

READ & STEVENS, INC.; FRANKLIN, ASTON & FAIR, LTD.;  
AND  
COLORADO INTERSTATE GAS COMPANY

IBLA 77-100

Decided March 4, 1977

Appeal from the automatic termination of an oil and gas lease, NM 12719, and forwarded to the Board of Land Appeals by the New Mexico State Office, Bureau of Land Management.

Appeal dismissed and case remanded.

1. Oil and Gas Leases: Generally--Oil and Gas Leases: Reinstatement--  
Rules of Practice: Appeals: Generally-- Rules of Practice: Appeals:  
Dismissal

An appeal to the Board of an automatic termination of an oil and gas lease will be dismissed as not ripe where appellant sends the appeal to the Board before a Notice of Termination of Lease has been issued and a Petition for Reinstatement rejected by the State Office, Bureau of Land Management.

APPEARANCES: Joe Wigley, Read & Stevens, Inc., pro se.

OPINION BY ADMINISTRATIVE JUDGE RITVO

Read & Stevens, Inc., lessee of oil and gas lease NM-12719 has filed an appeal and tendered a check in the amount of \$ 340 in payment of the amount that the rental due was deficient on the anniversary date.

In forwarding the appeal, the New Mexico State Office, Bureau of Land Management (BLM), pointed out that the lease had terminated on December 1, 1976, under the provisions of 30 U.S.C. § 188(b) (1970) because the balance of the rent due on December 1, 1976, was not paid until December 6, 1976. It also said that the lessee had

filed the notice of appeal before it (the State Office) had issued a notice of termination. Because appellant filed a notice of appeal, BLM forwarded it directly to us.

The lease was issued effective December 1, 1970, for a term of 10 years. By mesne assignments approved on May 27, 1976, operating rights to a portion of the lease were assigned to Colorado Interstate Gas Company.

The total annual rent due on the lease was \$ 897. On November 12, 1976, Colorado made partial payment of \$ 557. As we have noted, on December 6, 1976, the BLM received a \$ 340 check from Read & Stevens, Inc., for the remainder of the rental along with this appeal.

Read & Stevens, Inc., states it believed Colorado would pay the full rental and bill it later for its proportionate share. It also detailed the steps it had taken to assure payment had been mailed out during the first half of November 1976. A rental reminder letter to Colorado sent out by Read & Stevens, Inc., was returned confirming the rental had been paid, but not saying that the payment had been only for Colorado's part of the total rent. In addition, during November 1976, appellant had Schutz Abstract Co. check the rental status of the lease. A computer sheet maintained by the State Office, BLM, showed the rental as paid on November 12, 1976. Subsequently, the November 12 date was scratched out and replaced by November 17, 1976. However, Read & Stevens, Inc., claims it had no reason to suspect anything other than a full payment.

Appellant mailed its appeal, along with the rental payment for the deficiency, before the State Office, BLM, sent a Notice of Termination. 43 CFR 3108.2-1(c) requires a petition for reinstatement to be filed within 15 days after receipt of Notice of Termination of Lease.

There has been no denial of appellants' petition for reinstatement by the State Office of BLM. Since an appeal to the Board lies only when a party has been adversely affected by a decision of the BLM, the case is not in proper posture for an appeal. 43 CFR 4.410.

We suggest that, in view of the status of the case, the papers submitted by the appellant as its appeal should be treated by the BLM as its petition for reinstatement.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the

appeal is dismissed and the case is remanded to the New Mexico State Office, BLM.

Martin Ritvo

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Administrative Judge

We concur:

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Joseph W. Goss  
Administrative Judge

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Anne Poindexter Lewis  
Administrative Judge

