

GNC ENERGY CORP.

IBLA 94-225

Decided November 1, 1995

Appeal from a decision of the Utah State Director, Bureau of Land Management, notifying a lessee that a combined hydrocarbon lease had terminated by operation of law. UTU-56301.

Affirmed.

1. Oil and Gas Leases: Termination

When annual rental for a combined hydrocarbon lease was not timely paid the lease terminated automatically by operation of law; BLM was neither required nor authorized to give a 30-day notice of default before lease termination could occur in such a case.

APPEARANCES: W. H. Hudson, President, GNC Energy Corporation, Dallas, Texas, for appellant.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

GNC Energy Corporation (GNC) has appealed from a December 10, 1993, decision of the Utah State Director, Bureau of Land Management (BLM), that declared combined hydrocarbon lease UTU-56301 terminated when GNC failed to timely make the annual rental payment due on May 1, 1993. Finding that payment had not been received by BLM until November 1, 1993, BLM found that, pursuant to 30 U.S.C. § 188(b) (1988), lease termination had occurred by operation of law, and that the lapsed lease could only be reinstated under provision of 30 U.S.C. § 188(d) (1988) by using Class II reinstatement procedures, which required enumerated payments in addition to the delinquent annual rental payment.

On appeal to this Board, GNC admits that the annual rental payment was not made timely; citing section 11 of the lease terms, GNC argues, however, that failure to make timely payment was a default governed by section 11, and that GNC was therefore entitled to 30 days written notice before lease UTU-56301 could have been cancelled. Pursuing this argument, GNC explains that a check for the annual rental was timely mailed to BLM in April 1993; when the check had not been cashed by October 1993, however, GNC inquired with BLM, and then learned that the check had not been received and the lease had terminated. It was then that GNC tendered the

payment received by BLM on November 1, 1993. Contending that BLM failed to properly give notice under the default clause before terminating the lease, and that BLM had GNC's current address but failed to send notice to that address (a notice describing how to pursue Class II reinstatement procedures for lease UTU-56301 mailed by BLM in September 1993 to a prior address used by GNC was returned undelivered), GNC concludes that the lease should "be reinstated without penalty, as the lessor has not complied with all terms of the lease in that lessor did not serve proper notice of default." We find that this argument must be rejected, and conclude BLM correctly found that lease termination occurred by operation of law when the annual rental was not paid on time.

[1] Combined hydrocarbon lease UTU-56301 was issued pursuant to the Mineral Leasing Act of 1920, as amended, 30 U.S.C. §§ 181-287 (1988). Section 11 of the lease deals with curable defaults by a lessee, and provides a 30-day period during which a lessee may cure a default following written notice from BLM of any action allegedly not in compliance with the lease. Failure to timely pay the annual rental when due, however, does not fall within the terms of section 11. Instead, nonpayment of annual rental causes immediate and automatic lease termination without intervention by BLM. See 30 U.S.C. § 188(b) (1988); Dominic D. Demicco, 92 IBLA 378, 380 (1986), and authorities cited therein. Since GNC chose to use the mails to deliver the April 1993 check that was not received by BLM, the responsibility for failure to make timely payment by that means rests entirely with GNC. See Nancy Wohl, 91 IBLA 327, 329 (1986). Under the circumstances described, lease UTU-56301 terminated automatically by operation of law on May 1, 1993, when the annual rental was not paid on the anniversary date of the lease; BLM was not required to give notice of the fact to GNC in order to implement the statutory termination, which was self-executing. Id.

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.

Franklin D. Amess
Administrative Judge

I concur.

John H. Kelly
Administrative Judge

