

MARTIN EXPLORATION MANAGEMENT CORP.

IBLA 82-419

Decided April 22, 1982

Appeal from decision of the Montana State Office, Bureau of Land Management, denying petition for reinstatement of oil and gas lease M 35405(SD).

Affirmed.

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

In order for the failure to pay oil and gas lease rental timely to be considered justifiable, generally it must be caused by factors outside the lessee's control, which were the proximate cause of the failure. A lessee's ignorance of BLM's correct address, resulting in the return to him of the incorrectly addressed payment envelopes, is not a justifiable excuse.

2. Regulations: Generally

All persons dealing with the Government are presumed to have knowledge of duly promulgated rules and regulations, regardless of their actual knowledge of what is contained in such regulations.

APPEARANCES: George Stankiewicz, General Manager Contract Administration, Martin Exploration Management Corporation.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

This appeal is taken from a decision dated January 6, 1982, by the Montana State Office, Bureau of Land Management (BLM), denying appellant's petition for reinstatement of oil and gas lease M 35405 (SD).

The anniversary date of this lease was December 1, 1981. BLM's termination notice, received by appellant on December 14, states:

The envelope in which the rental was mailed is post marked December 3, 1981, and was received in this office on December 7, 1981. Also received were copies of envelopes postmarked November 11, 1981, and November 24, 1981, mailed to the former Montana State Office BLM address, and subsequently returned to you by the Post Office.

Appellant's two November envelopes were addressed to BLM at "316 North 26th Street, Billings Montana 59101." In the petition for reinstatement appellant stated that the reason for sending copies of the November envelopes was "to show that efforts had been made to have the check in your office by December 1, 1981." Appellant further asserted that it had never been notified of an address change. Both of these envelopes were returned to appellant marked "Returned to Sender." The November 24 envelope was also stamped "authorized time for forwarding has expired."

In the decision BLM states that there had been no recent address change for the Montana State Office, and that the correct address was imprinted on the notice of payment due which was mailed to appellant some time prior to the anniversary date, December 1, 1981. The file contains a copy of the notice, with the Montana State Office address appearing as P.O. Box 30157, Billings, Montana 59107. The latter address also appears on such a notice for the rental due December 1, 1978, showing appellant had actual notice of the address required to be used beginning in 1978. However, appellant failed to use it until after December 1, 1981.

In the statement of reasons appellant states that from 1977 through 1980 it had been sending its rental checks to 316 North 26th Street, Billings, Montana 59101. The file contains appellant's rental receipts for the years 1977 through 1980. All are addressed to 316 North 26th Street, Billings, Montana, and all bear BLM's receipt date stamp. Referring to the two attempts made November 11 and 24, 1981, to mail the check to 316 North 26th Street, appellant states:

The first time the check was mailed, it was returned saying that the address was unknown. In assuming that there had been a mistake in the mail, it was resent to the same address and once again returned to us. The second return stated that the forwarding time had expired and that is when I tried to locate the new address.

In looking through other Montana lease files, I noticed that you were now using the P. O. Box address, so my information was changed accordingly and the check was resubmitted to your office.

[1, 2] An oil and gas lease terminated by operation of law for failure to pay the advanced rental on time may be reinstated upon a showing by the lessee that the failure to pay on or before the anniversary date was either justifiable or not due to a lack of reasonable diligence. 30 U.S.C. § 188(c) (1976); 43 CFR 3108.2-1(c). Factors outside the control of the lessee or

sufficiently extenuating circumstances must have arisen which prevented timely payment. Ram Petroleum, Inc. v. Andrus, 658 F.2d 1349 (9th Cir. 1981).

With respect to mailings, the appropriate regulation, 43 CFR 3103.1-4, requires that payments be made to the proper office. The proper office and its address are set forth in 43 CFR 1821.2-1 as "Montana State Office, Granite Tower, 222 N. 32nd Street, P.O. Box 30157, Billings, Montana, 59107." The address used by appellant had been obsolete for several years. It was last listed as the State Office address in the October 1978 revision of 43 CFR.

The facts suggest that appellant's erroneously addressed correspondence, from 1978 through 1980, reached the Montana State Office because it was forwarded by the Post Office, and that the period for forwarding had expired by November 1981. As appellant concedes in the statement of reasons, ascertainment of BLM's correct address was not a factor outside his control. Moreover, appellant must be held to have been on notice of the correct address, which was published in the Federal Register (44 FR 55875 (Sept. 28, 1979)) and duly promulgated in 43 CFR 1821.2-1. Overthrust Oil and Gas Corp., 52 IBLA 119, 88 I.D. 38 (1981). Indeed, appellant had actual notice of the correct box number and zip code in 1978 but failed to use it. Appellant was lucky in having the delivery to BLM made prior to 1981. However, its luck ran out and appellant has only itself to blame for the 1981 payment not being received timely.

Accordingly, 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.

---

Anne Poindexter Lewis  
Administrative Judge

We concur:

---

Bernard V. Parrette  
Chief Administrative Judge

---

Douglas E. Henriques  
Administrative Judge

