

INTERNATIONAL RESOURCE ENTERPRISES, INC.

IBLA 80-812

Decided June 30, 1981

Appeal from decision of Wyoming State Office, Bureau of Land Management, denying petition for reinstatement of oil and gas lease terminated by operation of law. W 28541.

Affirmed.

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

A lease terminated automatically for untimely payment of annual rental may be reinstated only upon proof that reasonable diligence was exercised, or that the failure to make timely payment was "justifiable." In the absence of such proof, a petition for reinstatement is properly denied.

2. Oil and Gas Leases: Reinstatement -- Oil and Gas Leases:
Termination

A late rental payment may be justifiable if it is demonstrated that at or near the anniversary date there existed sufficiently extenuating circumstances outside the lessee's control which affected his or her actions in paying the rental fee. The fact that a lessee's accountant, responsible for submitting the rental payment, is overburdened with work will not justify reinstatement.

APPEARANCES: Robert W. Cross, President, International Resource Enterprises, Inc., for the appellant.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

International Resource Enterprises, Inc., has appealed from a decision of the Wyoming State Office, Bureau of Land Management (BLM), dated July 2, 1980, denying appellant's petition for reinstatement of oil and gas lease, W 28541, which terminated by operation of law for failure to pay timely the annual rental. ^{1/}

There is no question that the annual rental was not timely paid. The anniversary date of the lease was June 1, 1980. The rental check, dated June 2, 1980, and mailed in an envelope postmarked the same date, was not received by BLM until June 5, 1980.

[1] Failure to pay the annual rental for an oil and gas lease on or before the anniversary date of the lease results in the automatic termination of the lease by operation of law. 30 U.S.C. § 188(b) (1976). The Secretary of the Interior may reinstate oil and gas leases which have terminated for failure to pay rental timely only where the rental is paid or tendered within 20 days of the due date and upon proof that such failure was either justifiable or not due to a lack of reasonable diligence. 30 U.S.C. § 188(c) (1976). In the absence of such proof, a petition for reinstatement is properly denied. See, e.g., Margaret Lee Pirtle, 54 IBLA 113 (1981); Alice M. Conte, 46 IBLA 312 (1980); J. R. Oil Corp., 36 IBLA 81 (1978).

On appeal, appellant contends that its late payment was justifiable because it was due to circumstances "beyond our company's control." Appellant explains that "[o]n or about May 4, 1979" it entered into a joint venture with Joseph L. Gruber, Salt Mountain Petroleum Co., Ltd., and Garvin Taylor, with respect to the subject lease. Under this agreement, Gruber was designated the operator, "with sole responsibility for field, financial and accounting matters." Subsequently, there was a falling out between Gruber and the other members of the joint venture, resulting in the initiation of litigation and negotiations in January 1980. On January 15, 1980, Gruber agreed to execute partial assignments of his 100 percent interest in the lease. Appellant alleges that there was "considerable confusion" surrounding the assignment "generated by the Secretary of Interior's suspension order on the processing of oil and gas lease assignments." Appellant states that its accountant, Gary Leibensperger, who handled payment of the annual rental, was overburdened with work "shortly before the anniversary date" of the lease. Appellant states that "[t]he normal workflow of the company was severely disrupted by preparation of the accounting and tax information for Gruber-related projects," including the subject oil and gas lease. The accountant was under "considerable pressure" to submit tax returns for six partnerships and four joint venture partnerships, "various entities of which Gruber was operator," by April 15, 1980, in addition to his other work. Appellant states:

^{1/} Appellant is the assignee of a 42 percent interest in the subject oil and gas lease pursuant to an assignment from Joseph L. Gruber, d.b.a. Gruber Oil, which was approved by BLM on Feb. 1, 1980. Prior to the assignment, Gruber was the record title owner of a 100 percent interest in the subject lease.

Immediately after the tax season, Mr. Leibensperger still had to locate and prepare an itemization of all the outstanding bills on projects related to Gruber. In May, 1980, Mr. Leibensperger was under the impression that negotiations were still being conducted with Mr. Gruber. Our accountant attempted to keep up with the accounting on this lease as much as possible.

