

Appeal from decision of Utah State Office, Bureau of Land Management, requiring evidence of authorization for partial relinquishment, absent which noncompetitive oil and gas lease deemed terminated. U-13627.

Affirmed.

1. Estoppel -- Oil and Gas Leases: Relinquishments -- Oil and Gas Leases: Termination

An oil and gas lease on which there is no well capable of producing oil or gas in paying quantities will automatically terminate on the anniversary date of the lease upon failure of lessee to pay the minimum annual rental, despite a partial payment submitted on the basis of a partial relinquishment, which was ineffective because not filed by the record title holder pursuant to 43 CFR 3108.1, and despite issuance of a Bureau of Land Management decision subsequent to the anniversary date confirming a decreased annual rental.

APPEARANCES: Robert P. Hill, Esq., Salt Lake City, Utah, for appellant.

OPINION BY ADMINISTRATIVE JUDGE GOSS

B. J. Bradshaw has appealed from a decision of the Utah State Office, Bureau of Land Management (BLM), dated October 25, 1978, questioning the status of noncompetitive oil and gas lease U-13627. The

2,566-acre lease was issued effective February 1, 1971, to B. J. Bradshaw for a term of 10 years at an annual rental of \$1,283. The land is situated in secs. 4, 5, 8, and 9, T. 27 S., R. 17 E., Salt Lake meridian, Wayne County, Utah.

On February 1, 1972, a partial relinquishment was filed by F. J. Bradshaw, appellant's husband, surrendering secs. 4 and 5 of the leasehold and tendering \$640 as the decreased annual rental. On February 3, 1972, BLM issued a decision cancelling the lease as to the surrendered land and confirming the annual rental as \$640 for the remaining land. In that decision, F. J. Bradshaw was listed as the record lessee. Since that time BLM has billed F. J. Bradshaw for the annual rental.

In its October 25, 1978, decision, BLM noted its error in accepting a partial relinquishment from F. J. Bradshaw in view of the fact that the lease file contained no authorization for F. J. Bradshaw to act as agent for the record lessee. BLM allowed appellant 30 days to submit evidence that F. J. Bradshaw was authorized to act on her behalf in filing the partial relinquishment. Otherwise, the lease would be held to have automatically terminated effective February 1, 1972, for failure to pay the full annual rental, and \$4,480 in rental payments would be refunded. The final paragraph indicated that appellant had a right of appeal to the Board.

Appellant did not submit the requested evidence but filed a notice of appeal from the BLM decision on November 21, 1978.

In her statement of reasons for appeal, appellant contends that BLM is estopped to deny the validity of the subject lease by virtue of the fact that the lessee paid the annual rental in accordance with the February 3, 1972, BLM decision and subsequent bills. In the alternative, appellant argues that under 43 CFR 3108.2-1(b) she was entitled to a notice of deficiency and 15 days to pay the deficient annual rental prior to termination of the lease.

[1] Failure of a lessee to pay annual rental on or before the anniversary date of the lease, for a lease on which there is no well capable of producing oil or gas in paying quantities, will result in automatic termination of the lease. 30 U.S.C. § 188(b) (1976). However, the statute also provides two exceptions to the rule of automatic termination. The second exception provides that where a rental payment paid on or before the anniversary date

was calculated in accordance with the acreage figure stated in the lease, or in any decision affecting the lease, or made in accordance with a bill or decision which

has been rendered by [the Secretary] \* \* \* and such figure, bill, or decision is found to be in error resulting in a deficiency, such lease shall not automatically terminate unless \* \* \* the lessee fails to pay the deficiency within the period prescribed in a notice of deficiency sent to him by the Secretary. [1/]

30 U.S.C. § 188(b) (1976).

We hold that appellant's oil and gas lease terminated by operation of law effective February 1, 1972, the anniversary date of the lease. The partial relinquishment, filed on that date, was not then effective as it had not been filed by the "record title holder," B. J. Bradshaw. 43 CFR 3108.1; Reichhold Energy Corp., 40 IBLA 134 (1979). Thus, the amount tendered on that date in payment of the annual rental was not sufficient as it represented payment only for the unrelinquished land.

Appellant cannot rely on the February 3, 1972, BLM decision to bring her within the statutory exception to the rule of automatic termination. The statute applies where payment submitted on or before the anniversary date of the lease was either calculated in any decision affecting the lease or made in accordance with a bill or decision rendered by the Secretary. The provision has no application where a bill or decision was issued after the anniversary date of the lease. In the present case the BLM decision was issued two days after the anniversary date of the lease. The case cited by appellant, Pacific Transmission Supply Co., 35 IBLA 297 (1978), is inapposite.

Neither does the doctrine of estoppel apply. The lease terminated on February 1, 1972, regardless of the February 3, 1972, decision. Appellant did not rely on any prior action within the Department. There was nothing therefore which could form the basis for an estoppel. See generally Edward L. Ellis, 42 IBLA 66 (1979).

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1/ The first exception applies where a rental payment paid on or before the anniversary date "has been or is hereafter deficient and the deficiency is nominal." 30 U.S.C. § 188(b) (1976); 43 CFR 3108.2-1(b). This exception has no application in the present case where the deficiency was \$643 or over 50 percent of the annual rental due.

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 affirmed.

Joseph W. Goss  
Administrative Judge

We concur:

James L. Burski  
Administrative Judge

Anne Poindexter Lewis  
Administrative Judge

