

USIBELLI COAL MINE, INC.

IBLA 73-331

Decided November 19, 1973

Appeal from decision of Alaska State Office, Bureau of Land Management, denying reinstatement of oil and gas leases F-032547 and F-035308.

Affirmed.

Oil and Gas Leases: Termination

Pursuant to 30 U.S.C. § 188(b) (1970), where an oil and gas lessee fails to make his annual rental payment at the appropriate Bureau of Land Management Office on or before the anniversary date, the lease is terminated by operation of law.

Oil and Gas Leases: Reinstatement! ! Withdrawals and Reservations:
Effect of

Where an oil and gas lease is terminated by operation of law and the lands involved are withdrawn from mineral leasing either before or after such termination, a petition for reinstatement of the lease must be rejected, notwithstanding a finding of reasonable diligence. 43 CFR 3108.2-1(c)(3).

APPEARANCES: Joseph E. Usibelli, for appellant.

OPINION BY MR. FISHMAN

Usibelli Coal Mine, Inc., 1/ has appealed from the February 28, 1973, decision of the Alaska State Office denying reinstatement of

1/ The party appearing before this Board apparently appears on behalf of appellant as an officer or full time employee. 43 CFR 1.3(b)(3)(iii).

its oil and gas leases, F-032547 and F-035308, which terminated July 31, 1971, pursuant to § 31 of the Mineral Leasing Act of 1920, as amended, 30 U.S.C. § 188(b) (1970).

That decision stated that the anniversary date of the leases was August 1, 1971, the first following working day was August 2, 1971, and the rentals were received August 3, 1971. The State Office found that appellant, whose rental payments were postmarked July 29, 1971, reasonably believed the State Office would receive the lease payments on or before the close of business on August 2, 1971.

However, all the lands in issue 2/ are withdrawn from leasing under the mineral leasing laws by Public Land Order 5150, 3/ 36 F.R. 25410 (1971). This order withdrew and reserved these lands for a utility and transportation corridor within the ambit of section 17(c) of the Alaska Native Claims Settlement Act of 1971, 43 U.S.C. § 1616(c) (Supp. 1973). 4/

The decision below found that although appellant was reasonably diligent in submitting its rental payments within the purview of 43 CFR 3108.2-1(c)(1), the leases cannot be reinstated due to Public Land Order 5150, supra, which barred reinstatement under 43 CFR 3108.2-1(c)(3). 5/ That regulation interdicts reinstatement where the oil and gas interests have become unavailable for mineral leasing.

2/ Block 7, T. 3 N., R. 13 E., Umiat Meridian, Alaska.

3/ The order was published in the Federal Register on December 31, 1971.

4/ "In the event that the Secretary withdraws a utility and transportation corridor across public lands in Alaska pursuant to his existing authority, the State, the Village Corporations and the Regional Corporations shall not be permitted to select lands from the area withdrawn." 43 U.S.C. § 1616(c) (Supp. 1973).

5/ This regulation states:

(3) Under no conditions will a terminated lease be reinstated if (i) a valid oil and gas lease has been issued prior to the filing of a petition for reinstatement affecting any of the lands covered by that terminated lease, or (ii) the Federal oil and gas interests in the lands have been withdrawn or disposed of, or have otherwise become unavailable for oil and gas leasing; however, the authorized officer will not issue a new lease for lands covered by a lease which terminates automatically until 90 days from the date of termination. (Emphasis supplied.)

Appellant contends in essence that since the Public Land Order was promulgated after its leases terminated, that order is "after! the! fact" and should not affect the merits of its appeal. In Robert F. Kimpel, 13 IBLA 286 (1973), where a withdrawal was made prior to the termination of an oil and gas lease, we ruled that the lease could not be reinstated because "the Federal oil and gas interests in the lands have been withdrawn." 43 CFR 3108.2-1(c)(3). That regulation clearly states that "[u]nder no conditions will a terminated lease be reinstated * * *" where such oil and gas interests have been withdrawn. In other words, reinstatement of an oil and gas lease is precluded by a withdrawal of the oil and gas interests regardless of whether the withdrawal took place either before or after the termination. Since the order of withdrawal and the regulation prevent reinstatement of appellant's oil and gas leases, its petition for reinstatements was properly denied.

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

Newton Frishberg
Chairman

