

ESTATE OF KENNETH F. KRAMMES

IBLA 78-470

Decided March 29, 1979

Appeal from decision of the California State Office, Bureau of Land Management, denying reinstatement of oil and gas lease CA 486, terminated, by operation of law, for failure to pay annual rental on or before the anniversary date of the lease.

Reversed.

1. Oil and Gas Leases: Termination—Oil and Gas Leases: Reinstatement

A lease terminated automatically for untimely payment of annual rental may be reinstated only upon proof that reasonable diligence was exercised, or that the lack of diligence was justified. In the absence of such proof, a petition for reinstatement is properly denied.

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

Reasonable diligence ordinarily requires mailing the payment sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the mail.

3. Oil and Gas Leases: Termination—Oil and Gas Leases: Reinstatement

Untimely payment of the annual rental may be justified if proximately caused by extenuating circumstances outside the lessee's control which occurred at or near the anniversary date of the lease.

APPEARANCES: Dustin N. Jameson, Esq., Chain, Younger, Jameson, Lemucchi, Williams & Noriega, Bakersfield, California, and Susan Krammes Sammis, Executrix of the Estate of Kenneth F. Krammes, for appellant.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

Susan Krammes Sammis as executrix of the Estate of Kenneth F. Krammes, deceased, appeals the May 12, 1978, decision of the California State Office, Bureau of Land Management (BLM), denying reinstatement of oil and gas lease CA 486, which terminated automatically by operation of law for failure to timely pay the annual rental therefor.

By court decree of April 7, 1975, Richard P. Gervais of the Kern County (California) Public Conservator's Office, was appointed conservator of the person and estate of Kenneth F. Krammes, the record lessee of oil and gas lease CA 486. 1/ By letter of May 30, 1975, BLM was advised of Mr. Gervais' appointment. The letter also requested an inventory of Mr. Krammes' property, *inter alia*, and detailed information regarding all oil and gas leases held by the conservatee, including the respective anniversary dates and the annual rental fees therefor. By letter dated June 12, 1975, the requested information was transmitted to Mr. Gervais.

The anniversary date of lease CA 486 was March 1, 1978. The rental payment envelope was postmarked February 28, 1978, and received in the State Office on March 2, 1978. Accordingly, by decision dated April 5, 1978, the lease was terminated automatically by operation of law. 30 U.S.C. § 188 (b) (1976); 43 CFR 3108.2-1(c).

On April 12, 1978, the conservator petitioned for reinstatement arguing, as grounds therefor, that BLM's "failure to receive the rental payment was not due to a lack of reasonable diligence on the Conservator's part \* \* \*. If the Post Service had been functioning properly, [BLM] would have received the rental payment on March 1, and it would have been timely." Appellant in its statement of reasons for appeal 2/ further argues that:

[A]s the payment envelope was deposited by the Conservator's Office in the ordinary course of business with agencies which are not in his Department and over which he has no control, and within a period that allowed five days to be delivered by them on time, the Conservator's failure to make the rental payment on the due date was justifiable under the circumstances.

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1/ Mr. Krammes died on March 6, 1978.

2/ Retained counsel for appellant submitted a statement of reasons for appeal, as did Ms. Sammis in her representative capacity. The above-quoted language and any arguments of appellant to which we refer are, unless otherwise indicated, those of counsel.

[1] Appellant correctly recognizes that a lease terminated automatically for untimely payment of annual rental may be reinstated only upon proof that reasonable diligence was exercised, or that the lack of diligence was justified, 30 U.S.C. § 188(c) (1976). In the absence of such proof, a petition for reinstatement is properly denied. See, e.g., J. R. Oil Corp., 36 IBLA 81 (1978); James Donoghue, 25 IBLA 280 (1976); Levi T. Bellah, 22 IBLA 1 (1975); Pauline G. Thornton, 17 IBLA 251 (1974).

[2] Reasonable diligence ordinarily requires mailing the payment sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the mail. 43 CFR 3108.2-1(c)(2). Appellant vigorously contends that the rental check was issued on February 24, 1978, and deposited in the Kern County mail system the same day. Allowance of 5 days for delivery within the State over a distance of 280 miles is, it is argued, sufficiently in advance of the date due so as to constitute reasonable diligence.

