

GRETCHEN CAPITAL, LTD.

IBLA 76-770

Decided March 25, 1977

Appeal from decision of Montana State Office, Bureau of Land Management, denying reinstatement of oil and gas lease M-31655, considered to have terminated by operation of law for failure to pay annual rental on or before the due date.

Set aside and remanded.

1. Oil and Gas Leases: Termination

Where the fact that a bank improperly dishonored a check drawn thereon is not corroborated by an official of the bank until after the State Office issued its decision adverse to oil and gas lessee, the decision will be set aside and the case remanded for further consideration in light of the bank's admission of error.

APPEARANCES: Bennett Leader, Esq., Buffalo, New York, for appellant.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

Gretchen Capital, Ltd., appeals from a decision of the Montana State Office, Bureau of Land Management, dated August 20, 1976, which rejected its petition for reinstatement of oil and gas lease M 31655, considered to have terminated by operation of law for failure to pay the annual rental due on or before July 1, 1976. 30 U.S.C. U.S.C. § 188(b) (1970).

Appellant's check for the rent was received by the Montana State Office on June 18, 1976, but was returned unpaid by Citibank of Buffalo, New York, with the reason stated as "insufficient funds." The Montana State Office thereupon determined that the rental had not been paid and that the lease therefore terminated.

With its statement of reasons, appellant enclosed a letter from the bank manager explaining why appellant's check was returned for insufficient funds:

After learning of the incident, I was able to trace a deposit of \$ 8,722.25 made on 6/18/76 on a non-imprinted deposit ticket. The clerk handling the deposit put the incorrect account number on the ticket, putting the funds into the wrong Gretchen Capital account. I have enclosed a photo copy of the bank statement on each account so that you can see the funds were in the bank at the time the check was returned, only in the wrong account.

We agree with Gretchen that the letter of the bank manager is an admission of the bank's error which led it to dishonor appellant's check.

Improper dishonor of a check by a bank, where corroborated by a bank official, has on several occasions been deemed a justifiable reason for failure to timely pay annual rental so long as payment was otherwise correct. See, for example, Wikoa, Inc., 22 IBLA 6 (1975); George E. Conley, 9 IBLA 302 (1973); Duncan Miller, 70 I.D. 113 (1963). The rationale underlying this result is that a check operates as payment as of the date given where the drawer has sufficient funds to his credit in the bank on which it is drawn (Duncan Miller, supra at 116 and cases there cited).

The record in this case shows that Gretchen's check was timely received by the State Office and, except for the bank's error, would have been considered proper payment of the annual rental in issue. It also appears that the decision below was issued without benefit of the bank's letter in which it admitted error in handling the Gretchen accounts.

In these circumstances, it is proper to set aside the State Office decision and to remand the case for reconsideration.

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 set aside and the case is remanded to

the Montana State Office, Bureau of Land Management, for further consideration.

Anne Poindexter Lewis

Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Joan B. Thompson
Administrative Judge

