him to sign and return the enclosed lease forms and to submit the first year's rental payment (\$348) "within 30 days from receipt of this notice." BLM received a draft dated January 15, 1982, in the amount of \$348, payable to BLM and signed by appellant. The draft was drawn on the Union Cash Management Fund, Inc. The draft was dishonored and returned by the drawee fund because it was not valid if drawn for less than \$500. On March 17, 1982, appellant submitted a certified check as rental for the lease.

[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.]

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 simultaneous oil and gas lease application, pursuant to 43 CFR 3112.6-1(d). Kathy L. Phillips, 64 IBLA 388 (1982); 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). Accordingly, where a draft submitted in payment of the first year's advance rental is dishonored and returned by the drawee, BLM must reject the offeror's application in the absence of proof of wrongful dishonor by the drawee. Jose V. Lim, 44 IBLA 96 (1979); Karen L. Brown, 31 IBLA 239 (1977).

^{1/} The BLM decision refers to the instrument as a "check" drawn on "Union Cash Management Fund, Inc., Irving Trust Company." Appellant also describes the instrument as a "check." However, a check is defined as a draft drawn on a bank and payable on demand. ² Anderson, Uniform Commercial Code, § 3-104 (2d ed. 1971). Although it appears that the instrument is more accurately described as a draft drawn on the money market fund rather than a check drawn on the bank, resolution of this issue is not material to the disposition of this case.

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:

James L. Burski
Administrative Judge

Bruce R. Harris
Administrative Judge

