

RICHARD L. KNOWLES

IBLA 85-35

Decided August 1, 1985

Appeal from decision of the New Mexico State Office, Bureau of Land Management, rejecting oil and gas lease offers NM 58675 and NM 58683.

Affirmed.

1. Notice: Generally -- Oil and Gas Leases: Applications: Filing -- Oil and Gas Leases: Rentals

Where BLM mails a notice to the first-drawn applicant in a simultaneous oil and gas lease drawing requiring the applicant to execute a lease offer and tender the first year's rental in accordance with 43 CFR 3112.6-1(a), the failure to return the rental payment and executed lease offer within the 30-day period properly results in rejection of the offer. The offeror's absence from his address of record when the notice was received at that address will not excuse noncompliance with 43 CFR 3112.6-1.

APPEARANCES: Richard L. Knowles, Kodiak, Alaska, pro se; Cecelia Ann Duncan, Esq., Departmental Counsel, Santa Fe, New Mexico, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

Richard L. Knowles has appealed from a September 10, 1984, decision of the New Mexico State Office, Bureau of Land Management (BLM), rejecting oil and gas lease offers NM 58675 and NM 58683. Knowles filed an automated simultaneous oil and gas lease application for six parcels in September 1983. Prior to the scheduled drawing, the Secretary of the Interior issued a moratorium on all simultaneous oil and gas leasing. On February 3, 1984, the Secretary notified BLM that simultaneous leasing could resume. In April 1984 BLM conducted a simultaneous drawing in which Knowles' application was selected with first priority for parcels NM 108 (NM 58675) and NM 116 (NM 58683). Pursuant to 43 CFR 3112.6-1(a), BLM, by decisions dated June 18, 1984, forwarded lease offer forms and requests for payment of first year's rental to Knowles' address of record. The decisions stated that the forms should be returned and rental paid within 30 days of receipt of the decisions. The case file reflects receipt of those decisions on June 25, 1984. BLM did not receive the executed

lease forms and rentals until August 31, 1984. On September 10, 1984, BLM issued a decision rejecting the offers to lease. Knowles filed a timely notice of appeal.

On appeal Knowles complains that although his secretary received the notices at "one of my many offices," she did not give them to him until after the 30 days had lapsed. He claims, in essence, that he should not have been responsible for the notices until he actually saw them. Further, he complains because of the long delay in the drawing and the fact that it was "rescheduled so many times," he had invested his money in other areas so that it took time to raise the first year's rentals. ^{1/}

[1] The Departmental regulations governing communications by mail, 43 CFR 1810.2, provide:

(a) Where the regulations of this chapter provide for communication by mail by the authorized officer, the requirement for mailing is met when the communication, addressed to the addressee at his last address of record in the appropriate office of the Bureau of Land Management, is deposited in the mail.

(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. [Emphasis added.]

In this case BLM sent its notices certified mail to appellant's last address of record. Those notices were delivered and the return receipt cards signed by appellant's secretary. In accordance with the regulations, the time for compliance with the notices is marked from the date they were received and signed for by appellant's secretary, regardless of when the secretary actually gave the notices to appellant. See Floanne Ervin, 81 IBLA 100 (1984). Appellant did not forward the lease offers and rentals until long after the time for compliance had expired.

The Board has held many times that failure to file a completed lease offer and/or tender the first year's rental within the prescribed period mandates rejection of the application. JoAnn S. Bennett, 87 IBLA 121 (1985); Robert D. Nininger, 16 IBLA 200 (1974). In affirming the Board's decision in Nininger, the District Court held, "The regulations * * * are mandatory, and apply to the plaintiff. Said regulations do not permit the consideration of

^{1/} We note that contrary to appellant's claim the drawing was not "rescheduled so many times." It was merely delayed from Oct. 1983 to Apr. 1984. Even if it had been rescheduled a number of times, that would not excuse appellant's failure to comply timely.

excuses for failure to timely remit payment." Nininger v. Morton, No. 74-1246 (D.D.C. Mar. 25, 1975). See also Dawson v. Andrus, 612 F.2d 1280 (10th Cir. 1980); Fred William Berger, 81 IBLA 344 (1984).

Accordingly, 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.

Bruce R. Harris
Administrative Judge

We concur:

Gail M. Frazier
Administrative Judge

James L. Burski
Administrative Judge

