

SUN OIL CO.

IBLA 82-450

Dated March 26, 1982

Appeal from decision of the Utah State Office, Bureau of Land Management, declaring that oil and gas lease U-41087 had terminated by operation of law for failure to pay annual rental and denying petition for reinstatement.

Affirmed.

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

An oil and gas lease on which there is no well capable of producing oil or gas in paying quantities automatically terminates by operation of law if the lessee fails to pay the annual rental on or before the anniversary date of the lease. 30 U.S.C. § 188(b) (1976). Under 30 U.S.C. § 188(c) (1976), the Department of the Interior has no authority to reinstate a terminated oil and gas lease where the rental payment is not tendered at the proper office within 20 days after the due date.

2. Oil and Gas Leases: Termination

A notice of termination is sent to the lessee of a terminated oil and gas lease only if the lessee has tendered payment of the rental within 20 days after the anniversary date.

APPEARANCES: Thomas B. Deal, Esq., Sun Exploration and Production Company, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Sun Oil Company has appealed the decision of the Utah State Office, Bureau of Land Management (BLM), dated January 11, 1982, denying its petition for reinstatement of oil and gas lease U-41087 which terminated by operation of law on October 1, 1980, for failure to pay timely the annual rental due on that date.

Appellant submitted its petition for reinstatement on September 11, 1981, after learning from BLM by telephone conversation on August 4, 1981, that lease U-41087 had terminated for failure to pay the rental. Until that time, appellant was apparently under the impression that BLM had received its October 1980 rental payment and that the lease was in good standing. Appellant explained that it prepared and mailed its rental check on September 16, 1980, to BLM at the address where it had sent its 1979 rental payment and other documents pertaining to the lease. Appellant admitted that the address used was not the current BLM address in September 1980, and acknowledged that the notice of payment due that it had received reflected the correct BLM mailing address. Appellant asserted, however, that the Postal Service apparently neither forwarded the payment nor returned it, as appellant has no record of receiving it back. Appellant urged that it exercised reasonable diligence in mailing the payment to the address in its records in plenty of time to be timely received by BLM and that, but for the Postal Service's failure to forward or return the payment, the rental would have been received timely. Appellant enclosed the overdue rental payment with its petition for reinstatement.

BLM's decision denying reinstatement held that even if appellant could show that the failure to pay was justifiable or not due to a lack of reasonable diligence, the Secretary of the Interior has no authority to reinstate a terminated lease where payment was not made within 20 days of the due date.

In its statement of reasons, appellant alleges that BLM has the authority to reinstate its lease under 43 CFR 3108.2-1(c). Appellant argues that it never received a notice of termination prior to filing its petition for reinstatement and, therefore, that the petition must be viewed as timely filed within the 15-day period specified in the regulation.

Appellant also notes that BLM amended its decision on February 9, 1982, to reflect an adverse party holding lease No. U-48760, effective October 1, 1981, for the same lands included in lease No. U-41087. Appellant contends that this lease should be voided because it was issued after appellant filed its petition for reinstatement.

[1, 2] Section 31 of the Mineral Leasing Act, as amended, 30 U.S.C. § 188(b) (1976), provides that upon failure of a lessee to pay rental on or before the anniversary date of a lease on which there is no well capable of production of oil or gas in paying quantities, the lease terminates automatically by operation of law. This Department has no authority under the Mineral Leasing Act to reinstate an oil and gas lease that has terminated by operation of law unless payment of the required amount is received within 20 days after the date of termination. 30 U.S.C. § 188(c) (1976).

The regulation referenced by appellant, 43 CFR 3108.2-1(c), reads:

(c) Reinstatement. (1) Except as hereinafter provided, the authorized officer may reinstate a terminated lease which has been or is hereafter terminated automatically by operation of law for failure to pay on or before the anniversary date the full amount of rental due, provided that (i) such rental was paid or tendered within 20 days thereafter, and (ii) it is shown to the satisfaction of the authorized officer that such failure was either justifiable or not due to a lack of reasonable diligence on the part of the lessee, and (iii) a petition for reinstatement, together with the required rental, including any back rental which has accrued from the date of termination of the lease, is filed with the appropriate office within 15 days after receipt of Notice of Termination of Lease due to late payment of rental. The Notice of Termination will be sent by certified mail, return receipt requested.

Appellant's argument that its petition for reinstatement must be considered timely because BLM never sent it a Notice of Termination misses the heart of the problem herein. Under the statute, BLM may consider reinstating a terminated lease only when the rental due was paid or tendered within 20 days of its anniversary date, in this case, October 1, 1980. The Notice of Termination is intended to toll a 15-day period for submission of a petition for reinstatement where reinstatement is within the discretion of the Secretary. Such notice is only sent, therefore, if the lessee has met the requirements of 30 U.S.C. § 188(c) (1976) and has tendered rental within 20 days of the anniversary date of the lease. C. J. Iversen, 21 IBLA 312, 82 I.D. 386 (1975); Amoco Production Co., 16 IBLA 215, 219 (1974). Since BLM did not receive appellant's rental until almost 1 year after the anniversary date, BLM had no authority to reinstate the terminated lease. Jean Szczepanski, 60 IBLA 375 (1981); Jack J. Grynberg, 53 IBLA 165 (1981); James Valjalo, 50 IBLA 256 (1980).

Given our disposition of this appeal, we make no finding with respect to the issuance of lease No. U-48760.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the Utah State Office is affirmed.

Douglas E. Henriques
Administrative Judge

We concur:

Bruce R. Harris
Administrative Judge

Bernard V. Parrette
Chief Administrative Judge

