

KEOHANE, INC., ET AL.

IBLA 79-283

Decided September 30, 1980

Appeal from decision of the New Mexico State Office, Bureau of Land Management, rejecting application for lease renewal and holding the lease terminated for failure to timely remit annual rental in advance. NM 10192.

Reversed and remanded.

1. Oil and Gas Leases: Renewals--Oil and Gas Leases: Rentals--Oil and Gas Leases: Terminations

Where an applicant for an oil and gas renewal lease under 30 U.S.C. § 223 (1976) requests to be advised of additional requirements but the Bureau of Land Management fails to notify applicant of rent due, failure to submit rental before expiration of existing lease does not mandate denial of the application and 30 U.S.C. § 188 (1976) is not applicable.

APPEARANCES: S. B. Christy IV, Esq., Rosewell, New Mexico, for appellants.

OPINION BY ADMINISTRATIVE JUDGE GOSS

Keohane, Inc., Sally Saunders Toles, Sue Saunders Graham, Elyse Saunders Patterson, Virginia Lee Saunders, Woodlan P. Saunders, and Mary Lee Saunders Reese appeal the decision of the New Mexico State Office, Bureau of Land Management (BLM), rejecting appellants' application for lease renewal and holding the lease terminated for failure to timely remit annual rental therefor.

Appellants are lessees of oil and gas lease NM 10192, a nonproducing 10-year renewal lease dated January 1, 1969. 30 U.S.C. § 223 (1976). Lease NM 10192 was originally segregated out of lease LC 058008(a) which in turn was segregated from a 20-year lease.

On August 31, 1978, appellants filed the application to renew the lease for an additional 10 years, which filing was more than 90 days before the expiration of the term as required by 43 CFR 3107.8-2. Therewith, appellants requested advice as to whether there were additional filing requirements as to which they should be concerned. The record contains no evidence that BLM responded to that request.

On January 8, 1979, appellants were notified that the application had been approved. Accordingly, several lease forms were transmitted for execution. The lease forms were returned to BLM on January 30, 1979. After noting several differences in the forms, vis-a-vis the pre-existing lease, appellants' covering letter again requested information regarding "any further requirements." As before, apparently BLM did not respond to this request.

By decision dated February 28, 1979, the renewal application was rejected and the lease declared "terminated" pursuant to the provisions of 30 U.S.C. § 188 (1976), on the ground that the "annual rental payment did not accompany the application, nor was it paid prior to the lease expiration date of December 31, 1978." The rental payment was received on February 7, 1979. The decision also held that reinstatement under 43 CFR 3108.2-1(c), is not applicable. 30 U.S.C. § 188(c) (1976).

On appeal it is argued that neither 43 CFR 3103.3 (advance rental payments) nor 43 CFR 3107.8 (renewal leases), addresses the question of when the initial annual rental for a renewal lease must be paid. Apparently challenging the definitional language in 43 CFR 3103.3-2(d), governing rentals of leases on which there is no well capable of producing oil or gas in paying quantities, it is contended that "[t]he only 'succeeding years' in the present instance must commence January 1, 1980[,] since there can be no 'succeeding years' to a lease that has never issued, nor can [one] 'succeed' to the original date of the lease except in subsequent years." Appellants therefore seek to bring themselves within the rule of A. M. Shaffer, 73 I.D. 293 (1966), which stands for the proposition that a regulation should be so clear that there is no basis for a noncompliance therewith, before the regulation is interpreted to deprive one of a statutory preference right to a lease.

[1] Under Departmental practice, a renewal lease is treated as a new lease, obtained after application therefor, and not as a mere extension of the existing lease. 43 CFR 3107.8-3(a). ^{1/} Section 188 does not require or authorize termination of a lease not yet in existence. Appellants, having a vested right to obtain a renewal lease,

^{1/} Accord, as to leases in general, Sanders v. Wender, 205 Ky. 422, 265 S.W. 939 (Ct. App. 1924).

should not be deprived of this right in the absence of a clear provision of statute, regulation or lease. No such provision has been cited. Section 188 applies to a lease in esse rather than to an option to obtain a renewal lease. Departmental regulation 43 CFR 3107.8 sets forth the "requirements" for the application, but nowhere mentions that rent must be paid in advance. Section 223, supra, states that the original 20-year lease shall require the annual payment of \$1 per acre in advance. Under 43 CFR 3103.3-1, each "offer" shall be accompanied by the first year's rental, in order to receive priority. 2/ The Board has ruled, however, that the language of section 3107.8-2 is permissive; under particular circumstances it is proper to issue a renewal lease despite the fact that application therefor was not made until after expiration of the term of the previous lease. Homestake Oil and Gas Co., 40 IBLA 262 (1979); Peacock Oil Company, 30 IBLA 103 (1977).

Under the facts herein, appellants filed the application four months prior to expiration and requested "if there are any further or additional requirements please call us." In such circumstances, BLM should have notified appellants of the amount and date due. There being no basis for termination under 30 U.S.C. § 188 (1976), 3/ if all other requirements are met, the renewal lease should issue.

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 and the case remanded for appropriate action.

Joseph W. Goss
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Edward W. Stuebing
Administrative Judge

2/ It can be argued that section 3103.3-1 was primarily fashioned to apply to entirely new leases, and that it is unclear that it should be applied to renewals. For this reason, appellant would not be deprived of its vested rights. A. M. Shaffer, supra. See also 43 CFR 1821.2-2(g).

3/ It should be noted that the above comments are confined to the initial rental payment in connection with approval of an application to renew a preference right lease.

