

Y. GEORGE HARRIS

IBLA 81-140

Decided December 22, 1981

Appeal from decision of the Utah State Office, Bureau of Land Management, declaring oil and gas lease U-30117 to have terminated.

Set aside and remanded.

1. Oil and Gas Leases: Termination

Pursuant to 30 U.S.C. § 188(b) (1976) an oil and lease will not automatically terminate when an annual rental payment is deficient if the deficiency is nominal. A deficiency is nominal if it is not more than \$10 or 5 percent of the total payment due, whichever is more.

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

Where a timely rental payment for a non-producing oil and gas lease is nominally deficient in the amount of 24 cents, such lease is not automatically terminated if the notice of deficiency, is not served on the attorney who has notified BLM that he represents the estate of the deceased lessee. In instances where an attorney has made an appearance of record, the attorney should be recognized as controlling the matter on behalf of his client, and service of any documents relating to that matter should be made on the attorney so that he may take timely and appropriate actions on behalf of his client.

APPEARANCES: James P. Kelley, Esq., Oklahoma City, Oklahoma, for appellant.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

Y. George Harris has appealed from a decision dated October 8, 1980, of the Utah State Office, Bureau of Land Management (BLM), holding oil and gas lease U-30117 to have terminated by operation of law for nonpayment of rent.

The facts of record show that a 10-year noncompetitive oil and gas lease (U-30117) was originally issued to William D. Harris, effective July 1, 1975. The lease document states on its face that it contains a total of 1,634.76 acres and sets forth the amount of the annual rental of \$817.38. Section 2(d)(1)(a) of the lease governing the rates for rentals and royalties also specifically states, "If the lands are wholly outside the known geologic structure of a producing oil or gas field: (i) for each lease year a rental of 50 cents per acre or fraction of an acre." The record also shows that BLM originally notified the lessee, William D. Harris, that his first rental payment was due for the amount of \$817.50. Receipts for payment show that BLM received that amount for the rental from the lessee from 1975-1977.

By letter of November 23, 1977, James P. Kelley, Esq., notified BLM of his representation of appellant as executor of the estate of William D. Harris who died October 8, 1977. Mr. Kelley inquired as to the deceased's interests in oil and gas leases and lease payments due in the future. BLM responded by letter of December 5, 1977, informing Mr. Kelley that William D. Harris held record title to two Federal oil and gas leases in Utah. These included U-30117, for which the annual rental of \$817.50 was due by July 1.

A receipt in the record further verifies that the lease rental of \$817.50 was paid for the 1978 lease year. However, a rental deficiency notice for 12 cents was issued for 1979, dated June 26, 1979, but was erroneously sent to the deceased lessee. The notice was returned as "not deliverable as addressed unable to forward."

By letter of June 23, 1980, Mr. Kelley submitted a deficient rental in the amount of \$817.38 for lease U-30117 and reaffirmed his position as attorney of record for Y. George Harris, executor of the estate of William D. Harris. While he included a mailing address for appellant, he stated:

We assume that all previous payments have been received and that said lease is in full force and effect. We further assume that with the reception of this payment, the lease will continue through August 1, 1981.

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Please contact the undersigned should you have any questions concerning any of the above.

Although Mr. Kelley had specifically requested BLM to contact him as legal counsel for the executor, BLM sent appellant the notice of the deficiency for 1979 and 1980 on July 3, 1980, asking for the total amount of \$817.62 to bring the account up to date. The notice received July 8, 1980, specified that he had 15 days in which to pay the deficiency and that if payment was not made within that time the lease would automatically terminate.

Mr. Kelley made subsequent inquiries to BLM as to the status of the lease by letter of July 15, 1980, and telephone conversation of August 13, 1980. The rental deficiency was tendered to BLM September 2, 1980.

Appellant now contends on appeal that the lease should not have been terminated because he "wholly relied upon the face of the actual lease itself to determine the amount of annual rental due." He contends *inter alia*, that the Department accepted the checks for \$817.38 for 1979 and 1980 and, therefore, he had no reason to believe such sum of money was not the correct rental amount. He further asserts that he has not received due process in that he did not receive notice that there was any need to send the additional 24 cents within any given period of time.

Contrary to appellant's contentions his reliance on the figure of \$817.38 which appeared on the face of the lease does not justify deficient payment for 1979 and 1980. The correct rental of 50 cents per acre or fraction thereof was not properly rounded out for the full acreage on the face of the lease. BLM, however, consistently gave notice of the correct rental amount of \$817.50 to the original lessee in 1975 and appellant's attorney, Mr. Kelley in 1977. The annual payment receipts list the amount due on the lease as \$817.50 and it is clear that the correct rental amount was noted since the full rental was paid from 1975 to 1978.

[1] Failure to pay 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. Virgil T. Hartquist, 51 IBLA 356 (1980); 30 U.S.C. § 188(b) (1976). However, an exception to the rule of automatic termination occurs when payment is made on or before the anniversary date of the lease and is only nominally deficient. A nominal deficiency is one which is not more than \$10 or 5 percent of the total amount due, whichever is more. Where a nominal deficiency exists the lessee is entitled to a notice of deficiency allowing the lessee 15 additional days from the date of receipt in which to pay the balance of the rental due. 30 U.S.C. § 188(b) (1976); 43 CFR 3108.2-1. In such cases the lease will not terminate automatically unless the lessee fails to pay the deficiency before the anniversary date of the lease or within the period prescribed in the notice of deficiency which is sent to the lessee by the authorized office. 43 CFR 3108.2-1(b); Joseph Francis, 22 IBLA 277 (1975).

[2] In this case BLM erroneously sent the 1979 deficiency notice to the deceased lessee after being notified in 1977 that James P. Kelley was the attorney of record for the lessee's estate. Similarly, the service of the deficiency notice for 1979 and 1980 on the executor, Y. George Harris, is insufficient because Kelley had notified BLM of his representation and had requested that he be contacted regarding any matters involving the lease. Since Kelley was the attorney handling all of these matters for the executor of the estate, it was critical that he too receive notice of the deficiency and the impending termination. Attorneys of record are recognized as fully controlling their client's cases in appeals before this Board. Where an attorney has made an appearance of record, the attorney should be recognized as controlling the matter on behalf of his client, and service of any documents relating to that matter should be made on the attorney so that he may take timely and appropriate actions on behalf of his client. Cf. 43 CFR 4.22(b) governing service of documents filed in proceedings before the Office of Hearings and Appeals. The same rationale holds true in the case before us and the lessee's estate should not be penalized where notice was not sent directly to counsel thereby enabling corrective action. Therefore, the nominally deficient rental should be considered timely received by BLM.

Accordingly, the decision appealed from is set aside and the case remanded to the Utah State Office for action consistent herewith.

Gail M. Frazier  
Administrative Judge

We concur:

James L. Burski  
Administrative Judge

Douglas E. Henriques  
Administrative Judge