The distance over which mail must be transmitted for delivery is obviously relevant to any inquiry into the reasonableness of a lessee's actions in paying the annual rental. See W. A. Fitzhugh (On Reconsideration), 18 IBLA 323 (1975); Inexco Oil Co., 15 IBLA 422 (1974); Sharon Rae Cook, 15 IBLA 424 (1974). What is overlooked is the fact that two mail systems are here involved – that of Kern County and that of the United States. The deposition in the mails to which our decisions refer is placement in the United States mail. The payment apparently was not deposited in the United States mail system until February 28, 1 day prior to the due date. Mailing a payment 1 day in advance of the anniversary date of a lease does not constitute reasonable diligence. J. R. Oil Corp., *supra*; Hubert W. Scudder, 35 IBLA 58 (1978).

[3] Untimely payment of the annual rental may be justified if proximately caused by extenuating circumstances outside the lessee's control which occurred at or near the anniversary date of the lease. Hubert W. Scudder, *supra*; Lloyd M. and Adelheid A. Patterson, 34 IBLA 68 (1978); Genevieve C. Aabye, 33 IBLA 285 (1978); Leonard A. J. Tancredi, 32 IBLA 325 (1977). The State Office denied appellant's <sup>3/</sup> petition for reinstatement on the ground that "[a] lessee or an agent of a lessee cannot be excused from performing his obligation to pay rental timely either because of the complexity of his organization's business procedures or because his employees fail to perform." (Citations omitted.)

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<sup>3/</sup> We earlier noted that the reinstatement petition was actually filed by Mr. Gervais, the Public Conservator, on behalf of Mr. Krammes.

We have previously held that a lessee's lack of diligence is excused where sufficiently extenuating circumstances are presented, as in cases of personal injury, illness, death, or catastrophe. E.g., Billy Wright, 29 IBLA 81 (1977); Fredres E. Laubaugh, 24 IBLA 306 (1976); David Kirkland, 19 IBLA 305 (1975).

Herein, the public conservator was required to utilize the county mailing system. In fulfilling his obligations under his conservatorship, he placed the rental payment in the county system 5 days prior to the anniversary date. For reasons undeterminable the rental payment apparently was delayed 4 days in the system before it was delivered to the United States Postal Service. While placement of the check in the County of Kern mail collection system did not, in and of itself, constitute posting sufficient to show reasonable diligence, the conservator's actions can properly be taken into account to determine whether the failure in the exercise of reasonable diligence was justifiable. Considering all of the facts of this case, we hold that it was.

This case is fundamentally different from Monturah Co., 10 IBLA 347 (1973), and similar such cases in which this Board has noted that corporations and other large organizations "cannot hide behind the bulk and complexity of their organizations, so as to make 'justifiable' for them actions which would not be held to be justifiable for individual lessees." Id. at 348. Essential to those cases, as well as the cases in which the failure of an agent has been imputed to the principal, has been the control which the organization or principal exercised over employees or agents. Such is not the situation in the instant case. On the contrary the public conservator was required to place outgoing mail in the Kern County mail system, over which he exercised no control. Thus, the principle of the Monturah case is not applicable herein.

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 reversed.

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James L. Burski  
Administrative Judge

I concur:

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Joan B. Thompson  
Administrative Judge

## ADMINISTRATIVE JUDGE GOSS CONCURRING:

I concur in the result. I would hold, however, that the Public Conservator clearly exercised reasonable diligence, such diligence being less than the absolute diligence which would avoid all possible problems.

Departmental regulation 43 CFR 3108.2-1(c)(2) provides in part: "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." (Emphasis added.)

During proposed rulemaking in connection with the regulation 43 CFR 3108.2-1, the Assistant Secretary stated: "The regulations have been revised to broaden what constitutes reasonable diligence so as to permit such a finding in special circumstances even when the lessee has not sent or delivered payments in advance of the due date." 36 FR 21035 (Nov. 3, 1971). It will be further noted that the regulation refers to reasonable diligence in connection with the "sending" of payments; the regulation is not restricted to reasonable diligence in the deposit in the United States postal system.

The overwhelming majority of government and business mail, including much mail in the Department of the Interior, is processed with central collection prior to delivery into the postal system. Absent known problems, the Public Conservator would have every reason to expect that even with normal delays there would be delivery within 6 days of a payment deposited for Kern County mail authorities on February 24. To hold that the Public Conservator did not exercise reasonable diligence is to disregard the intent of the statute. In certain instances, where payment is received within the required 20 days, Congress contemplated that a lessee may be held to have been reasonably diligent despite an error of a subordinate. 1970 U.S. Code Cong. & Ad. News 3007-08; Private L. No. 294, 82 Stat. 1409 (1968); Elwyn C. Hale, Las Cruces 063610 (August 27, 1968).

Reasonable diligence by the lessee in sending a check for deposit in the mail would, in circumstances here, be sufficient for the purposes of the regulation.

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Joseph W. Goss  
Administrative Judge

