

Editor's note: Reconsideration denied by order dated April 26, 1973

LOUIS J. PATLA, ET AL.

IBLA 72-210, etc.

Decided March 15, 1973

Appeals from nine decisions of various Bureau of Land Management State Offices refusing to reinstate oil and gas leases terminated for failure to timely pay the advance rentals.

Affirmed.

Oil and Gas Leases: Reinstatement -- Oil and Gas Leases: Rentals

The failure to receive a courtesy notice informing the lessee of the rent due will not be deemed a "justifiable" reason for the failure to pay the rental on or prior to the date due, within the meaning of section 31 of the Mineral Leasing Act, 30 U.S.C. § 188(c) (1970).

APPEARANCES: Laurence C. Baldauf, Jr., Esq., of Schall & Stennett, San Diego, California, for appellant Baker; Charles R. Bennett, Esq., of Howatt and Bennett, Saint Augustine, Florida, for appellant Evans; Gail R. Runnels, Esq., of Holliman, Langholtz, Runnels & Dorwert, Tulsa, Oklahoma, for appellants Canadian Kenwood Co., and T. R. Parker; Louis J. Patla, pro se; Carlos F. Otto, pro se; John H. Clifton, pro se; H. J. Rhodes, pro se; Alex Pappas, pro se; Chestina Boila, pro se.

OPINION BY MR. HENRIQUES

These nine appeals, set out in the Appendix, are from Bureau of Land Management State Office decisions refusing reinstatement of oil and gas leases terminated for failure to pay the advance rentals on or prior to the anniversary date. These appeals arise under the recent amendments to section 31 of the Mineral Leasing Act, 30 U.S.C. § 188 (1970), which were the subject of a lengthy exegesis in Louis Samuel, et al., 8 IBLA 268 (1972). The precise question involved here, however, was not presented in that case. The issue is whether failure to receive a courtesy notice will have the effect of making justifiable the failure to pay timely.

It is to be noted that the Department, prior to the 1970 amendments, had held that reliance upon terms contained in a courtesy notice, particularly as related to the amount due, did not excuse failure to pay the full amount of the lease within the time required. ^{1/} Thus, a fortiori, late payment allegedly resulting from the failure to receive a courtesy notice worked the termination of the lease. The 1970 amendments, however, changed section 31 so as to provide that reliance upon a courtesy notice, which resulted in a nominal monetary deficiency, would not result in termination of the lease. See section 31(b) of the Mineral Leasing Act, 30 U.S.C. § 188(b). The question these cases pose is whether reliance upon the receipt of the courtesy notice constitutes a justifiable excuse for failure to pay the advance rental prior to or on the due date.

This Department is under no obligation to provide lessees with the courtesy notice, and the 1970 amendments have not modified this rule. Thus, in letters to Senator Jackson, Chairman of the Senate Committee on Interior and Insular Affairs, and Representative Aspinall, Chairman of the House Committee on Interior and Insular Affairs, urging passage of P.L. 91-245, the Under Secretary of the Interior noted:

We want to make it clear that the Department does not send out "bills" as such and that it has no obligation under the law to do so. We do not construe the language in S. 1193 [eventually enacted with slight modifications, not relevant here, as P.L. 91-245] as changing this situation.

S. Rep. No. 91-205 at 6; H.R. Rep. No. 91-1005 at 8.

Accordingly, while affirmative reliance upon erroneous data found in a courtesy notice will not result in the termination of the lease, it is clear that reliance upon the receipt of the courtesy notice can neither prevent the lease from termination by operation of law nor serve to justify a failure to timely pay the lease rental.

In the cases at bar failure to receive the courtesy notice was alleged as a justification for the lessees' late payment of the rental. This allegation having been deemed insufficient to justify the late

^{1/} See Billy Mathis, et al., A-30512 (July 6, 1966); Cities Services Oil Company, A-30498 (April 21, 1966).

payment, we have examined these cases to see whether, in the light of Louis Samuel, et al., 8 IBLA 268 (1972), other factors would make the failure to timely pay either not the result of a lack of reasonable diligence, or in the alternative, justifiable. We find that such factors have not been presented by the showings in these cases.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the appeals of those set out in the Appendix are denied.

