

LIBERTY OIL & GAS CORP.

IBLA 82-411

Decided June 3, 1982

Appeal from the decision of the New Mexico State Office, Bureau of Land Management, denying reinstatement of oil and gas lease, NM 33653.

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

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 the mail. Depositing the payment in the mail on the same date it is due does not constitute reasonable diligence.

APPEARANCES: S. E. Thames, Jr., Esq., Livonia, Louisiana, for appellant; John H. Harrington, Esq., Office of the Field Solicitor, U.S. Department of the Interior, Santa Fe, New Mexico, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

The Liberty Oil & Gas Corporation has appealed from a decision of the New Mexico State Office, Bureau of Land Management (BLM), dated November 30, 1981, denying their petition for reinstatement of oil and gas lease NM 33653.

The BLM decision stated that appellant's lease automatically terminated on September 1, 1981, for failure to pay the annual rentals, due as of that date. That decision further stated that payment was not received until September 9, 1981. On November 13, 1981, appellant submitted a timely petition for reinstatement stating that the payment had been sent by certified mail on September 1, 1981. Incorporated in appellant's statement of reasons as an exhibit is a photostatic copy of the receipt for certified mail date stamped by the Livonia, Louisiana, post office on September 1, 1981.

[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 within 20 days 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. Margaret Lee Pirtle, 54 IBLA 113 (1981).

[2] 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). Mailing the payment on the anniversary date is not an indication of reasonable diligence by the appellant where payment must be received on or before that date. In the absence of a showing that the late payment was either justifiable or not due to a lack of reasonable diligence, appellant's petition for reconsideration was properly denied. Andrew H. Nelson, 58 IBLA 220 (1981).

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.

Edward W. Stuebing
Administrative Judge

We concur:

C. Randall Grant, Jr., Administrative Judge

Bruce R. Harris
Administrative Judge

