

ERNST SOFFER

IBLA 74-76

Decided March 26, 1974

Appeal from the decision of the Montana State Office, Bureau of Land Management, denying reinstatement of oil and gas lease M 21872-D.

Affirmed.

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

It is proper to deny a request for reinstatement of an oil and gas lease terminated for failure to pay advance rental timely 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.

APPEARANCES: Ernst Soffer, pro se.

OPINION BY MRS. LEWIS

Ernst Soffer has appealed from the August 3, 1973, decision of the Montana State Office, Bureau of Land Management, denying his petition for reinstatement of oil and gas lease M 21872-D which terminated July 1, 1973.

Rental in the total amount of \$80 was due in the Montana State Office on or before July 1, 1973. On June 29, 1973, that office received a payment of \$20 from the appellant. On July 5, 1973, the Bureau sent an automatic data processing statement to appellant, which acknowledged receipt of the \$20 on June 29, indicated an under payment of \$60, and stated "Unless other action is pending or the balance due is paid by the due date this lease may be terminated." As a result, the Bureau received a \$60 payment from appellant on July 16, 1973.

The Bureau issued a termination notice on July 18, 1973, in which the appellant was informed of his right to petition for reinstatement of the lease if he could show that his failure to pay the full rental on or before the due date was either justifiable or not due to a lack of reasonable diligence. Appellant filed a timely petition for reinstatement of the lease on August 1, 1973, alleging that the seller 1/ had the duty to notify him of the payment due but had neglected to do so, and that the delay in making payment was the result of a misunderstanding.

The Bureau issued its decision of August 3, 1973, denying the petition because reasonable diligence was not exercised in mailing the total payment in sufficient time to be received on or before the due date. The decision pointed out that it is the lessee's responsibility to be aware that the terms of his lease specify that rental shall be payable in advance at the rate of 50 cents per acre or fraction thereof for each year, and that since the acreage shown on the assignment from Judy S. Holcomb to Ernst Soffer showed that the lands being assigned total 160 acres, rental in the amount of \$80 was required.

In his appeal, appellant asserts, in substance: (1) that he received no statement from the Bureau of the payment due prior to the due date, and thus the delay in making payment was either the fault of the Bureau or Judy S. Holcomb who sold the lease to him without giving him the proper information; and (2) that his copy of the lease does not specify anything about paying rental in advance at the rate of 50 cents an acre or fraction thereof.

At the outset it is important to note that when payment of the annual rental is not received on or before the anniversary date, the lease is not terminated by a decision of the Bureau of Land Management. The lease actually terminates automatically by operation of law, pursuant to the Act of July 29, 1954, 30 U.S.C. § 188 (1970), and the occurrence of the termination is merely noted by the Bureau officer and communicated to the lessee. However, the law permits reinstatement of terminated leases under certain circumstances at the discretion of the Secretary of the Interior. In order to qualify, the lessee must establish to the satisfaction of the Secretary that his failure to pay the rental timely was either justifiable or not due to a lack of reasonable diligence on his part. 30 U.S.C. § 188(c) (1970); 43 CFR 3108.2-1(c)(2). See Knight & Miller Oil Corporation, 13 IBLA 337 (1973).

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1/ Refers to one Judy S. Holcomb who created the subject lease by partial assignment to Soffer out of another lease.

Appellant's petition is in essence a claim of ignorance of the regulations. In defining the word "justifiable" as used by Congress, this Board said in Louis Samuel, 8 IBLA 268 (1972), 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.] See also Wayne L. Williston, 13 IBLA 201 (1973); Norman K. Husted, 12 IBLA 341 (1973). Appellant has not explained why he paid \$20 in good time, but failed to tender the whole amount.

The Bureau does not send out statements or bills as such, but usually provides lessees with courtesy notices. However, it is under no obligation to do so, and the fact that appellant failed to receive a courtesy notice did not excuse his failure to pay the full amount of the rental within the time required. See Louis J. Patla, et al., 10 IBLA 127 (1973), and cases cited; Harold A. Armann, 13 IBLA 279 (1973).

As for appellant's assertion that his copy of the lease does not specify anything about rental payments, we can only speculate that he is referring to the instrument of assignment, since the lease was created by partial assignment out of another lease. It is true that the assignment contains no specific details regarding rental payments. However, the form contains the following general instructions on the reverse side:

5. Effect of Assignment--Approval of assignment of a definitely described portion of the leased lands creates separate leases. Assignee, upon approval of assignment, becomes lessee of the Government as to the assigned interest and is responsible for complying with all lease terms and conditions, including timely payment of annual rental and maintenance of any required bond; \* \* \* [Emphasis in original.]
6. A copy of the executed lease, out of which this assignment is made, should be made available to assignee by assignor.

Moreover, the standard lease form provides that the annual rental for lands outside a known geologic structure of a producing oil and gas field is 50 cents per acre.

Accordingly, we find that appellant's request for reinstatement of the lease was properly denied because he 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.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision below is affirmed.

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Anne Poindexter Lewis  
Administrative Judge

We concur:

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Edward W. Stuebing  
Administrative Judge

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Joan B. Thompson  
Administrative Judge

