

CHARLES ANDERSON

IBLA 83-834

Decided October 27, 1983

Appeal from decision of Nevada State Office, Bureau of Land Management, rejecting a first-drawn application in the simultaneous oil and gas leasing program. N 37832.

Vacated and remanded.

1. Administrative Practice -- Oil and Gas Leases: Generally -- Oil and Gas Leases: Applications: Filing

Where a group of simultaneous oil and gas lease applications was received in November 1982 with a single check to cover the filing fees, it was error for the Bureau of Land Management to deposit the check without first examining the applications to ascertain the adequacy of the amount of the check as required by 43 CFR 3112.5(a)(3) (1982).

2. Accounts: Payments -- Administrative Practice -- Oil and Gas Leases: Applications: Generally

Where a check deposited improperly by the Bureau of Land Management was returned as uncollectible, it was not a debt due the United States under 43 CFR 3112.2-2(c) (1982), and its maker was improperly disqualified from future participation in the simultaneous oil and gas leasing program.

3. Administrative Practice -- Oil and Gas Leases: First-Qualified Applicant

It was improper to disqualify a first-drawn applicant in the simultaneous oil and gas leasing program because his agent's check in a previous drawing was returned as uncollectible, since under the applicable regulations the check in question should not have been deposited by the Bureau of Land Management.

APPEARANCES: Charles Anderson, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Charles Anderson appeals the July 6, 1983, decision of the Nevada State Office (NSO), Bureau of Land Management, which rejected his simultaneous oil

and gas lease application N 37832 for parcel NV 181 in the January 1983 notice of lands subject to simultaneous oil and gas filings. The decision stated that, although his application received first priority in the drawing, the application was filed through an agent, M. T. Stocks, who had submitted an uncollectible check for filing fees in the November 1982 simultaneous filings, and under 43 CFR 3112.2-2(c), all filings made by Stocks would be disqualified until the debt due the United States is satisfied.

To understand the situation here presented, it is necessary to describe the circumstances surrounding the dishonored check of Stocks in the November 1982 simultaneous filings.

[1] In November 1982, Stocks, d.b.a. M. T. Stocks Enterprises, submitted a group of simultaneous oil and gas lease applications from his clients to the Wyoming State Office (WSO), Bureau of Land Management (WSO), together with his check in the amount of \$4,800 to cover the filing fees. Without examining the applications to verify the correctness of the tendered check for \$4,800, WSO deposited the check for collection. The check was returned as uncollectible. However, depositing the check was improper, as it was contrary to 43 CFR 3112.5(a)(3) (1982), which reads as follows: "§ 3112.5 Unacceptable filings. (a) Applications shall be examined prior to selection and the application or written notice, together with the filing fee, shall be returned to the applicant for any filing which is: * * * (3) Accompanied by an unacceptable remittance or insufficient filing fees." 1/

It was later discovered that the applications submitted by Stocks for his clients included 71 parcels for which the proper filing fees were \$5,325. Thus, depositing the check of Stocks without making the examination called for by 43 CFR 3112.5 (1982) was improper, 2/ and the error was compounded by considering the uncollectible check to be a debt due the United States.

1/ The regulations in 43 CFR Subpart 3112 were revised on July 22, 1983, effective Aug. 22, 1983. 48 FR 33648, 33675. 43 CFR 3112.5 was revised and renumbered as 43 CFR 3112.3. 48 FR 33679. The pertinent part of 43 CFR 3112.3 now reads:

"(a) Any Part B application form which in the opinion of the authorized officer:

* * * * *

"(4) Is received with an insufficient fee: shall be returned to the remitter as unacceptable.

"(b) For each Part B application form returned as unacceptable, of the fees remitted, a \$75 processing fee shall be retained and the balance of the fees, if any, shall be returned to the remitter."

Since the filings in this case were made prior to the revision of the regulations, the earlier regulations are applicable.

2/ There is little question that any of the applications included with the insufficient filing fee check would have been rejected if drawn with priority. Failure to identify a filing as unacceptable prior to selection does not bar rejection after selection. 43 CFR 3112.5(b). Thus, by negotiating the check for the filing fee and including the 71 applications in the drawing without checking to ascertain the sufficiency of the filing fees as required by the regulation, BLM retained the substantial fee for participation in a drawing where the applicants had no possibility of success. We cannot condone this practice in violation of the regulations.

As the Board held in Fred L. Engle, 66 IBLA 94 (1982), "Under 43 CFR 3112.2-2(b), a single remittance is acceptable for a group of simultaneous oil and gas lease applications, but the remittance submitted must be sufficient to cover all filings. If the remittance is insufficient, the entire group is unacceptable and BLM properly returns the filings to the applicant." So, in this case WSO should have returned both the remittance and the applications to Stocks. 3/

[2, 3] In the circumstances, it must be held that there was no debt due to the United States on account of the dishonored check of Stocks as that check never should have been deposited. It follows that application of the check submitted by Stocks for filings in January 1983 should have been used as payment for those filing fees and not applied to the alleged debt due to the United States. Finally, those filings submitted by Stocks for his clients which were awarded first priority in the drawing of the January 1983 filings are entitled to receive leases for the appropriate parcels, all else being regular.

The decision of NSO rejecting the application of Anderson because it was filed by Stocks must be vacated.

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 NSO rejecting the simultaneous application of Charles Anderson is vacated and the case is remanded for further appropriate action consistent herewith. WSO should consider the payment submitted by Stocks with his clients' January 1983 filings as filing fees for those applications, and not a payment on the alleged debt due to the United States because of the uncollectible check submitted by Stocks in November 1982.

Douglas E. Henriques
Administrative Judge

We concur:

C. Randall Grant, Jr.
Administrative Judge

Bruce R. Harris
Administrative Judge

3/ Under the regulations promulgated on July 22, 1983, and set forth in note 2, supra, the Part B application forms would be returned, but BLM would be authorized to retain a \$75 processing fee for each Part B application form returned. Thus, under the new regulations BLM would deposit the check submitted with the filings and process a refund check for any difference between the amount tendered and the sum of \$75 times the number of Part B application forms returned.

