

GRETCHEN CAPITAL, LTD.

IBLA 78-576

Decided November 8, 1978

Appeal from decision of the Montana State Office, Bureau of Land Management, denying reinstatement of oil and gas lease M 31655.

Affirmed.

1. Accounts: Payments--Oil and Gas Leases: Reinstatement--Oil and Gas Leases: Termination--Payments: Generally--Words and Phrases

"Payment." A noncompetitive oil and gas lease on which there is no well capable of production in paying quantities terminates by operation of law for failure to pay the annual rental on or before the due date. A check for rental does not constitute payment until it is received at the proper office.

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

The applicable statute limits the authority of the Department of the Interior in reinstating leases only to those situations where it is shown that the failure to pay the rental timely was either justifiable or not due to a lack of reasonable diligence. Reasonable diligence normally requires sending or delivering payment to the proper office sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the payment. Late payment of the rental is justifiable only where failure to make timely payment is the result of causes beyond the control of the lessee, and simple inadvertence in mailing the payment to the wrong

office does not justify failure to send timely payment to the proper office.

APPEARANCES: Jason R. Warran, Esq., McDade and Lee, Washington, D.C., for appellants.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

Gretchen Capital, Ltd., Bartram Levenson, and Samuel A. Rizzo are co-lessees who have appealed from the July 25, 1978, decision of the Montana State Office, Bureau of Land Management (BLM), which denied their petition for reinstatement of oil and gas lease M 31655 which was held to have terminated by operation of law for failure to pay the annual rental on or before the anniversary date. The lessees had mailed their separate checks in an envelope inadvertently addressed to the Eastern States Office of BLM. The checks were received by the Eastern States Office on June 26, 1978. They were not received in the Montana State Office until July 5, 1978, although the payment was due there on July 3.

[1] Appellants contend that it was error to hold the lease terminated. Alternatively, appellants contend that if the lease terminated, it should be reinstated. In their statement of reasons, they contend: "The basic issue in this case is, simply, whether the Department may terminate an oil and gas lease where payment of annual rental is made timely but to the wrong office of the BLM." This characterization of the issue is predicated on misstatements of law. First, the Department does not terminate leases; a noncompetitive oil and gas lease on which there is no well capable of production in paying quantities terminates by operation of law for failure to pay the annual rental on or before the anniversary date pursuant to 30 U.S.C. § 188(b) (1970). Appellant next errs in characterizing a check sent to the wrong office as "payment" within the meaning of the statute and regulations. Departmental regulation 43 CFR 3103.1-2(a) makes it abundantly clear that a check for rental of an oil and gas lease does not constitute payment until it is received at the proper office:

(a) Proper office. Unless otherwise directed by the Secretary, rentals and royalties under all leases and permits issued under the act shall be paid to the Authorizing officer of the proper office. All remittances to Bureau of Land Management offices shall be made payable to the Bureau of Land Management.

The Montana State Office is identified as the office having jurisdiction over oil and gas leases in that State. 43 CFR 1821.2-1(d). Because the check was not received in the proper office until after the due date, the payment was late and the lease terminated by

operation of law and not by the action of any official. Hiko Bell Mining & Oil Co., Inc., 24 IBLA 255 (1976). <sup>1/</sup> The need to conduct business at the office having appropriate jurisdiction has been long recognized. See, e.g., Matthews v. Zane, 7 Wheat. 164, 5 U.S. 244 (1822).

[2] We must next consider whether the lease may be reinstated. Where a lease terminates by operation of law for failure to pay timely the annual rental, the applicable statute limits the authority of the Department in reinstating leases only to those situations where it is shown that the failure to pay the rental timely was either justifiable or not due to a lack of reasonable diligence. 30 U.S.C. § 188(c) (1970). "Reasonable diligence normally requires sending or delivering payment 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). Because, under regulation, a check does not constitute payment unless it is received at the proper office, it necessarily follows that the requirement of "sending or delivering payment" cannot be met by sending the check to the wrong office. Thus, mailing the check to the wrong office logically and legally precludes a finding of reasonable diligence.

The Department has consistently held that a late payment of rental is justifiable within the meaning of the statute only where the failure to make timely payment is the result of causes beyond the control of the lessee and simple inadvertence has never been held by this Board to justify late payment. See Lone Star Producing Co., 28 IBLA 132 (1976); Hiko Bell Mining & Oil Co., Inc., supra; Vern H. Bolinder, 17 IBLA 9 (1974); Louis Samuel, 8 IBLA 268 (1978). The Board's use of this standard has been sustained in the Federal courts. See, e.g., Maisano v. Morton, Civil No. 39720 (E.D. Mich. 1973); Laatz v. Morton, Civil No. 03266 (E.D. Mich. 1975). Appellants admit that the checks were sent to the wrong office out of simple inadvertence:

