

C.S.V. OIL EXPLORATION CO.

IBLA 79-130

Decided February 13, 1980

Appeal from a decision of the Utah State Office, Bureau of Land Management, holding oil and gas lease to have terminated by operation of law. U-22921.

Set aside and remanded.

1. Oil and Gas Leases: Rentals -- Oil and Gas Leases: Termination

Where an oil and gas lessee pays his annual rental on or before the anniversary date of the lease in accordance with an erroneous bill issued by the Bureau of Land Management, the lease will not automatically terminate unless lessee fails to pay the deficiency within the period prescribed in a notice of deficiency sent by BLM. 30 U.S.C. § 188(b) (1976); 43 CFR 3108.2-1(b).

APPEARANCES: Jan E. Callister, Secretary, C.S.V. Oil Exploration Co.

OPINION BY ADMINISTRATIVE JUDGE GOSS

C.S.V. Oil Exploration Co. has appealed from a decision of the Utah State Office, Bureau of Land Management (BLM), dated November 27, 1978, holding appellant's oil and gas lease U-22921 to have terminated by operation of law for failure to submit the annual rental on or before the anniversary date of the lease. Appellant's lease was issued effective December 1, 1973, after competitive sale, for a term of 5 years at an annual rental of \$2 per acre for 320 acres of land situated in sec. 31, T. 16 S., R. 26 E., Salt Lake meridian, Grand County, Utah.

Appellant timely paid the annual rental each year of the lease term in accordance with bills submitted by the BLM State Office. The bills for the last 3 years incorrectly noted the amount due as \$160, computed at 50 cents per acre.

BLM held the lease to have terminated effective December 1, 1975, citing Levi T. Bellah, 22 IBLA 1 (1975), and L. P. Weiner, 21 IBLA 336 (1975), for the proposition that the obligation to pay annual rental on or before the anniversary date of the lease arises from the terms of the statute and not from receipt of a courtesy notice from BLM.

[1] Failure of a lessee to pay annual rental on or before the anniversary date of the lease, for any 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). The statute, however, provides two exceptions to the rule of automatic termination where payment has been timely made but is deficient. The first exception deals with a payment nominally deficient and is not applicable here. See 43 CFR 3108.2-1(b), infra. The second exception provides:

[I]f \* \* \* the payment was \* \* \* made in accordance with a bill \* \* \* which has been rendered by [the Secretary] and such \* \* \* bill \* \* \* is found to be in error resulting in a deficiency, such lease shall not automatically terminate unless (1) a new lease has been issued prior to May 12, 1970, or (2) the lessee fails to pay the deficiency within the period prescribed in a notice of deficiency sent to him by the Secretary.

30 U.S.C. § 188(b) (1976). The Secretary has implemented the statute in 43 CFR 3108.2-1(b). After reciting the substance of the statute, the regulation requires:

(b) Exceptions. If the rental payment due under a lease is paid on or before its anniversary date but either the amount of the payment has been or is hereafter deficient and \* \* \* the amount of payment made was determined in accordance with the rental \* \* \* figure \* \* \* stated in a bill \* \* \* rendered by an authorized officer and such figure is found to be in error resulting in a deficiency, such lease shall not have automatically terminated unless \* \* \* (2) the lessee fails to pay the deficiency within the period prescribed in the Notice of Deficiency provided for in this section. \* \* \* The authorized officer will send a Notice of Deficiency to the lessee on a form approved by the Director. The notice will be sent by certified mail, return receipt requested, and will allow the lessee 15 days from the date of receipt or until the due date, whichever is later, to submit the

full balance due to the appropriate office. If the payment called for in the notice is not paid within the time allowed, the lease will have terminated by operation of the law as of its anniversary date. [Emphasis added.]

Appellant clearly paid "in accordance with a bill" which was found to be in error. Therefore, he was entitled to a notice of deficiency and an opportunity to pay the annual rental owing. The decision appealed from, which is a notice of termination of the lease, does not qualify as a "Notice of Deficiency" specifying 15 days in which to pay, as is mandated by section 3108.2-1(b), supra.

