THERMAL RESOURCES, INC.

IBLA 80-360 Decided May 5, 1981

Appeal from decision of Oregon State Office, Bureau of Land Management, denying petition for reinstatement of geothermal lease. OR 11755.

Affirmed.

1. Geothermal Leases: Reinstatement--Geothermal Leases: Termination

A geothermal lease, terminated by operation of law for failure to pay timely the annual rental, will not be reinstated where the lessee through simple inadvertence mailed the rental payment to the wrong Bureau of Land Management Office.

APPEARANCES: P. Thomas Thornbrugh, Esq., Tulsa, Oklahoma, for the appellant.

OPINION ADMINISTRATIVE JUDGE HARRIS

Thermal Resources, Inc., has appealed from a decision of the Oregon State Office, Bureau of Land Management (BLM), dated December 28, 1979, denying its petition for reinstatement of geothermal lease OR 11755, which terminated by operation of law for failure to pay timely the annual rental.

The lease was issued to appellant, effective December 1, 1976, for a term of 10 years. On December 6, 1979, BLM sent a notice to appellant indicating that the lease had terminated for failure to pay timely the annual rental. On December 10, 1979, apparently before receiving the notice, appellant telegraphed the annual rental to BLM.

In its statement of reasons for appeal, appellant notes that a check dated October 1, 1979, in the amount of the annual rental, was mistakenly sent to the Idaho State Office, BLM, where it was received

on November 30, 1979. 1/ The Idaho State Office promptly returned appellant's check with a "Notice of Return Remittance," dated November 30, 1979, indicating appellant's mistake.

On December 18, 1979, appellant petitioned for reinstatement of its lease. In denying the petition, BLM stated that appellant had failed to show that its failure to pay timely the annual rental was either justifiable or not due to a lack of reasonable diligence, citing Gretchen Capital, Ltd., 37 IBLA 392 (1978).

[1] Section 5(c) of the Geothermal Steam Act of 1970 (the Act), 30 U.S.C. § 1004(c) (1976), provides that a geothermal lease automatically terminates by operation of law if the lessee fails to pay the annual rental on or before the anniversary date of the lease and that a terminated lease may only be reinstated if it is shown that the failure to pay the rental timely was either justifiable or not due to a lack of reasonable diligence. See 43 CFR 3244.2.

Appellant argues that Congress, in providing for reinstatement, intended that "equitable relief" be available in such late payment cases "unless the mistake claimed was intentional." (Emphasis in original.) Appellant directs our attention to the legislative history of a similar statutory reinstatement provision for oil and gas leases, the implementing regulations adopted by the Department, and a judicial construction of the equitable powers of an administrative agency. Appellant concludes that

> the 'misdirection' of the check to the Idaho Office was not intentional in the sense that it was done with design to defraud or delay the workings of the Bureau or to gain any private advantage whatsoever. As soon as the mistake and inadvertence was brought to the attention of the Appellant it is clear that due diligence was used in immediately transmitting the money payment required to secure payment for the lease in question.

Appellant urges the Board to use its "equitable discretion" in ordering reinstatement of the lease.

The applicable regulation, 43 CFR 3244.2-2(b)(2), provides, as to reasonable diligence, that "[r]easonable 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." The principles established in oil and gas lease reinstatement cases, interpreting similar regulatory provisions, govern the applicability of 43 CFR 3244.2. Leonard Lundgren, 53 IBLA 149 (1981).

1/ There is no indication in the record when the rental check was mailed to the Idaho State Office.

43 CFR 3205.3-2 requires that timely payment of the annual rental be made at the proper BLM office. The proper BLM office to receive rental payments for geothermal leases in Oregon is the Oregon State Office. 43 CFR 1821.2-1(d). Mailing a rental check to the wrong BLM office precludes a finding of reasonable diligence. Energetics, Inc., 52 IBLA 236 (1981); Monsanto Co., 52 IBLA 271 (1980); Gretchen Capital, Ltd., 37 IBLA 392 (1978); contra, Richard L. Rosenthal, 45 IBLA 146 (1980). This principle is applicable regardless of whether appellant's "mistake" was unintentional.

Late payment of the rental is justifiable only where the failure to make timely payment is the result of causes beyond the control of the lessee. Simple inadvertence on the part of the lessee in mailing the payment to the wrong office does not justify failure to send timely payment to the proper office. Energetics, Inc., supra; Monsanto Co., supra, and cases cited therein. Appellant does not allege, nor does the record disclose, that any other factor caused or contributed to its late payment.

While appellant has urged the Board to invoke its "equitable discretion" to reinstate its lease, we are bound by the statutory and regulatory guidelines established for reinstatement of geothermal leases. Accordingly, we must hold that BLM properly denied appellant's petition for reinstatement.

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.

Bruce R. Harris
Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

Edward W. Stuebing
Administrative Judge