

Appeal from decision of Wyoming State Office, Bureau of Land Management, cancelling noncompetitive oil and gas lease. W-83000.

Affirmed.

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

An oil and gas lease issued pursuant to the first-drawn application in the simultaneous filing procedures is properly cancelled 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 check for the payment, although timely tendered, is dishonored by the drawee.

APPEARANCES: Mark A. Emmons, pro se.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

Mark A. Emmons has appealed from a decision of the Wyoming State Office, Bureau of Land Management (BLM), dated March 18, 1983, cancelling his noncompetitive oil and gas lease, W-83000.

By decision dated January 28, 1983, appellant was notified by BLM that he was the successful drawee for parcel WY-351 in the September 1982 simultaneous oil and gas lease drawing. BLM required appellant to return executed copies of the lease offer form (Form 3110-2 (January 1978)) and attached stipulations and to pay the first year's advance rental in the amount of \$320 within 30 days of receipt of the decision, in accordance with 43 CFR 3112.4-1. On February 28, 1983, appellant submitted executed copies of the lease offer form and two checks in the amounts of \$220 and \$100. A noncompetitive oil and gas lease was issued March 15, 1983, effective April 1, 1983, to appellant for 320 acres of land situated in Carbon County, Wyoming, pursuant to section 17 of the Mineral Leasing Act, as amended, 30 U.S.C. § 226 (Supp. V 1981). In its March 1983 decision, BLM cancelled appellant's lease because the \$100 check submitted by appellant had been returned to BLM on March 17, 1983, marked "insufficient funds."

In his statement of reasons for appeal, appellant contends that his failure to have sufficient funds in the bank to cover the \$100 check was an "innocent mistake." Appellant explains that:

The \$100.00 check (Philadelphia National Bank, ck. #2389) was returned to the Cheyenne office on March 17, 1983 because of

"insufficient funds." At the time this check was written in early March, my recorded checking account balance at P.N.B. adequately covered payment for the \$100.00 amount. Going back over my check log, I discovered that a check was left unrecorded; thus, causing the problem.

[1] The applicable regulation, 43 CFR 3112.4-1(a), provides in relevant part that the first year's advance rental payment, along with an executed lease agreement, "shall be filed in the proper Bureau of Land Management office within 30 days from the date of receipt of notice." Failure to submit timely the first year's advance rental payment, 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). Mary Jane Associates, 74 IBLA 43 (1983). The same result applies where a draft submitted in payment of the first year's advance rental is dishonored and returned by the drawee, in the absence of proof of wrongful dishonor by the drawee. Jose V. Lim, 44 IBLA 96 (1979). Moreover, as we stated in Longhorn Oil, Ltd., 72 IBLA 45, 47 (1983): "Similarly, where a noncompetitive oil and gas lease is issued to the successful applicant in a drawing of simultaneously-filed offers and the lessee's check in payment of the first year's rental is subsequently returned by the drawee bank as uncollectible, the lease is subject to cancellation * * *." 1/ Appellant has submitted no evidence that the Philadelphia National Bank wrongfully dishonored appellant's rental check. Rather, appellant admits that the error was his own. Accordingly, we conclude that BLM properly cancelled appellant's noncompetitive oil and gas lease. The Secretary of the Interior is obligated to issue a noncompetitive oil and gas lease only to the first-qualified applicant, under 30 U.S.C. § 226(c) (Supp. V 1981), i.e., someone who has complied with all relevant Departmental regulations.

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.

Gail M. Frazier
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Edward W. Stuebing
Administrative Judge

1/ 43 CFR 3112.6-3 provides in relevant part that: "In the event a lease has been issued on the basis of an application or offer which properly should have been rejected * * * action shall be taken to cancel the * * * lease unless the rights of a bona fide purchaser * * * intervene."