Douglas E. Henriques, Member

We concur:

Frederick Fishman, Member

Martin Ritvo, Member

Joan B. Thompson, Member

Edward W. Stuebing, Member

Newton Frishberg, Chairman.

We dissent in part:

Joseph W. Goss, Member

Anne Poindexter Lewis, Member

APPENDIX

The following appeals, for the reasons stated supra, are denied.

Louis J. Patla; IBLA 72-210; N 1144

John H. Clifton; IBLA 72-266; ES 6901 (Miss)

H. J. Rhodes; IBLA 72-291; Mont. 8261-A

Carlos F. Otto; IBLA 72-297; NM 0554767

Thomas L. Baker; IBLA 72-377; NM 4306

Canadian Kenwood Co., and T. R. Parker; IBLA 72-398; NM
12209

H. H. Evans; IBLA 72-440; Sac. 079420

Chestina Boila; IBLA 72-481; W 23818-H

Alex Pappas; IBLA 73-58; U 2914-C

Joseph W. Goss, joined by Anne Poindexter Lewis, dissenting in part:

Under the majority opinion, even where appellant has in fact relied upon the expected receipt of a Land Office courtesy notice of due date for an oil and gas rental payment, such reliance cannot justify failure to make timely payment. In effect, the Secretary is divested of his discretion to reinstate a lease under section 31 of the Mineral Leasing Act, 30 U.S.C. § 188, subsection (c) (1970). I feel that under the proper circumstances, reasonable reliance would be justification for a payment made within the 20-day grace period provided by the statute. 1/

It is of course true that the sending of courtesy notices is not required by law. Nevertheless, assuming a bona fide reliance, it is the conduct of the Land Office which has led to the lessee's predicament. Cf. Gestuvo v. District Director of U.S. Immigration and Naturalization Service, 337 F. Supp. 1093 (C.D. Cal. 1971). An analogy may be made to the law of automobile insurance. While the authorities are not in agreement, the better rule is that where the custom or practice of the insurer is to give notice of the due date of the renewal premium, the insured has the right to rely on such notice. Where there has been reliance, the policy may not be terminated or forfeited for late payment without informing the insured that the custom of sending notices has been abandoned. Seavey v. Erickson, 244 Minn. 232, 69 N.W. 2d 889 (1955). Invocation of the doctrine is even more appropriate in the government-lessee relationship because subsection (c) of section 188 authorizes the Secretary in his discretion to reinstate the lease where the delay of payment was "either justifiable or not due to a lack of reasonable diligence" and where lessee has tendered payment within 20 days after the payment was due.

Subsection (c) of section 188, added in 1962, was intended to be remedial and for the benefit of lessees. As such it should be given a liberal interpretation. See Attix v. Robinson, 155 F. Supp. 592 (D.C. Mont. 1957); see also 3 SUTHERLAND, STATUTORY CONSTRUCTION § 5701 (1943). Cf. Lance v. Udall, Civil No. 1864-N, January 23, 1968 (D.C. Nev.). 2/ The 1970 amendment should be construed in the same manner.

1/ This discussion is not intended to indicate a conclusion that the appellants herein have shown a justifiable reliance under the particular facts presented.

2/ Dictum

In 1970, subsection (b) of section 188 was amended to provide that the Secretary has no discretion but to consider as remaining in effect 3/ a lease in connection with which timely payment was made but in an insufficient amount, due to reliance upon incorrect data contained in the government courtesy notice. It is submitted that the 1970 amendment to mandatory subsection (b) is an indication that under discretionary subsection (c) bona fide reliance upon receipt of a customary notice may be considered as a reason for reinstatement.

The burden of proving reliance upon the notice lies with the lessee, and he must provide evidence to satisfy the Secretary. Appellant must show that he did not receive the courtesy notice, that nonreceipt did not result from any action or lack of action on his part, that custom or practice is the basis for his reliance, and that the reliance on receipt of the notice was the reason for the late payment.

I recognize the administrative difficulties inherent in making exceptions. However where the statute itself provides a 20-day grace period, I feel it is incumbent upon the Department to assume the responsibility of evaluating the reasons for the delay in order to liberally construe the statute as to those payments received within the 20 days.

3/ In the situation set forth, the lease is subject to later termination if lessee fails to pay any deficiency, after he has been given notice that the deficiency is due.

