

SHELL OIL COMPANY

IBLA 77-71

Decided June 1, 1977

Appeal from decision of the Eastern States Office, Bureau of Land Management, denying reinstatement of oil and gas leases BLM! A-053484 and BLM! A-060017.

Affirmed.

1. Oil and Gas Leases: Acquired Lands Leases: Oil and Gas Leases: Extensions! ! Oil and Gas Leases: Rentals! ! Oil and Gas Leases: Termination

The lessee of an acquired lands oil and gas lease issued after September 2, 1960, which has reached the end of its primary term, must submit the rental for the first year of an anticipated extended term under 30 U.S.C. § 226(e) (1970), on or before the regular anniversary date of the lease. Failure to submit the rental timely will result in the automatic termination of the lease by operation of law under 30 U.S.C. § 188(b) (1970). Unless the lessee can show that he is entitled to reinstatement of his lease under 30 U.S.C. § 188(c) (1970), the lease must be deemed to have terminated at the end of its stated term.

2. Oil and Gas Leases: Acquired Lands Leases! ! Oil and Gas Leases: Reinstatement

A petition for reinstatement of an acquired lands oil and gas lease terminated for lack of timely payment of the rental is properly denied where the lessee fails to show reasonable diligence in mailing the payment or

a justifiable excuse for the delay in payment. The error of an employee in failing to recognize that rental payment was required for the leases in question does not justify the failure to make a timely payment.

APPEARANCES: James W. McDade, Esq., McDade & Lee, Washington, D.C., for appellant.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

Shell Oil Company has appealed from a decision of the Eastern States Office, Bureau of Land Management (BLM), dated November 16, 1976, which denied its petition for reinstatement of acquired lands oil and gas leases BLM! A-053484 and BLM! A-060017.

The two leases in question were issued October 1, 1966. Both leases cover lands in T. 2 N., R. 10 W., St. Stephens Meridian, Perry County, Mississippi.

On July 23, 1976, a unit agreement (Agreement No. 14-08-0001-16000) for the Camp Shelby Unit Area, was approved, including the lands covered by the above leases. The annual lease rental for the two leases was due on the anniversary date, October 1, 1976. The rental was not received and, as the unit did not contain a well capable of producing oil or gas in paying quantities, the leases terminated by operation of law. 30 U.S.C. § 188(b) (1970).

Appellant filed a petition for reinstatement of the leases and submitted the 11th year rentals on October 14, 1976. BLM denied the petition holding that appellant had failed to establish that the failure to make timely payment was either justifiable or not due to a lack of reasonable diligence, as provided by 30 U.S.C. § 188(c) (1970).

On appeal, appellant argues that reinstatement of the leases is appropriate under 30 U.S.C. § 188(c) (1970), because appellant's late payment of the rentals was justifiable or was not due to a lack of reasonable diligence. Alternatively, appellant contends that irrespective of justification or diligence concerning payment, the leases were continued in effect because drilling operations were being diligently prosecuted on the unit at the end of the primary term of each lease. Appellant states that the basis for such a contention is two! fold. First, reinstatement is available under 30 U.S.C. § 188(d) (1970), whose criteria are less stringent than those under 30 U.S.C. § 188(c) (1970), and second, 30 U.S.C. § 226(e) (1970), by itself, unequivocally mandates extensions of appellant's leases because of drilling.

[1] Appellant's contention that the leases were extended by drilling raises questions concerning the interaction of the extension by drilling provisions and the rental provisions of the Mineral Leasing Act of 1920, as amended, 30 U.S.C. § 181 et seq. (1970). Appellant would have us believe that the extension provisions take precedence over the rental provisions. As explained in a recent Board decision, Oil Resources, Inc., 28 IBLA 394, 398 (1977), such a position "is neither warranted by the language of the statutes nor indicated by the legislative history."

There is no question in the present case that actual drilling operations were being diligently prosecuted on the unit so as to qualify the two leases herein for 2! year extensions pursuant to 30 U.S.C. § 226(e) (1970). However, rental for an oil and gas lease must be paid for each year of the lease on or before the anniversary date of the lease. 30 U.S.C. § 188(b) (1970); 30 U.S.C. § 226(d) (1970).

An analysis of the relevant provisions of the Mineral Leasing Act is contained in Oil Resources, Inc., supra at 400-04. A summary of that discussion is found at 403-04, wherein it is stated:

To summarize the above discussion of Congressional action, we find that:
(1) In 1962, Congress was aware that the Department considered a lessee obligated to submit rental for the first year of an anticipated extended term or his lease would terminate under 30 U.S.C. § 188 (1954), now, as amended, 30 U.S.C. § 188(b) (1970); (2) Congress concurred in this position by providing special reinstatement relief to lessees holding leases issued prior to September 2, 1960; and (3) In 1970 Congress again, by its silence, declined to overrule the Department in this matter, or to provide special relief for post-1960 leases eligible for extension under 30 U.S.C. § 226(e) (1970), but which have terminated for failure to pay rental timely.

