

APOSTOLOS PALIOMBEIS

IBLA 78-292

Decided May 23, 1978

Appeal from decision of California State Office, Bureau of Land Management, denying petition for reinstatement of noncompetitive oil and gas lease S 5245.

Affirmed.

1. Oil and Gas Leases: Reinstatement

An oil and gas lease, terminated for failure to pay annual rental on or before the anniversary date of the lease, can be reinstated only if the petitioner shows that the failure was either justifiable or not due to a lack of reasonable diligence. Mailing the rental payment after it is due does not meet the reasonable diligence requirement.

2. Oil and Gas Leases: Reinstatement -- Oil and Gas Leases: Rental

Reliance on receipt of a courtesy billing notice from the Bureau of Land Management is not a justifiable excuse upon which to predicate reinstatement of an oil and gas lease terminated for failure to pay rental timely. The failure of the Bureau of Land Management to change a lessee's address of record resulting in the lessee not receiving the courtesy notice does not relieve the lessee from the obligation to pay rental timely.

APPEARANCES: Apostolos Paliombeis, pro se.

OPINION BY ADMINISTRATIVE JUDGE RITVO

Apostolos Paliombeis appeals from a decision of the California State Office, Bureau of Land Management (BLM), denying his petition

for reinstatement of noncompetitive oil and gas lease S 5245 which terminated by operation of law pursuant to 30 U.S.C. § 188(b) (1970), for failure to pay the annual rental due on or before the anniversary date of October 1, 1977.

Appellant mailed the rental payment on October 14 and it was received on October 17, 1977. Since an explanation for the late payment accompanied the check, the State Office treated the explanation as a petition for reinstatement pursuant to 30 U.S.C. § 188(c) and the pertinent regulation 43 CFR 3108.2-1(c).

Appellant stated that his rental was late because he had not received the notice of payment due until October 11, 1977, it having been mailed to his former address, despite the fact that he had previously notified the BLM of his new address.

The State Office denied his petition on the grounds that (1) failure to receive a notice of rental due does not justify late payment and (2) that it is the lessee's obligation to keep the BLM informed of his correct address.

In his appeal, appellant repeats his contention that he informed the BLM of his new address on February 11, 1977. Nonetheless, he says, the BLM continued to send mail to his old address.

The State Office notes that it can find a change of address dated December 21, 1977, for lease CA 222 and an earlier one received on April 28, 1977, for leases S 5134 and S 5170, when the latter leases were on appeal to this Board under somewhat similar circumstances.

In that case, the Board affirmed the denial of the petition for reinstatement. Apostolos Paliombeis, 30 IBLA 154 (1977). So too, must we here.

[1] The pertinent statute and regulations, 30 U.S.C. § 188(c) (1970), and 43 CFR 3108.2-1(c), specify that an oil and gas lease terminated by operation of law for failure to pay the annual rental on time may be reinstated if, among other things, the late payment is either justifiable or not due to a lack of reasonable diligence. "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." 43 CFR 3108.2-1(c)(2). Mailing the payment after it is due does not meet this requirement. Lula Mai Martin, 27 IBLA 360 (1976); Bobbie Arnold, 24 IBLA 352 (1976); L. P. Weiner, 21 IBLA 336 (1975).

[2] Thus, appellant must show that his late payment was justifiable. His only explanation is that he did not receive his notice of payment due timely.

Notices of rental due are merely courtesy notices and are not required by law. Failure to receive one on time does not justify failure to pay rent on time. Energy Reserve, Inc., 30 IBLA 11 (1977); Apostolos Paliombeis, supra. The obligation to pay arises from the terms of the statute. Id. The failure of the BLM to change the lessee's address of record resulting in his not receiving the courtesy notice does not relieve him from the obligation to pay the rental timely. Richard C. Corbyn, 32 IBLA 296.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the State Office is affirmed.

Martin Ritvo
Administrative Judge

We concur:

Frederick Fishman
Administrative Judge

Joseph W. Goss
Administrative Judge

