

LEONARD A. J. TANCREDI

IBLA 77-299

Decided October 11, 1977

Appeal from decision of the Colorado State Office, Bureau of Land Management, denying petition for reinstatement of oil and gas lease C-23499 Acq. which terminated by operation of law for failure to pay annual rental timely.

Affirmed.

1. Oil and Gas Leases: Reinstatement

An oil and gas lease, terminated by operation of law for failure to pay annual rental timely, may be reinstated only if, among other things, the lessee exercised reasonable diligence, i.e., the lessee sent the rental payment sufficiently in advance of the due date to account for normal delays in the collection, transmittal and delivery of the mail, or if the lessee can show his failure to pay timely was justifiable, i.e., the delay was caused by factor's outside his control, which were the proximate cause of the failure.

2. Oil and Gas Leases: Assignments or Transfers--Oil and Gas Leases: Rental--Oil and Gas Leases: Reinstatement

The oil and gas lessee of record is responsible for paying rental timely and for meeting the reinstatement requirements. The fact that a lessee attempts to assign his lease does not absolve him of the rental and reinstatement requirements until the assignment is approved by the Bureau of Land Management.

3. Oil and Gas Leases: Reinstatement

A rental payment mailed in Houston, Texas, the day before it was due in Denver, Colorado, does not alone show an exercise of reasonable diligence. An argument that the failure of a rental payment to arrive timely was the fault of the U.S. Postal Service does not provide justifiable excuse for reinstatement of the lease in the absence of reasonable diligence.

APPEARANCES: Clayton A. Wilson, Esq., El Monte, California, for appellant.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

Leonard A. J. Tancredi appeals from the March 10, 1977, decision of the Colorado State Office, Bureau of Land Management (BLM), denying his petition for reinstatement of noncompetitive oil and gas lease C-23499 Acq. and holding that the lease automatically terminated by operation of law for failure to pay rental on or before the anniversary date of the lease, March 1, 1977. The rental payment was postmarked February 28, 1977, in Houston, Texas, and was received by the State Office in Denver, Colorado, on March 2, 1977.

In his petition for reinstatement, appellant attributed the failure to send the rental payment sooner to confusion over the lease form. Noncompetitive oil and gas leases for acquired land are styled "OFFER TO LEASE AND LEASE FOR OIL AND GAS." Appellant explained that this reading caused confusion and required clarification to the accountant. He asserts that this confusion occurred in 1976 when Stewart Capital Co., appellant's filing firm, paid the first annual rental "just in time" after clarification, although the record shows this payment was filed with BLM the same day the notice of rental due was received at appellant's address of record. Appellant then argues that the same confusion and delay occurred in 1977 when appellant's purported assignee, Pecos Western Co., paid the rental. Appellant also argues that confusion and delay were caused by the attempted assignment to Pecos Western, apparently because either the proper assignment forms were not filed for approval with BLM or no assignment forms were filed.

The State Office denied appellant's petition because reasonable diligence was not exercised in mailing the rental payment and because appellant did not show that the failure to pay the rental

timely was justifiable. In his Statement of Reasons, appellant argues that the State Office did not clearly show that the lateness of payment was not due to his lack of diligence and that the delay was justifiable because he relied on service by the U.S. Postal Service. Appellant also asserts that the payment was made within 20 days of the anniversary date, a fact not disputed and which is not an issue here.

The State Office correctly denied appellant's petition for reinstatement. Appellant has neither shown how the State Office erred nor presented new arguments sufficient for the reinstatement of his lease. Therefore, for the reasons set out below, we affirm the decision of the BLM State Office.

[1] Reinstatement of a terminated oil and gas lease may be allowed where the lessee can show "to the satisfaction of the Secretary of the Interior that such failure [to pay rental timely] was either justifiable or not due to a lack of reasonable diligence on the part of the lessee," and other requirements not involved here. 30 U.S.C. § 188(c) (1970). Reasonable diligence generally requires sending the rental payment "sufficiently in advance to account for normal delays in the collection, transmittal, and delivery of the payment." 43 CFR 3108.2-1(c)(2); Nevada Western Oil Co., 30 IBLA 379 (1977); Lynn Schusterman, 29 IBLA 182 (1977). Failure to exercise reasonable diligence may be justifiable when it is caused by factors outside the lessee's control, which were the proximate cause of the failure. Adolph F. Muratori, 31 IBLA 39 (1977); Constitution Petroleum Co., Inc., 25 IBLA 319 (1976).

[2] The above rules are applied to the lessee of record, regardless who makes the rental payment. Lynn Schusterman, supra. Thus, the fact that appellant attempted to assign the lease to Pecos Western does not absolve him of paying rental timely, or of complying with the reinstatement requirements, until assignment of the lease is approved by BLM. 30 U.S.C. § 187a (1970); Clarence Zuspahn, 18 IBLA 1 (1974).

[3] Mailing a rental payment in Houston, Texas, on February 28, which is due in Denver, Colorado, on March 1, does not alone constitute reasonable diligence. Taking into account normal delays, 1 day mail service between cities generally should not be expected. E.g., Adolph F. Muratori, supra; Nevada Western Oil Co., supra.

The failure by appellant to pay the rental timely cannot be considered justifiable. Reliance on service by the U.S. Postal Service is a factor considered to determine whether reasonable diligence was exercised. See Constitution Petroleum Co., supra.

Regardless whether the Postal Service provides quick or slow service, reasonable diligence is determined objectively by the date the payment was deposited in the mail. Delay by the Postal Service will not provide justifiable excuse in the absence of reasonable diligence. See Lucyann W. Cameron, 29 IBLA 141, 143 (1977). Therefore, the BLM State Office properly denied appellant's petition for reinstatement.

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:

Douglas E. Henriques
Administrative Judge

Edward W. Stuebing
Administrative Judge

