

GETTY OIL CO.

IBLA 81-676

Decided January 28, 1982

Appeal from decision of Wyoming State Office, Bureau of Land Management, denying petition for reinstatement of noncompetitive oil and gas lease. W 49507.

Affirmed.

1. Notice: Generally--Oil and Gas Leases: Reinstatement-- Oil and Gas Leases: Rentals--Oil and Gas Leases: Termination

The law imputes knowledge when opportunity and interest, combined with reasonable care, would necessarily impart it; therefore, where the Bureau of Land Management served notice of an oil and gas lease rental increase on an office of a corporate lessee which the lessee claimed was not its address of record for the lease, the lessee cannot assert ignorance of the increase because reasonable care would dictate that the office receiving the notice inform the proper office.

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. Where a lessee asserts a lack of knowledge of a rental increase as justification for its failure to pay timely the full amount of the rental, the lease will not be reinstated if the record supports a finding that the lessee had knowledge of the increase approximately 6 weeks prior to the anniversary date of the lease.

APPEARANCES: Donn J. McCall, Esq., Casper, Wyoming, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

Getty Oil Company (Getty) has appealed from a decision of the Wyoming State Office, Bureau of Land Management (BLM), dated April 21, 1981, denying appellant's petition for reinstatement of noncompetitive oil and gas lease W 49507, which terminated by operation of law for failure to pay timely the annual rental.

Pursuant to section 17 of the Mineral Leasing Act, as amended, 30 U.S.C. § 226 (1976), BLM issued W 49507 effective April 1, 1975, to one Don J. Leeman for 326.54 acres of land situated in Converse County, Wyoming. The annual rental charge was initially \$163.50 (50 cents per acre). By assignment effective January 1, 1976, Getty acquired 100 percent record title interest in the lease.

On February 9, 1981, approximately 2 months prior to the lease anniversary date, April 1, 1981, BLM received payment from Getty for

the annual rental in the amount of \$163.50. However, by letter decision, dated February 11, 1981, BLM notified Getty of an increase in the annual rental to \$654 (\$2 per acre) based on a determination by Geological Survey that the land was within an undefined known geologic structure. Getty received the notice on February 13, 1981. On April 16, 1981, BLM received payment of \$654 from Getty's Tulsa, Oklahoma, office. The letter accompanying the payment explained that BLM sent the notice of the increased annual rental to Getty's Denver, Colorado, address rather than the Houston, Texas, address listed on the assignment of the lease to Getty from Leeman. Getty stated that "the Houston, Texas, office was unaware of the notice and tendered the normal rental of \$163.50."

In its decision, BLM concluded that the fact that the notice of increased annual rental was sent to appellant's Denver office instead of its Houston office was not a "justifiable reason" for the late payment because the notice was received by the Denver office "approximately six weeks prior to the due date." 1/ Getty filed a timely appeal.

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1/ In its decision, BLM noted that "[b]eginning with the April 1, 1979, rental due notice, the address on our records was changed to Getty Oil Company, 1515 Arapahoe Street, Suite 700, Denver, CO 80202." On May 8, 1981, appellant inquired as to the basis for the address change. BLM responded by letter dated May 12, 1981:

"We do not have any documentation to provide you with the information as to why Getty Oil Company's billing address was changed on our records between the April 1, 1978 and the April 1, 1979 billing.

"However, we did check our alphabetical listing of leases billed to Getty Oil Company. It lists 280 leases billed to their Denver address, 17 billed to their Tulsa address, and two billed to their Houston address."

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).

In its statement of reasons for appeal, appellant contends that it exercised reasonable diligence when it submitted its rental payment on February 9, 1981, and that its failure to pay timely the increase in the annual rental was "justifiable." Appellant argues that the fact that BLM mailed the notice of the increased annual rental to the wrong office "directly contributed to the failure of the increased rental payment to be timely received \* \* \* [and that this action was] not subject to and [was] \* \* \* completely outside of the control of Getty Oil." Appellant points out that the notice was sent to the Denver office despite the fact that the address of the Houston office appeared on the assignment to appellant from Leeman and that BLM received a rental payment from the Houston office only 2 days prior thereto.

[1] The initial question for consideration in this case is whether appellant had notice of the increased rental. This Board has held that in situations where an oil and gas lessee could not have known that rental was due, a lease could not terminate for failure to pay the rental timely. Davis Oil Co., 33 IBLA 53, 55 (1977); Husky Oil Co., 5 IBLA 7, 79 I.D. 17 (1972). In this case if appellant did not have notice of the rental increase, timely payment of the old lease rental having been made, its lease would not have terminated, and there would be no reason for reinstatement. On the other hand, if appellant did have notice, the lease would have terminated, and reinstatement could be granted only if appellant established that the failure to pay timely the increased rental was justifiable or not due to a lack of reasonable diligence.

The regulation applicable to BLM communications by mail, 43 CFR 1810.2(b) states:

Where the authorized officer uses the mails to send a notice or other communication to any person entitled to such a communication under the regulations of this chapter, that person will be deemed to have received the communication if it was delivered to his last address of record in the appropriate office of the Bureau of Land Management.

