

SCHUBERT BYERS ET AL.

IBLA 74-287

Decided September 25, 1974

Appeal from decision of the New Mexico State Office, Bureau of Land Management, denying appellants' petition for reinstatement of oil and gas lease NM 1402-D, terminated for failure to timely pay the annual rental.

Affirmed.

1. 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 § 31 of the 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.

APPEARANCES: Ronald H. Coombs, Esq., of Culver City, California, for appellants.

OPINION BY ADMINISTRATIVE JUDGE RITVO

Shubert Byers himself and 12 other parties who hold an interest in oil and gas lease NM 1402-D have appealed from a decision of the New Mexico State Office, Bureau of Land Management, dated April 10, 1974. 1/ The State Office decision denied appellants' petition for

1/ Other parties in interest are: Dan Patacchia, Dr. J. L. Sullivan, Charles Simons, Mayo Wright, Anthony Valle, Hal Thompson, Marion Edmonds, LeRoy Koos, Edward L. Juline, Hank Crosby, Joe Ehliis, Donald Olson, and Ronald H. Coombs.

reinstatement of their lease which had terminated by operation of law upon their failure to timely pay the annual rental on or before the due date.

Appellants' rental payment was due on February 1, 1974. The rental check was mailed from Culver City, California, January 31, 1974. The rental was not received by the Bureau's office in Santa Fe, New Mexico, until February 4, 1974.

Appellants assert their lease should be reinstated as their failure to transmit the rental was not the result of lack of reasonable diligence. They maintain that under normal circumstance delivery by air mail from Culver City to Santa Fe should take no more than one day. They contend they acted reasonably to obtain prompt delivery of the rental by relying on the mail schedule posted in their local post office.

The pertinent statute, 30 U.S.C. § 188(b) (1970), provides that an oil and gas lease will terminate by operation of law if the annual rental is not paid on or before the anniversary date of the lease. However, 30 U.S.C. § 188(c) (1970), provides that a lease which has terminated by operation of law may be reinstated upon timely petition by the lessee if the failure to pay on time was either justifiable or not due to a lack of reasonable diligence.

[1] In this case we cannot find that appellants' failure to pay the rental on time is either justifiable or not due to a lack of reasonable diligence. Appellants' strict reliance on the posted mail schedules did not allow any leeway for possible delay. We have held pursuant to the governing Departmental regulation, 43 CFR 3108.2-1(c)(2), that reasonable diligence normally requires that annual rental payments be sent sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of mail. Gordon R. Epperson, 16 IBLA 60 (1974); Louis Samuel, et al., 8 IBLA 268 (1972). Therefore, appellants' mailing of the rental the day before its due date does not constitute reasonable diligence. Gordon R. Epperson, *supra*.

Appellants cite several other mitigating factors including the equities of the matter, the law relating to late payment of income taxes and lack of explanation on the lease form as to timely payment requirements. None of these circumstances constitute justification for late payment. The lessee has a responsibility to maintain the lease in good standing. Failure to do so may not be excused on the grounds of forgetfulness, simple inadvertence, or ignorance of the regulations. Louis Samuel, *supra*.

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.

Martin Ritvo
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Anne Poindexter Lewis
Administrative Judge

