

SATISH K. ARORA

IBLA 84-116

Decided May 4, 1984

Appeal from a decision of the Wyoming State Office, Bureau of Land Management, disqualifying appellant's simultaneous oil and gas lease application and barring appellant's participation in future drawings.

Affirmed.

1. Accounts: Fees and Commissions--Oil and Gas Leases: Applications: Drawings

Under 43 CFR 3112.2-2 (1982), it is proper for BLM to disqualify simultaneous oil and gas lease applications submitted with uncollectible filing fees and require payment of the debt as a condition for further participation in the simultaneous leasing program, even where an applicant substitutes a collectible remittance after the filing period.

APPEARANCES: Satish K. Arora, pro se.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

Satish K. Arora has appealed from a decision of the Wyoming State Office, Bureau of Land Management (BLM), dated August 26, 1983, disqualifying his simultaneous oil and gas lease application and barring his participation in future simultaneous oil and gas lease drawings.

Appellant filed an application form (form 3112-6a (June 1981)) for parcels in the July 1983 simultaneous oil and gas lease drawing and tendered a check in the amount of \$450 to cover the filing fees. The check was deposited but was returned as uncollectible because of insufficient funds. Following receipt of the uncollectible check, BLM issued a decision, dated August 26, 1983, which provided that the application was disqualified and that appellant was barred from further participation in the simultaneous oil and gas lease drawings until the uncollected amount and a \$10 handling fee was paid.

On September 27, 1983, BLM received an appeal from its decision together with a cashier's check in the amount of \$460. In his appeal appellant explained that a check from a third party had been deposited in his account to cover the amount of the check written payable to BLM. This check from the third party had "bounced" and, as a result, there was not sufficient

funds in the account to cover the check to BLM. Appellant asked that the check be accepted in exchange for the one earlier tendered and that his name be retained in the July drawing.

The regulation in effect at the time of the submission of the application and return of the check submitted by appellant was 43 CFR 3112.2-2(c) (1982). This regulation provides:

An uncollectible remittance covering the filing fee(s) shall result in disqualification of all filings covered by it. In such a case, the amount of the remittance shall be a debt due to the United States which shall be paid before the applicant is permitted to participate in any future selection. 1/

[1] We recently dealt with the question of an uncollectible remittance in Marceann Killian, 79 IBLA 105 (1984). We stated in Killian that the applicable regulation, 43 CFR 3112.2-2 (1982), clearly provided that simultaneous oil and gas lease applications shall be accompanied by appropriate filing fees (\$75 per parcel) and that submission of an uncollectible remittance shall result in disqualification of all filings covered by it and shall, despite such disqualification, bar participation in future drawings until paid. As noted in Killian, it has long been Departmental practice to disqualify an application when the filing fee remittance is uncollectible, with the only exception being cases where the bank's refusal to honor a check has been shown to be the bank's error. Marceann Killian, supra at 107. The requirement that an applicant submit a collectible remittance with a lease application is a matter of substantive importance because "if applicants were not required to submit a collectible remittance at the outset, BLM could be continually faced with bad checks that are only paid if the applicant received priority on a desirable parcel." Id. at 107-08. The present case clearly involves an uncollectible remittance, i.e., one which was found to be acceptable on its face but not honored by the drawee bank on presentation. We conclude that BLM properly invoked the provisions of 43 CFR 3112.2-2(c) (1982).

In the case of uncollectible remittances, the regulations are quite clear as to the results -- disqualification of the application and a bar from further participation in drawings until the debt is paid. Appellant seeks to avoid this result by asking that the cashier's check submitted by him and received by BLM on October 27, 1983, be used to qualify him for the July drawing. The date of receipt of this second check was clearly subsequent to the closing of the filing period for the July 1983 drawing, i.e., the 15th working day after the first working day of July 1983 (July 22, 1983). See 43 CFR 3112.1-2 (1982). The only payment submitted during the filing period was the uncollectible remittance. Under the simultaneous leasing system, all qualified applications submitted within the filing period are

1/ The Department has subsequently revised the regulations pertaining to oil and gas leases. The comparable regulation is now found at 43 CFR 3112.2-2 (48 FR 33678 (July 22, 1983)). As restated, the regulation again provides for the disqualification of the application and a bar from further participation until the debt is paid.

deemed to have been made simultaneously. The first-priority applicant is then selected from this pool of qualified applicants by random selection. However, the qualifications of that applicant, as well as the other applicants, must have been established during the filing period. See Simon A. Rife, 56 IBLA 378 (1981), appeal dismissed, Rife v. Department of the Interior, Civ. No. C81-0318 (D. Wyo., Jan. 8, 1982). In order to be considered qualified, an applicant must have complied with all mandatory regulations. Sorensen v. Andrus, 456 F. Supp. 499 (D. Wyo. 1978). An applicant seeking to cure a deficiency in his application after the time provided for filing applications, so as to establish his qualifications, could not properly be considered to have filed a qualified application in a timely manner. Moreover, to permit an applicant to cure after the close of the filing period would infringe on the rights of the other participants who were qualified at the close of the filing period. Finally, to permit applicants to cure after the filing period, even up until the moment of the drawing, would impair the efficient administration of the simultaneous leasing system, especially in its current automated form, and, thus, delay prompt issuance of leases, from which the Government and the public, alike, benefit. See generally 43 CFR 1821.2-2(g). Thus, we conclude that appellant was not entitled to substitute a collectible remittance after the close of the July 1983 filing period but prior to the drawing so as to counteract the requirements of 43 CFR 3112.2-2(c) (1982), and the effect of submitting an uncollectible remittance with his application. The submittal of \$460 would, however, lift the bar from further participation.

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.

R. W. Mullen
Administrative Judge

We concur:

Wm. Philip Horton
Chief Administrative Judge

Will A. Irwin
Administrative Judge

