

Editor's note: Appealed -- dismissed with prejudice, Civ. No. 73-C-96 (D. Okla. Nov. 2, 1973), motion for rehearing denied (Nov. 14, 1973)

DUNCAN MILLER

IBLA 72-206

Decided January 21, 1972

Appeal from determination (NM-A-023620 (Oklahoma)) by the New Mexico state office, Bureau of Land Management, holding oil and gas lease terminated.

Affirmed.

Oil and Gas Leases: Termination -- Oil and Gas Leases: Unit and Cooperative

Agreements

Where an unit agreement was approved February 25, 1971, and terminated effective July 1, 1971, a lease holder within the unit agreement boundaries who had been afforded the opportunity to join the unit, but did not do so by signing the agreement or by subsequent joinder prior to the termination of the unit, is not entitled to the 2-year extension afforded by 30 U.S.C. § 226(j) (1970), and 43 CFR § 3107.5 (1971).

APPEARANCES: Duncan Miller, pro se.

OPINION BY MR. FISHMAN

Duncan Miller has appealed from a determination dated October 12, 1971, 1/ of the Chief, Branch of Lands and Minerals Operations, New Mexico state office, Bureau of Land Management, that his oil and gas lease, NM-A 023620 (Oklahoma) ". . . is due to expire January 31, 1972, unless extended by production."

The lease was issued effective March 1, 1960, embracing some 2,020 acres for a period of five years. A 5-year extension was granted on December 6, 1965, terminating February 28, 1970. A partial assignment from Miller to the Stag Oil Company, for some 80 acres, was approved effective February 1, 1970. By virtue of the assignment and pursuant

1/ The finding was reiterated in the state office letter of November 4, 1971, which stated that ". . . since your lease was never committed to the unit, it was not entitled to extension when the unit terminated."

to the Act of July 29, 1954, ch. 644, § 1(6), 68 Stat. 585, the lease was extended for two years from the effective date of the assignment, i.e., through January 31, 1972. See 43 CFR 3107.6-2 (1971).

The appellant asserts in his statement of reasons that he had ". . . a half dozen telephone conversations, approximately, regarding the subject Unit, and he was intensely interested in forming the Unit." His excuse for not joining the unit is that the unit agreement was not clear to him and did not reflect the terms he deemed appropriate. The appellant submitted a copy of his letter of February 19, 1971, to Mr. J. K. Caskey of the Beard Oil Company 2/ stating: "I definitely wish to join the Unit Agreement but want to get more clarification."

The unit agreement was approved on February 25, 1971, and terminated effective July 1, 1971. The record indicates that the appellant was invited to join the unit but did not do so by either signing the agreement initially or by subsequent joinder.

His letter of February 19, 1971, to the unit operator reflects, in my judgment, a dilatory device rather than a firm intention to join the unit agreement.

Consequently, we find no basis for relief in the appellant's assertions. It follows that the appellant is not entitled to the 2-year extension afforded by 30 U.S.C. § 226(j) (1970) and 43 CFR § 3107.5 3/ (1971).

2/ The Beard Oil Company was the Unit Operator.

3/ This section reads as follows:

"§ 3107.5 Extension by elimination.

"Any lease eliminated from any approved or prescribed cooperative or unit plan or from any communitization or drilling agreement authorized by the act, and any lease in effect at the termination of such plan or agreement, unless relinquished, shall continue in effect for the original term of the lease, or for 2 years after its elimination from the plan or agreement or the termination thereof, whichever is the longer, and so long thereafter as oil or gas is produced in paying quantities."

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior (211 DM 13.5; 35 F. R. 12081), the decision below is affirmed.

Frederick Fishman, Member

We concur:

Douglas E. Henriques, Alternate Member

Edward W. Stuebing, Member

