

CAROLINE L. HUNT

IBLA 79-485

Decided October 22, 1979

Appeal from a decision of the New Mexico State Office, Bureau of Land Management, declaring geothermal lease NM 20663 terminated for failure to pay the rental timely.

Affirmed.

1. Geothermal Leases: Rentals -- Geothermal Leases: Termination

A geothermal lease is automatically terminated when the lessee fails to pay the advance rental on or before the anniversary date of the lease.

2. Accounts: Payments -- Geothermal Leases: Rentals -- Geothermal Leases: Termination -- Payments: Generally

Timely tender of a check which, when presented, is dishonored properly by the bank on which it is drawn does not constitute timely payment.

APPEARANCES: Caroline L. Hunt, pro se.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

Caroline L. Hunt appeals from the June 12, 1979, decision of the New Mexico State Office, Bureau of Land Management (BLM), declaring geothermal lease NM 20663 terminated for failure to pay timely the annual rental due on or before June 1, 1978.

Appellant mailed the rental payment check dated May 18, 1978, to BLM. The check was apparently timely received at the BLM office; however, when the check was submitted to the bank for collection the bank returned the check to BLM as uncollectible, marked "Unable to locate account number."

On August 9, 1978, BLM issued a decision reciting that the lease had automatically terminated on June 1, 1978, for failure to make the rental payment timely. The uncollectible check was enclosed with the BLM decision. BLM misaddressed the letter to a Tulsa, Oklahoma, address rather than appellant's address of record in Dallas, Texas. ^{1/} An inquiry was made to the Tulsa Postmaster by BLM regarding the August 9, 1978, letter. The Postmaster responded that the letter was returned to the BLM State Office. The letter was apparently lost in the mail, as it was never received by appellant nor returned to the sender, BLM.

Apparently having no notice that the 1978 payment check was uncollectible or of BLM's decision of August 9, 1978, reciting that her lease had terminated, appellant tendered her rental payment check for the 1979-80 rental period. One June 12, 1979, BLM sent to appellant at her Dallas address the decision appealed from, informing her that the lease had automatically terminated on June 1, 1978.

[1] A geothermal lease is automatically terminated when the lessee fails to pay advance rental on or before the anniversary date of the lease. Robert L. Wheeler, 33 IBLA 371 (1978); 30 U.S.C. § 1004(c) (1976); 43 CFR 3205.3-2(a). Checks or drafts are accepted subject to collection and final payment without cost to the Government office. 43 CFR 1822.1-2(a). Timely tender of a check which, when presented, is dishonored by the bank on which it is drawn does not constitute timely payment. Pauline V. and John H. Trigg, 31 IBLA 296, 298 (1977).

[2] This is the very situation we have here. Appellant's check, presumably timely received, was returned by the bank as uncollectible. The record does not show that the bank acted in error. ^{2/} Therefore, her payment was not timely and her lease was properly terminated. Duncan Miller, 70 I.D. 113, 114 (1963).

Appellant's statement of reasons suggests that the lease is in full force and effect because she was never notified of the noncollectible nature of her 1978 check. BLM's error in misaddressing the

^{1/} The August 12, 1978, letter was addressed 1401 Elm Street, Tulsa, OK 75202. Appellant's address of record at that time was 1401 Elm Street, Dallas, Texas, 75202.

^{2/} If the return of the check resulted from confirmed bank error, subsequent collection and payment would relate back to the time that the check was tendered to BLM and payment would be timely. Pipeline Petroleum Corp., 34 IBLA 73 (1978). Proof that the bank error did in fact occur is required. Pauline V. and John H. Trigg, *supra*. Appellant has neither alleged nor established that the return of the check resulted from bank error.

termination notice does not change the legal consequences. As discussed above, the lease was automatically terminated by operation of law on June 1, 1978. The fact that the notification of termination was delayed is unfortunate. However the delay does not change the result. The law provides unequivocally that "[i]f there is no well on the leased lands capable of producing geothermal resources in commercial quantities, the failure to pay rental on or before the anniversary date shall terminate the lease by operation of law." 3/

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.

Frederick Fishman
Administrative Judge

We concur:

Joan B. Thompson
Administrative Judge

Joseph W. Goss
Administrative Judge

3/ Although this case has not been couched in terms of possible reinstatement of the lease, appellant's statement of reasons does not afford a sufficient predicate for holding that "the failure to pay timely the lease rental was justifiable or not due to a lack of reasonable diligence." 30 U.S.C. § 1004(c) (1976). Specifically, appellant attempts to place the entire onus on BLM, but she has offered no explanation whatsoever for her failure to note that she was not charged by the bank for the amount of the check or the failure of the bank to honor the check. See footnote 2, supra.