It is clear that appellant may not rely on 30 U.S.C. § 188(d) (1970), as extending the terms of the leases herein, as § 188(d) is only applicable to leases issued prior to September 2, 1960. The leases in this case were issued in 1966. In addition, 30 U.S.C. § 226(e) (1970) will not serve to extend a lease unless timely payment of the rental is made. Appellant failed to make timely payment of the rental for the present two leases; therefore, the leases terminated automatically by operation of law as provided by 30 U.S.C. § 188(b) (1970). Unless appellant is able to show that it is entitled to reinstatement of the leases pursuant to 30 U.S.C. § 188(c) (1970), an extension under 30 U.S.C. § 226(e) (1970) cannot be effective. Oil Resources, Inc., supra.

Appellant claims that its failure to pay was both justifiable and not due to a lack of reasonable diligence. Appellant explains that prior to the anniversary date of each lease, the file covering each lease was reviewed by an employee of the company. Company procedure requires that each file be referred to the Operations Section of the company for a determination of whether the leases would expire on October 1, 1976, because of the expiration of the primary term. The Operations Section noted on each file that the lease was held by drilling of a unit well, and returned the files to the Records and Obligations Section, which is the section that would ordinarily order the rental paid.

Appellant has filed an affidavit signed by one J. S. Patty, the Supervisor of the Records and Obligations Section of the Land Department of the Southern Exploration and Production Region of Shell Oil Company. Mr. Patty states that when the files on the two leases in question were received in his section, a clerk interpreted the notation to mean that no further action was necessary to maintain the leases while the well was being drilled and that no rental was payable. Only upon subsequent review did appellant discover the failure to pay.

The two grounds for reinstatement were discussed in the Board's decision, Louis Samuel, 8 IBLA 268 (1972), aff'd, Samuel v. Morton, Civil No. CV 74-1112! EC (C.D. Calif., August 26, 1974). It was explained that the reasonable diligence test is an objective test dependent upon what action a reasonably diligent person would take, while the justifiable standard is limited to those cases where, owing to factors ordinarily outside of an individual's control, the reasonable diligence test could not be met.

[2] Appellant argues that the failure to make timely payment was not due to "a lack of reasonable diligence on the part of the lessee." Reasonable diligence is defined in the regulations, 43 CFR 3108.2-1(c)(2), as follows: "Reasonable diligence normally requires sending or delivering payments sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the payment."

Appellant asserts that such a meaning primarily contemplates a failure on the part of the post office, but that "reasonable diligence" cannot be limited to postal failures. Appellant argues that "reasonable diligence" contemplates the facts in the present case wherein the lessee did everything that could reasonably be expected of it.

Appellant directs our attention to the history of the 1971 revision of 43 CFR 3108.2-1, as outlined in the dissenting opinion in Lone Star Producing Co., 28 IBLA 132, 148 (1976).

As we stated in Lone Star at 138:

The dissenting opinion quotes at length from the legislative history of the Act of May 12, 1970, 84 Stat. 206. The points raised in the dissent have been fully considered earlier by this Board and rejected in Louis Samuel, 8 IBLA 268 (1972), and in Louis J. Patla, 10 IBLA 127 (1973). The principles which the dissent attacks have been consistently reaffirmed by this Board, and in many cases, by the federal courts. See, e.g., Maisano v. Morton, Civil No. 39720 (E.D. Mich. 1973); Samuel v. Morton, Civil No. CV-74-1112! EC (C.D. Cal. 1974); Goad v. Morton, Civil No. 9948 (D. N.M. 1974); Laatz v. Morton, Civil No. 03266 (E.D. Mich. 1975).

Herein, appellant followed certain procedures which were designed to insure the timely and proper payment of oil and gas lease rentals. In this particular case, the system broke down because one of appellant's employees misinterpreted a notation on the files for the two leases. The present situation is not unlike a recent case decided by the Board, Phillips Petroleum Company, 29 IBLA 114 (1977), wherein a number of factors caused by the inadvertence or negligence of the company's employees combined to cause late payment of the rental. Phillips also had adopted a usually reliable system for rental payments. In Phillips we held that the company had failed to exercise reasonable diligence.

Although in the present case there was only one employee error which precipitated the late payment, we cannot find a difference in substance, only in degree. The mistake directly resulted in appellant's failure to make timely payment of the rental. We find that appellant failed to demonstrate reasonable diligence in this case.

Appellant also argues that its failure to make timely payment was justifiable. This Board has held on a number of occasions that a lessee may not rely on the bulk and/or complexity of its business organization so as to make "justifiable" an action which would not be held to be justifiable for an individual lessee. Mono Power Company, 28 IBLA 289, 291 (1977); Serio Exploration Co., 26 IBLA 106, 108 (1976); Monturah Co., 10 IBLA 347, 348 (1973).

Mere inadvertence or negligence of lessee's employees is not sufficient justification to reinstate a lease terminated for failure to make a timely rental payment. Samuel J. Testagrossa, 25 IBLA 64, 65 (1976); L. P. Weiner, 20 IBLA 336, 338 (1975). Appellant would have us believe that there was a judgmental error involved in this case and that, therefore, the failure to make timely payment was justifiable. However, despite appellant's characterization of the mistake and appellant's argument, we find that the error, be it judgmental or inadvertent, is not sufficient justification to warrant reinstatement of the lease.

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.

Frederick Fishman
Administrative Judge

We concur:

Newton Frishberg
Chief Administrative Judge

Joan B. Thompson
Administrative Judge

