

Appeal from decision of Wyoming State Office, Bureau of Land Management, rejecting appellant's simultaneously filed oil and gas lease application W-86890.

Affirmed.

1. Oil and Gas Leases: Applications: Drawings -- Oil and Gas Leases: Rentals

Where, after a drawing of simultaneously filed oil and gas lease applications, the authorized officer mails a notice to the successful drawee informing him of his priority and the requirement that the advance rental must be paid within the allotted time, which letter is received at his address of record, his subsequent failure to remit the rental timely will disqualify his application even though he asserts that the person who received and signed for the notice was not his designated agent for receipt of mail.

2. Oil and Gas Leases: Applications: Drawings -- Oil and Gas Leases: Rentals

After a drawing of simultaneously filed oil and gas lease applications the requirement that the first year's rental be received in the proper office within the allotted time after notice to the applicant is mandatory, and consideration of excuses for failure to comply is not permitted.

APPEARANCES: Daniel Pia, pro se.

OPINION BY ADMINISTRATIVE JUDGE GRANT

Daniel Pia appeals from a decision of the Wyoming State Office, Bureau of Land Management (BLM), dated December 28, 1983, rejecting his simultaneous oil and gas lease application W-86890, drawn with first priority for parcel WY-421 in the July 1983 simultaneous oil and gas lease drawing.

BLM rejected appellant's application because the rental payment and executed lease agreements were not filed with BLM within 30 days from the

date of receipt of BLM's notice requesting the rental payment and lease agreements. This notice was sent by certified mail to appellant's address of record. The return receipt card shows that it was delivered on November 5, 1983. The card shows the signature of Lynne A. Marks.

In rejecting appellant's application, BLM relied on 43 CFR 3112.6-1 and 43 CFR 3112.5-1(c). The regulation at 3112.6-1 provides in part: "The signed lease agreement and rental payment shall be filed in the proper BLM office within 30 days from the date of receipt of the notice, and shall constitute the applicant's offer to lease." The regulation at 3112.5-1(c) states: "The application of the first qualified applicant shall be rejected if an offer is not filed in accordance with § 3112.6-1 of this title."

On appeal appellant asserts that he did not receive notification of BLM's request, and, therefore, there was no way he could have acted upon such request. Appellant points out that the signature on the return receipt card is not his signature, but the signature of someone else. He asserts that Mrs. Hilda Cooper is the only person authorized to sign for certified letters. Appellant contends that if someone else signs for a letter and then misplaces or loses it, it should not be his (appellant's) responsibility.

[1, 2] A similar situation was presented to this Board in Robert D. Nininger, 16 IBLA 200 (1974), a case in which appellant's daughter received the notice of rental due. Nininger contended that she was not his agent to receive his mail. Affirming BLM's rejection of Nininger's offer, the Board cited 43 CFR 1810.2(b), the regulation regarding notice, which provides, in pertinent part, as follows:

(b) Where the authorized officer uses the mails to send a notice or other communication to any person entitled to such a communication under the regulations of this chapter, that person will be deemed to have received the communication if it was delivered to his last address of record in the appropriate office of the Bureau of Land Management, regardless of whether it was in fact received by him.

The Board's decision affirming the rejection of Nininger's offer was affirmed on judicial review in Nininger v. Morton, Civil No. 74-1246 (D.D.C. Mar. 25, 1975), in which the Court stated the following conclusions of law:

2. The regulations 1810.2(b) and 3112.4-1, Title 43, Code of Federal Regulations, [1/] are mandatory and apply to the plaintiff. Said regulations do not permit the consideration of excuses for failure to remit payment.

* * * * *

1/ 43 CFR 3112.4-1 (1973), the regulation dealing with payment of the first year's rental, has since been amended and recodified. 43 CFR 3112.6-1.

4. The notice was properly delivered by mail to plaintiff's home and his excuse that his daughter was not his agent for receipt of mail is insufficient as a matter of law. [Emphasis added.]

This holding has subsequently been reaffirmed by the Board. Edgar C. Bennington (On Reconsideration), 28 IBLA 355 (1977).

BLM properly rejected appellant's offer. The regulations clearly mandate that the rental payment and executed lease agreement must be filed with BLM within 30 days from the receipt of the notice and that failure to timely file will result in rejection of the application. Floanne Ervin, 81 IBLA 100 (1984); William F. Heins III, 74 IBLA 133 (1983). Strict compliance with these regulations is necessary to protect the rights of second- and third- qualified applicants. Floanne Ervin, supra at 101; Ballard E. Spencer Trust, Inc., 18 IBLA 25 (1974), aff'd sub nom. Ballard E. Spencer Trust Inc. v. Morton, 544 F.2d 1067 (10th Cir. 1976).

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 the Wyoming State Office, BLM, is affirmed.

C. Randall Grant, Jr.
Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

Bruce R. Harris
Administrative Judge