

NORMAN K. HUSTED

IBLA 73-258

Decided August 15, 1973

Appeal from decision (W-24743) of Wyoming State Office, Bureau of Land Management, denying petition for reinstatement of oil and gas lease.

Affirmed.

Act of May 12, 1970 -- Oil and Gas Leases: Reinstatement

It is proper to deny a petition for reinstatement of an oil and gas lease terminated for failure to pay rental as required by section 31, Mineral Leasing Act of 1920, as amended, 30 U.S.C. § 188 (1970), where the petitioner has not shown that his failure to pay the rental on or before the anniversary date of the lease was justifiable or not due to lack of reasonable diligence, as set forth in P.L. 91-245, Act of May 12, 1970. Mere absence from one's home where he receives mail and the failure of a relative to call to his attention promptly the courtesy notice of rental due do not constitute satisfaction of either of those criteria.

Act of May 12, 1970 -- Words and Phrases

"Reasonable Diligence". As used in P.L. 91-245, and in 43 CFR 3108.2-1(c)(2), "reasonable diligence" in timely transmitting a rental payment for an oil and gas lease means posting the payment through the United States mail at no later date than that on which letters mailed thereon would, despite normal delays in the collection, transmittal, and delivery of mail, be delivered to the appropriate land office on or before the due date of the rental.

APPEARANCES: Louis Pasquinelli, Esq., Pasquinelli, Pasquinelli, Nino & Filice, San Jose, California, for appellant.

OPINION BY MR. FISHMAN

Norman K. Husted has appealed from a decision of the Wyoming State Office, Bureau of Land Management, denying his petition for reinstatement of his oil and gas lease, W-24743.

The lease was issued to appellant effective August 1, 1970. Rental for the third lease year in the amount of \$310.50 was required to be received in the Wyoming State Office on or before August 1, 1972. Payment was mailed to the State Office on August 12, 1972, as evidenced by the postmark on the envelope transmitting the payment, and actually received on August 15, 1972. On his petition for reinstatement, filed pursuant to the Act of May 12, 1970, P.L. 91-245, appellant gave no reason for the delay.

Appellant asserts that (1) he lives in Burlingame and operates an almond orchard in the San Joaquin Valley, California; (2) he is often away from his residence for periods lasting as long as three weeks; and (3) at the time the notice of payment due was received, he was at the ranch and his wife overlooked advising him of the notice. Appellant further asserts that "no damage resulted to the above named department [of the Interior] by virtue of the rent payment being fifteen days late and that, consequently, the oil and gas lease in question should be reinstated."

Appellant misconceives the authority of the Department to reinstate oil and gas leases for failure to pay full rental timely. Apart from the reinstatement provisions embodied in 30 U.S.C. § 188 (1970), failure to pay full rental timely brings a lease to an irrevocable termination. See Hunt Oil Company, A-30101 (June 23, 1964). The reinstatement provisions of that section apply only where "it is shown to the satisfaction of the Secretary of the Interior that such failure was either justifiable or not due to a lack of reasonable diligence on the part of the lessee * * *." See Louis Samuel, 8 IBLA 268 (1972). Appellant's argument that his spouse did not timely apprise him of the receipt of the courtesy notice is of no moment. Louis J. Patla, 10 IBLA 127 (1973). Cf. John Rusiniak, 10 IBLA 74 (1973). As was said in Samuel, supra at 274, "[w]hat is clearly not covered are cases of forgetfulness, simple inadvertence or ignorance of the regulations, or, * * * inability to pay." [Emphasis in original.] Appellant's petition is in essence a claim of forgetfulness and simple inadvertence.

The relevant regulation, 43 CFR 3108.2-1(c)(2), provides in part:

Reasonable diligence normally requires sending or delivering payments sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the payment.

Appellant did not mail the rental until about August 12, 1972, some 11 days after the due date, which was not received until August 15, 1972. In the circumstances, it cannot be said that he exercised reasonable diligence.

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.

Frederick Fishman, Member

We concur:

Edward W. Stuebing, Member

Joseph W. Goss, Member

