

SAMUEL J. TESTAGROSSA

IBLA 76-461

Decided May 28, 1976

Appeal from a decision of the Colorado State Office, Bureau of Land Management, denying reinstatement of oil and gas lease C-11896, terminated by operation of law for failure to pay the annual rental on or before the due date.

Affirmed.

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

An oil and gas lease terminated by operation of law for failure to pay the advance rental on or before the anniversary date may be reinstated only upon a showing that the failure to pay on time was either justifiable or not due to lack of reasonable diligence. Inadvertence of the lessee's employee in misplacing the courtesy notice does not justify late payment.

APPEARANCE: Samuel J. Testagrossa, pro se.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Samuel J. Testagrossa appeals from a decision dated January 13, 1976, of the Colorado State Office, Bureau of Land Management, denying his petition for reinstatement of oil and gas lease C-11896. The lease was terminated by operation of law because the lessee failed to make timely payment of the rent as provided in 30 U.S.C. § 188(b) and 43 CFR 3108.2-1(c)(2).

The anniversary date of the lease was December 1, 1975. However, the rent was not received by the Colorado State Office until December 8, 1975. According to appellant, the reason for the late payment was that one of his employees inadvertently

placed the courtesy notice of payment with the paid bills. He did not discover the misplaced notice until Sunday, November 30, 1975. He mailed the check for the rent on Monday, December 1.

The statute provides that an oil and gas lease terminated by operation of law for failure to pay the advance rental on time may only be reinstated on a showing that the failure to pay on or before the anniversary was not due to a lack of reasonable diligence or was the result of a justifiable delay. 30 U.S.C. § 188(c) (1970). "Lack of reasonable diligence" is defined in the regulations as failure to mail the payment '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); Louis Samuel, 8 IBLA 268, 272-73 (1972); aff'd Samuel v. Morton, Civ. No. CV 74-1112-EC (D. Calif. C.D., sum-j-Aug. 26, 1974). A delay in making the rent payment is justifiable only where there are extenuating circumstances of sufficient gravity over which the lessee had no control. Louis Samuel, supra at 274.

Appellant failed to meet the "reasonable diligence" test because he did not mail the rent payment sufficiently in advance of the anniversary date to allow for normal delivery. His argument that the delay was justifiable is without merit in light of the Board's repeated holding that mere inadvertance or negligence of the lessee's agent or employee is not sufficient justification to reinstate a lease terminated for failure to make a timely rental payment. L. P. Weiner, 20 IBLA 336, 338 (1975); Charles C. Sturdevant, 20 IBLA 280 (1975); G. Wesley Ault, 16 IBLA 291, 293 (1974). In addition, the fact that appellant did not see the courtesy notice until the day before payment was due does not relieve him of responsibility for making timely payment. His obligation to pay on or before the anniversary date of the lease arises from the terms of the statute, not from receipt of a courtesy notice from the Bureau of Land Management. Levi T. Bellah, 22 IBLA 1 (1975); L. P. Weiner, 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.

Edward W. Stuebing

Administrative Judge

We concur:

Anne Poindexter Lewis
Administrative Judge

Joan B. Thompson
Administrative Judge