Appellant contends that notice was not delivered to its last address of record. It asserts that its address of record for lease W 49507 was its corporate office in Houston, Texas, not its office in Denver where the

notice was received. Appellant is apparently correct in this contention. In its decision BLM stated that appellant changed its record address in 1979 from Houston to Denver. However, BLM had no documentation to support this statement, nor does the case record reflect any request for a change by appellant. 2/ Therefore, we must conclude that when BLM mailed notice to appellant's Denver address it was not mailing the notice to appellant's record address which it was obliged to do by regulation.

The question then becomes whether appellant may assert this lack of service at its record address so as to preclude termination of the lease. Under the circumstances of this case, we think not.

BLM was obligated to notify appellant's Houston office. It did not. However, it did notify appellant's Denver office of the rental increase on February 13, 1980. Appellant's Denver office therefore had actual knowledge of the increased rental. Appellant's Denver office received lease rental billings and notices for other leases administered by the BLM Wyoming State Office. Appellant has made no attempt to explain why its Denver office did not contact its Houston office concerning the lease in question. It seeks instead to focus all blame on BLM for not notifying the Houston office.

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2/ We note that the case file contains a copy of "Receipt for Payment" (form 1371-17) for the 1979 rental and a copy of the same form for the 1980 rental. Appellant's Denver address appears on each copy.

It is well settled that the law imputes knowledge when opportunity and interest, combined with reasonable care, would necessarily impart it. United States v. Shelby Iron Co., 273 U.S. 571, 580 (1927); Wollensak v. Reiher, 115 U.S. 96, 99 (1885). The Denver office received notice. We must assume that there are people in the Denver office knowledgeable about rental payments, since most of appellant's leases listed with the Wyoming State Office are administered there. Reasonable care would dictate the notification of the Houston office when the Denver office realized that lease W 49507 was managed through the Houston office. Apparently this was not done; however, the circumstances are such that knowledge of the increase must be imputed to the Houston office. Since appellant's Houston office must be presumed to have had knowledge of the rental increase and there was a failure to pay the proper amount timely, the lease terminated.

[2] We must now consider whether the lease may be reinstated. Clearly appellant did not exercise reasonable diligence because reasonable diligence ordinarily requires mailing the payment sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of mail. 43 CFR 3108.2-1(c)(2). Although appellant submitted the old rental amount approximately 6 weeks in advance of the anniversary date, it failed to transmit the full amount until 2 weeks after the due date. Under such circumstances we must find a lack of due diligence. See Ralph W. M. Keating, 55 IBLA 113 (1981).

A failure to make timely payment may be justifiable for purposes of reinstatement if it is demonstrated that the failure was proximately caused by extenuating circumstances outside the lessee's control which occurred at or near the anniversary date of the lease. Ram Petroleums, Inc. v. Andrus, 658 F.2d 1349 (9th Cir. 1981); Ralph W. M. Keating, supra. Appellant's asserted justification for the late payment is its lack of notice. Since we determined above that appellant's Houston office was presumed to have knowledge of the rental increase, we must conclude that there were no extenuating circumstances outside of appellant's control which precluded timely payment of the rental. 3/

Appellant would have us conclude that the Board's decision in Richard L. Rosenthal, 45 IBLA 146 (1980), mandates a different result in this case. In Rosenthal we held that under the totality of circumstances the appellant was entitled to reinstatement of his lease. Rosenthal had submitted his rental payment to the wrong BLM office (the Colorado State Office rather than the Montana State Office). However, we concluded that "the initial delay attributable to the appellant's error was compounded by the excessive length of time [over 2 weeks] it

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3/ As pointed out in the BLM decision, this Board has not accepted either the bulk and/or complexity of a business organization as adequate justification for a late payment. Mono Power Co., 28 IBLA 289 (1976) (complete remodeling of office space); Serio Exploration Co., 26 IBLA 106 (1976) (duty to make payment transferred from company's land manager to accountant); Columbia Gas Transmission Co., 13 IBLA 243 (1973) (restructuring of internal operations).

took employees of the Colorado State Office either to return the payment to appellant or to forward it to the proper office." Richard L. Rosenthal, *supra* at 148. We noted that employees of the Colorado State Office had actual notice of the proper office for receiving payment and of the due date.

This case represents the converse factual situation to Rosenthal. In Rosenthal the lessee had an obligation to make payment in the proper BLM office. He did not. BLM failed over a period of time to forward payment, however, and we ordered reinstatement. In the present case BLM had an obligation to send notice to appellant's record address. It did not. However, appellant's office that did receive notice failed over a 6-week period of time to notify the proper office. The rationale of Rosenthal supports the holding in this case. 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.

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Bruce R. Harris  
Administrative Judge

We concur:

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Bernard V. Parrette  
Chief Administrative Judge

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James L. Burski  
Administrative Judge