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<sup>1/</sup> This decision was reversed by an unpublished order in Hiko Bell Mining & Oil Co. v. Andrus, C 76-138 (C.D. Utah, April 4, 1978), in which the court found the regulations ambiguous and ordered reinstatement of the lease, concluding that "a reasonable person in the exercise of reasonable diligence could find the regulations and the lease provisions confusing and might be justified in sending his rental payment to the wrong office." Although we decline to follow the court's analysis in this case for reasons stated in the text of this decision, we wish to stress that the court's ordering reinstatement of the lease could only have been based on a conclusion that the lease actually terminated when payment was not timely received in the proper office. If the lease did not terminate, reinstatement would not be necessary. The lease having terminated, it could only be reinstated upon a showing that the lessee exercised reasonable diligence in making the rental payment or that the late payment was justifiable.

There is no doubt here that the office to which the rental payment was made was not the proper one; that Appellants did not suppose that that office was the proper one; and that Appellants did not send the rental payment to the wrong office out of reckless disregard of the law and regulations, but out of simple inadvertence in addressing the envelope. The question, then, is whether the law and regulations require that Appellants, whose tender of rental was in every other way satisfactory, lose their lease, and that the United States lose \$1,096.00 annual rental, because of such inadvertence. (Statement of Reasons, pp. 4-5). Under the standards articulated in the above-cited decisions, the answer to appellants' question is simply that the leases terminated and may not be reinstated.

Appellants' arguments that the lease never terminated, or that it ought to be reinstated if it did terminate, are based on their assertion that the regulations requiring payment in the proper office are unduly ambiguous. Appellants draw support from the unpublished court decision reversing the Board's decision in Hiko Bell Mining & Oil Co., Inc., *supra*. 2/ After holding the regulation to be ambiguous, the court held that the lessee had exercised reasonable diligence and that failure to pay the rental timely was justifiable. However, this case does not involve a Utah lease, and the decision does not constitute binding precedent for other Federal judges. Hartley v. Sioux City and New Orleans Barge Lines, Inc., 247 F.Supp. 1015 (W.D. Pa. 1965), *aff'd*, 379 F.2d 354 (3d Cir. 1967); *see* United States v. Mathies, 350 F.2d 923 (3d Cir. 1965); *see also* Taylor v. Cox, 315 F.Supp. 1316 (E.D. Va. 1970). We decline to follow it because it conflicts with principles of construction applied in other cases cited above which have been judicially sustained.

Even if the regulations were ambiguous, we cannot overlook the self-evident truism that only something that causes failure to make timely payment can justify late payment within the meaning of the statute. As we have shown above, appellants have admitted that the payments were sent to the wrong place by simple inadvertence rather than by an ambiguity in the regulations. This is also demonstrated by appellants' successful submission of rentals in the past. In order to hold that the alleged ambiguity justified mailing the rental to the wrong office, we would have to hold that the alleged ambiguity was the cause of appellants having done so. However, reinstatement can only be granted on the basis of the facts of each case, not the fictions.

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2/ See n.1, *supra*.

Furthermore, we see no factual basis to support the conclusion that the regulations are ambiguous. One can expect a certain amount of error by those who seek to comply with even the clearest rules, and if a regulation is truly ambiguous, one would expect to find a significant measure of noncompliance resulting from the ambiguity. Yet despite the large volume of rental payments submitted each month, this is the first appeal since the Board's decision in Hiko Bell in which the payment was sent to the wrong office, and in Hiko Bell, as in this case, the error was due to inadvertence rather than any ambiguity in the regulation.

Appellants cite the following statement on the reinstatement provision by Representative Wayne Aspinall as a basis for concluding that their lease should be reinstated:

As I recall, we have brought [public or private relief] bills before this body where the rental was short by 15 cents or 20 cents and in many cases the shortage was a few dollars or less. In other situations the rental was mailed in ample time but the letter was misdirected to the wrong office. These are some of the situations that this proposed bill would eliminate. 3/ [Emphasis added in appellants' Statement of Reasons.]

In Margaret C. Hose, 19 IBLA 307, 309 (1975), the Board considered the import of this statement:

We note that Representative Aspinall's reference to "misdirected" is ambiguous, namely, it is not clear whether he is referring to misdirection by the post office, the lessee or by both. The Board concludes that adequate tender of payment requires that a letter be properly addressed. Accordingly, we hold that proper construction of the term "misdirected" excuses late payment only in instances where the error rests with the post office, and not the inadvertence of the lessee.

We further note that this is the only interpretation consistent with principles established in earlier decisions sustained on judicial review.

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3/ 116 Cong. Rec. H-3253 (daily ed. Apr. 20, 1970).

Therefore, 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.

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Joan B. Thompson  
Administrative Judge

We concur.

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James L. Burski  
Administrative Judge

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Anne Poindexter Lewis  
Administrative Judge

