

SAXE, BACON AND BOLAN, P.C.

IBLA 78-196

Decided March 6, 1979

Appeal from a decision of the Wyoming State Office, Bureau of Land Management, denying a petition for reinstatement of oil and gas lease W 56961.

Affirmed.

1. Oil and Gas Leases: Reinstatement--Reinstatement: Generally

The burden of showing that the failure to pay annual rent for an oil and gas lease on or before the anniversary date of the lease was justifiable or not due to a lack of reasonable diligence is on the lessee. The fact that the lessee retained a leasing service which misrepresented that it would file appropriate assignment documents prior to the anniversary date does not justify late payment. Mailing of the annual rental payment on a date after it is due does not constitute reasonable diligence.

APPEARANCES: William E. Casselman II, Esq., Ambrose and Casselman, Washington, D.C. for appellant.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Saxe, Bacon and Bolan, P.C., hereafter Saxe, appeals from a decision of January 5, 1978, by the Wyoming State Office, Bureau of Land Management (BLM), denying appellant's petition for reinstatement of oil and gas lease W 56961.

On December 1, 1976, appellant was issued oil and gas lease W 56961 to parcel WY-89 located in various sections of T. 57 N., Rs. 76 and 77 W., sixth principal meridian, Sheridan County, Wyoming. The term of the lease was 10 years, and annual rent in the amount of \$774.00 was due on or before December 1 of each year.

Appellant's holdings in oil and gas leases were at all relevant times herein handled by Stewart Capital Corp. (Stewart). According to appellant, Stewart advised appellant on or about the second week of November 1977 that its leases were up for "renewal" as of December 1, 1977. Stewart further advised that it would be in appellant's best interest to transfer the Wyoming lease at issue here to a third party, and accordingly an assignment of record title was prepared by Saxe and forwarded to Stewart on November 21, 1977.

Saxe maintains that it was informed by Stewart that the assignment of this lease would be completed by December 1, 1977, and that therefore there was no need for Saxe to tender rental payment for the lease. Stewart did not, however, file the transfer documents with BLM in a timely manner, and the obligation to pay the rent remained with appellant.

According to Saxe, it was first informed by Stewart on December 6, 1977, of Stewart's failure to file the assignment documents. Saxe thereupon tendered the appropriate rental payment to BLM on December 8, 1977.

On December 14, 1977, BLM informed appellant that its lease had terminated automatically by operation of law on its anniversary date for failure to pay rental in a timely manner. 30 U.S.C. § 188(c) (1976).

By letter of December 23, 1977, appellant petitioned for reinstatement of its terminated lease alleging that its failure to pay rental in a timely manner was "justifiable and/or not due to a lack of reasonable diligence." Appellant recounted many of the facts set forth above and further mentioned that the rent for a second lease which it held had been timely paid by the Stewart organization.

Appellant's petition for reinstatement was denied by the Chief, Oil and Gas Section, BLM, by decision dated January 5, 1978. Therein, BLM set forth a portion of the appropriate regulation, 43 CFR 3108.2-1 (1977):

(c)(2) The burden of showing that the failure to pay on or before the anniversary date was justifiable or not due to lack of reasonable diligence will be on the lessee. 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.

BLM found that Stewart's negotiation for the sale of the lease was not an extenuating circumstance amounting to justifiable delay. The decision denying reinstatement cited Charles E. Reynolds, 9 IBLA 300 (1973), for the proposition that the failure to pay annual rental was

not justified by the fact that the lease holder was in the process of negotiating the sale of the lease. Reynolds further held that a lessee does not exercise reasonable diligence in mailing the annual rent 1 day prior to the anniversary date of the lease. Here the rental was not mailed until 9 days after the due date.

Saxe appeals the denial of its petition for reinstatement claiming that extenuating circumstances outside the control of the lessee were present to constitute justifiable cause. Lucille Lipphardt, 24 IBLA 81 (1976). The essence of appellant's argument is that it retained a respected lease management company, Stewart Capital Corporation, to handle its oil and gas lease holdings, and Stewart breached its responsibility to appellant by failing to timely file the appropriate transfer documents or, in the alternative, to advise appellant of the need to pay annual rent. Saxe maintains that Stewart was in the unique position of being the only party with direct knowledge of whether the assignment documents were timely filed or whether appellant remained responsible for the annual rent. Saxe further maintains that Stewart misrepresented that the appropriate assignment documents would be timely filed.

[1] We affirm the denial of the petition for reinstatement, because we find that appellant has neither exercised reasonable diligence nor shown sufficient justification to require reinstatement of its oil and gas lease. A critical element in our holding is the fundamental rule underlying agency law that within the sphere of the authority conferred, the act of the agent is as binding upon the principal as if it were done by the principal itself. Hoffman v. John Hancock Mutual Life Insurance Co., 92 U.S. 161 (1875). The activities of Stewart have been examined in D. E. Pack, 30 IBLA 166 (1977), wherein Stewart was found to act as agent for its client offerors in the simultaneous oil and gas leasing program. The duties of Stewart, as set forth in appellant's statement of reasons, permit this same finding in the present case.

This Board has held on several occasions that where the lessee has entrusted the timely payment of the lease rental to another, the negligent failure of the agent and/or subagent to accomplish payment will not excuse or justify late payment. A. O. Holley, 14 IBLA 264 (1974), lessee entrusted payment to a firm of certified public accountants; Phillips Petroleum Co., 29 IBLA 114 (1977); Shell Oil Co., 30 IBLA 290 (1977); David R. Smith, 33 IBLA 63 (1977); Charles C. Sturdevant, 20 IBLA 280 (1975), lessee assigned duty to make timely payment to an employee; Lucille C. Lipphardt, *supra*, lessee entrusted rental payment to a friend; Stanley J. Pirtle, 26 IBLA 348 (1976), by prearrangement, as part of a business negotiation, a third party assumes responsibility for rental payment.

Misrepresentation by an employee entrusted with the duty of making timely rental payments does not justify late payment of rent. Ram Petroleum Inc., & Ramoco, Inc., 37 IBLA 184 (1978). 1/

The mailing of the annual rental payment on a date after it is due does not constitute reasonable diligence. Apostolos Paliombeis, 30 IBLA 153 (1977); Bobbie Arnold, 24 IBLA 352 (1976).

The fact that a lessee attempts to assign his lease does not absolve him of the rental payment requirements until the assignment is approved. Auburn C. Hunsucker, 34 IBLA 316 (1978); Leonard A. J. Tancredi, 32 IBLA 325 (1977).

The prudent course for appellant is suggested by the Wyoming State Office in Charles E. Reynolds, *supra*: "Before this office can approve an assignment of an oil and gas lease, the lease account must be maintained in good standing (regulation 43 CFR 3106.2-4); therefore, if you are attempting to sell this lease, we believe you should have made sure the rental was properly paid."

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.

Douglas E. Henriques
Administrative Judge

We concur.

Edward W. Stuebing
Administrative Judge

Frederick Fishman
Administrative Judge

1/ Judicial review pending.