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With a huge amount of unpaid invoices on this lease, our accountant ranked the lease rental payment of \$17.50 behind the larger bills.

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Mr. Leibensperger, in fact, had to hire a new permanent full-time bookkeeper on May 5, 1980 to keep up with the work load. By the first of June, Mr. Leibensperger was able to cover the lease rental payment and immediately issued a check.

Appellant argues that it has made a "good faith" effort to comply with the terms of the lease and that Congress, in providing for automatic termination, intended only "to prevent 'intentional' delays in payments 'whereby unethical operators could knowingly underpay or submit rentals late and thereby gain additional time while an oil field 'play' is developing.' See House Report (Interior and Insular Affairs Committee) No. 91-1005; April 14, 1970."

The showing of reasonable diligence necessary for reinstatement ordinarily requires mailing payment sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the mail. 43 CFR 3108.2-1(c)(2). Appellant's rental check was not mailed until June 2, 1980, one day after the anniversary date. This cannot be held to be reasonable diligence. Margaret Lee Pirtle, supra.

[2] A failure to make timely payment may be justifiable, however, if it is demonstrated that at or near the anniversary date there existed sufficiently extenuating circumstances outside the lessee's control which affected his or her actions in paying the rental fee. See Ramco, Inc. v. Andrus, No. 80-1100 (10th Cir. May 27, 1981); see also Martin Mattler, 53 IBLA 323, 88 I.D. (1981); Bernard W. Crowe, 40 IBLA 114 (1979). Proximity in time and causality of the untoward occurrence are essential elements. Earl Chancellor, 24 IBLA 121 (1976). Accordingly, we are most concerned with circumstances affecting appellant at or near the anniversary date.

We do not believe that appellant has provided adequate justification for the late payment. It is true that circumstances surrounding an employee entrusted with payment of the annual rental may justify a late payment. See David Kirkland, 19 IBLA 305 (1975) (secretary solely responsible for personal accounts in hospital under sedatives on and

before the due date). However, it seems equally true that such circumstances must cause the employee to be "so incapacitated as not to be reasonably able to attend to normal business matters." Earl Chancellor, *supra* at 123; see Victor Holz, 42 IBLA 284 (1979); David Kirkland, *supra*.

As pointed out in the decision below, this Board has not accepted either the bulk and/or complexity of a business organization as adequate justification for a late payment. Mono Power Company, 28 IBLA 289 (1976) (complete remodeling of office space); Serio Exploration Company, 26 IBLA 106 (1976) (duty to make payment transferred from company's land manager to accountant); Columbia Gas Transmission Corporation, 13 IBLA 243 (1973) (restructuring of internal operations). Appellant, on the other hand, contends that it was affected by "external" circumstances rather than "internal" factors. While there is some merit to this distinction, we note that the unexpected workload precipitated by the necessity for filing various tax returns culminated on April 15, 1980. Appellant alleges, however, that its accountant was still busy locating and itemizing bills on various projects, but it appears that its accountant knew about the rental payment but "ranked the lease rental payment of \$17.50 behind the larger bills." Therefore, apparently appellant made a conscious decision to take care of what it considered more pressing business before paying the rental. These facts do not establish that the failure to make timely payment was justifiable. When appellant's accountant became overburdened with work, appellant should have made other arrangements to ensure payment of the rental. See, e.g., Helena Silver Mines, Inc., 30 IBLA 262 (1977). Moreover, the inexperience, confusion, or lack of knowledge of appellant's employee does not make the late payment "justifiable." Nevada Western Oil Company, 30 IBLA 379 (1977); Phillips Petroleum Company, 29 IBLA 114 (1977); Samuel Testagrossa, 25 IBLA 64 (1976). BLM properly denied appellant's petition for reinstatement.

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.

Bruce R. Harris
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Anne Poindexter Lewis
Administrative Judge