The cases cited by BLM in its decision establish the principle that "[r]eliance upon receipt of such a [courtesy] notice (where it is not received) will not justify a failure to make timely payment of the lease rent" (Emphasis added), L. P. Weiner, 21 IBLA 336, 338 (1975). This is because BLM is under no obligation to provide a courtesy notice. As BLM's November 27 decision states, the obligation to pay annual rent arises from the terms of the statute. Regardless of this rule of law, however, where a lessee receives an erroneous courtesy notice and pays his annual rental in accordance with the notice, he is entitled to a notice of deficiency and 15 days in which to pay the amount owing. 43 CFR 3108.2-1(b).

On November 18, 1978, appellant filed a request for suspension of operations and production on the subject lease under 30 U.S.C. § 209 (1976). The Secretary has authority to suspend operations and production in the absence of a well capable of producing oil or gas in paying quantities where a request is filed prior to the lease expiration date. Burton Hancock, 40 IBLA 1 (1979). Action on appellant's request was suspended pending resolution of this appeal.

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 set aside and the case remanded for appropriate action.

Joseph W. Goss  
Administrative Judge

I concur:

Newton Frishberg  
Chief Administrative Judge

## ADMINISTRATIVE JUDGE FISHMAN DISSENTING:

The lease issued December 1, 1973, for a term of 5 years and expired at the very latest, absent production or suspension, on November 30, 1978. Although a suspension was requested, the file does not reflect one was granted.

Therefore the lease is dead, subject to being revived as explained, infra, and any discussion whether the lease terminated at the end of its second year is probably moot.

The only basis that the controversy could be deemed to be justiciable would be triggered by Jones-O'Brien, 85 I.D. 89, 93-95 (1978), holding that a nonproducing lease "may be suspended retroactively in the interest of conservation if a suspension application is properly filed before the lease expires." Id. at 94.

Even assuming, arguendo, that the requested extension will be granted, the merits of appellant's case seem remote.

In pertinent part 30 U.S.C. § 188(b) (1976), provides as follows:

Notwithstanding the provisions of this section, however, upon failure of a lessee to pay rental on or before the anniversary date of the lease, for any lease on which there is no well capable of producing oil or gas in paying quantities, the lease shall automatically terminate by operation of law: Provided, however, That when the time for payment falls upon any day in which the proper office for payment is not open, payment may be received the next official working day and shall be considered as timely made: Provided, that if the rental payment due under a lease is paid on or before the anniversary date but either (1) the amount of the payment has been or is hereafter deficient and the deficiency is nominal, as determined by the Secretary by regulation, or (2) the payment 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 him and such figure, bill, or decision is found to be in error resulting in a deficiency, such lease shall not automatically terminate unless (1) a new lease has been issued prior to May 12, 1970, or (2) the lessee fails to pay the deficiency within the period prescribed in a notice of deficiency sent to him by the Secretary.

In the case at bar, appellant paid the first 2 years' rental of \$640, for each year at \$2 per acre for a competitive lease. The

computer miscalculated the rental for the following 3 years at \$160 per annum. It hardly seems likely that Congress intended to afford relief that the main opinion grants to one whose lease clearly and unequivocally states that "for each lease year" appellant is obligated to pay "a rental of \$2 per acre." Schedule "B," attached to lease issued as of December 1, 1973.

Moreover, on November 17, 1978, appellant tendered \$640, accompanied by letter on November 16, 1978, presumably as payment for the sixth year's rental, if the application for suspension was granted. No other payment has been tendered by appellant to compensate the Government for the deficient rentals.

In a very real sense the decision of November 17, 1978, is a "notice of deficiency," since it clearly points out the failure to pay full rental for the third, fourth, and fifth years of the lease, aggregating \$1,440.

Under 43 CFR 3108.2-1(b), since more than 15 days has passed without payment to BLM, the lease cannot be reinstated. Since the deficiency has not been paid, there is nothing justiciable before the Board.

I would affirm the decision of the State Office.

Frederick Fishman  
Administrative Judge

