JOSEPH FRANCIS

IBLA 76-32 Decided October 30, 1975

Appeal from decision of the Wyoming State Office, Bureau of Land Management denying petition for reinstatement of terminated oil and gas lease.

Affirmed.

1. Oil and Gas Leases: Rentals -- Oil and Gas Leases: Termination

   Where the deficiency in rental paid on or before the anniversary date of a lease is nominal and a notice of deficiency is sent to the lessee, the lease terminates by operation of law when the balance is not paid within 15 days from receipt of the notice or until the anniversary date, whichever is later.

2. Oil and Gas Leases: Rentals -- Oil and Gas Leases: Reinstatement -- Oil and Gas Lease Termination

   No petition for reinstatement of an oil and gas lease terminated by operation of law, 30 U.S.C. § 188(b), may be entertained if the full amount of rental due was not paid within 20 days after the anniversary date of the lease.

APPEARANCES: Robert C. Klevorn, Esq., Boyne City, Michigan, for appellant.

OPINION BY ADMINISTRATIVE JUDGE RITVO

Joseph Francis has appealed from a decision of the Wyoming State Office, Bureau of Land Management, dated June 18, 1975, which held his oil and gas lease, W-18309-F, to have terminated.

Appellant held the lease covering 80.63 acres by partial assignment, effective March 1, 1970. He had paid the annual rental of $40.50 for that year and then annually for each of the next 3 years. He was sent a bill for that amount which he received early in April 1975.

The annual rental payment of $40.50 for appellant's lease was due in the Bureau's Wyoming State Office on or before May 1, 1975. On April 14, 1975, the State Office received a rental payment of $40.00. The State Office on May 14, 1975, issued a deficiency notice citing the lessee's underpayment by $.50. He received that notice May 17, 1975. The lessee was advised of the possibility of termination of the lease should he fail to pay the deficiency within 15 days of receipt of the notice (June 2, 1975).

On May 28, 1975, the State Office received an additional inquiry from appellant questioning the correct amount of the rental. He said the rental due was $40.00 and that he had paid that amount. The State Office again responded by letter of May 30, 1975, instructing that he transmit an additional 50 cents before June 2, 1975.

Since the required amount was not received until June 9, 1975, 7 days after the due date, the lease was held to have terminated effective April 30, 1975.

Appellant claims on appeal that he did not receive his deficiency notice until June 3rd, the day after the due date. The record shows he received the deficiency notice May 17, 1975. Unfortunately, he apparently did not understand the full import of his underpayment until he received further correspondence from the State Office in response to his subsequent inquiry. By that time it was too late to transmit the required deficiency by mail.

The termination of a noncompetitive oil and gas lease for failure to pay the advance rental on or before the anniversary date of the lease is brought about not by the act or decision of any federal agency or employee, but by operation of law pursuant to section 31(b) of the Mineral Leasing Act of 1920, as amended, 30 U.S.C. § 188(b) (1970), which provides that:

> * * * upon failure of a lessee to pay rental on or before the anniversary date of the lease, for any lease on which there is no well capable of producing oil or gas in paying quantities, the lease shall automatically terminate by operation of law. * * *

The law and the implementing regulations, however, recognize an exception to the automatic termination provision under certain circumstances where payment of the rental has been tendered on or before

the anniversary date but the amount of the payment is deficient. Where the deficiency is nominal, i.e., less than $10.00 or 5 percent of the total amount due whichever is the greater, a notice of deficiency is sent to the lessee. If the balance is paid not later than the anniversary date, or 15 days from receipt of the notice, whichever is later, the lease does not terminate. 30 U.S.C. § 188(b) (1970); 43 CFR 3108.2-1(b).

However, where the payment called for in the notice is not paid within the time allowed, the lease will have terminated by operation of law as of its anniversary date, 43 CFR 3108.2-1(b). In this case when the deficiency payment was not timely paid within 15 days of receipt of the notice, i.e. by June 2, 1974, the lease did terminate by operation of law on April 30, 1975.

Where a lease has terminated by operation of law, the full amount of the rental due must be paid or tendered within 20 days after the anniversary date before any consideration may be given to a petition for reinstatement of the lease, 43 CFR 3108.2-1(c). Since payment or tender of the balance of the rental due under lease W-18309-F was not received within the 20-day period immediately following the anniversary date of the lease, the lease is not subject to reinstatement under the Act. Aaron V. Barson, 18 IBLA 156 (1974); Amoco Production Company, 16 IBLA 215 (1974).

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.

Martin Ritvo
Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

Joan B. Thompson
Administrative Judge