

Appeal from decision of the Utah State Office, Bureau of Land Management, denying appellant's petition for reinstatement of two oil and gas leases terminated by operation of law.

Affirmed.

1. Oil and Gas Leases: Reinstatement

Where the rent for an oil and gas lease was not mailed by the lessee until 14 days after due date because the lessee was away from his residence where he received his mail and the courtesy notice of rental payment due did not receive proper attention when it arrived, rejection of the petition for reinstatement for lack of reasonable diligence or circumstances causing the neglect to be justifiable is proper.

APPEARANCES: L. P. Weiner, pro se.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

Appellant was the holder of two federal oil and gas leases (U-5043-00 and U-5090-BB) issued by the Utah State Office, Bureau of Land Management (BLM). The anniversary date for both leases was March 1, which fell on Saturday, a non-business day in 1975. Appellant failed to pay the rent for the two leases on or before March 3, 1975 (the first business day after the anniversary date), and, accordingly, the leases terminated by operation of law. 30 U.S.C. § 188(b) (1970).

The rental payment for both leases was received by the BLM on March 20, 1975. A photocopy of the envelope in the file bears a postmark of "March 17, 1975." Appellant's check was returned to him on March 26, 1975, together with an "Oil and Gas Lease Termination Notice" for each lease informing appellant that the leases had

terminated for failure to make timely rental payments and that he had a right to petition for reinstatement of the leases.

Appellant filed a petition for reinstatement of the leases, accompanied by the rental payments, with the BLM within 15 days. The petitions were denied by decision dated April 15, 1975, on the ground that the appellant had not shown that the failure to make timely payment of rental was either justifiable or not due to lack of reasonable diligence.

In support of his appeal, appellant alleges that "the envelopes [courtesy notices of rental due] were misplaced for a while by my domestic help while I was traveling on business." Appellant further notes that he does not have an office staff to assist him and asserts that if "* * * these notices [had] been received in a business office, they would no doubt have had correct and proper attention."

Automatic termination of nonproducing oil and gas leases for failure to pay the rent by the anniversary date of the lease is provided by statute:

* * * [U]pon failure of a lessee to pay rental on or before the anniversary date of the lease, for any lease on which there is no well capable of producing oil or gas in paying quantities, the lease shall automatically terminate by operation of law * * *.

30 U.S.C. § 188(b) (1970).

The sometimes harsh consequence of this statutory provision was mitigated somewhat with enactment of § 2 of the Act of May 12, 1970, 30 U.S.C. § 188(c) (1970). The latter statute provides that a lease which has terminated automatically for failure to make timely payment of rental may be reinstated upon petition of the lessee subject to the requirement that it be "* * * 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 * * *." 30 U.S.C. § 188(c) (1970). The issue presented by this appeal is whether the failure of the appellant to pay the rent on or before the anniversary date was either justifiable or not due to a lack of reasonable diligence.

[1] "Reasonable diligence" generally requires that the rental payment be transmitted "sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the payment." 43 CFR 3108.2-1(c)(2). In view of the fact that appellant did not mail his rental payment until the 17th of March (14 days after the due date) and it was not

received until the 20th of March, it cannot be concluded that the appellant exercised "reasonable diligence." See Norman K. Husted, 12 IBLA 341, 343 (1973).

The second issue is whether appellant's failure to pay the rental timely was justifiable. The Department is under no obligation to provide the lessee with the courtesy notice of rental payment due. Reliance upon receipt of such a notice (where it is not received) will not justify a failure to make timely payment of the lease rent. Louis J. Patla, 10 IBLA 127, 128 (1973). A fortiori, the failure of the lessee to respond to a notice actually received does not justify such a failure.

The absence of the appellant from his home when the notices were sent out cannot improve his position in these circumstances. The absence of the lessee from his residence where he receives mail and the failure of people there to call his attention promptly to the courtesy notice of rental due can neither justify a failure to pay rental timely nor support a finding of reasonable diligence. Norman K. Husted, *supra*.

The remedial statute is not intended to cover situations involving mere inadvertence or forgetfulness on the part of the lessee or his agents. Louis Samuel, et al., 8 IBLA 268, 274 (1972). The lessee has the burden of proof on the issue of justifiable cause or reasonable diligence. James E. Fowler, 8 IBLA 372, 374 (1972); 43 CFR 3108.2-1(c)(2). It is our conclusion from the facts alleged by the appellant that the failure to make the timely rental payments was the result of inadvertence, oversight, or forgetfulness on the part of the appellant and/or his agents and that, therefore, appellant has failed to meet the burden of proof with respect to justifiable cause or reasonable diligence.

Accordingly, 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.

Joan B. Thompson
Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

Douglas E. Henriques
Administrative Judge

