

RICHARD C. HUBBARD

IBLA 82-864

Decided November 4, 1982

Appeal from decision of the Eastern States Office, Bureau of Land Management, finding oil and gas lease ES-22238 terminated for nonpayment of rental.

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

Reliance upon receiving a courtesy billing notice before the due date can neither prevent the lease from terminating by operation of law nor serve to justify a failure to pay the full lease rental in a timely manner.

3. 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 of the anniversary date.

APPEARANCES: Richard C. Hubbard, pro se.

OPINION BY ADMINISTRATIVE JUDGE IRWIN

Richard C. Hubbard has appealed the decision of the Eastern States Office, Bureau of Land Management (BLM), dated April 30, 1982, holding for denial a petition for reinstatement of oil and gas lease ES-22238.

On January 7, 1982, BLM received the 1982 rental payment for the lease and a petition for reinstatement explaining why the rental was not paid on or before January 1, 1982, the anniversary date of the lease, and asking that the lease not be terminated. Since the BLM lease records showed that the 1981 rental had not been paid and therefore, the lease had terminated by operation of law as of January 1, 1981, BLM directed that appellant show proof that the 1981 rental for the lease had been timely paid or his petition for reinstatement would be denied. Appellant appealed to this Board by notice dated May 24, 1982, without submitting any proof of a 1981 payment to BLM.

In his statement of reasons, appellant argues that section 2(d)(4) of the lease terms be invoked to waive his 1981 rental payment and that his petition for reinstatement of the lease involving the 1982 rental be considered. Section 2(d)(4) permits waiver of rentals "if the Secretary of the Interior finds that for the purpose of encouraging the greatest ultimate recovery of oil or gas and in the interest of conservation of natural resources, it is necessary, in his judgment, to do so in order to promote development." Appellant argues that acceptance of his offer to assign the lease by Sun Oil Company on June 15, 1981, promotes development and that failure to reinstate the lease will delay its development, denying the United States current rentals and royalties.

Appellant also suggests that because of circumstances allegedly, caused by BLM he didn't timely receive a copy of the lease and missed the rental payment. He notes that, although the lease was signed and dated by BLM on December 31, 1979, with an effective date of January 1, 1980, he never executed and certified the lease. In January 1980 he contacted Stewart Capital Corporation (Stewart), about the whereabouts of his lease, and Stewart advised that long delays in lease issuance by the Eastern States Office could be expected. In March, Stewart reported to him that although the lease had issued with an effective date of January 1, 1980, Stewart had not received it, 1/ blaming the post office or BLM. Stewart suggested that he obtain a copy by writing directly to BLM. Appellant reports that in April 1981 he assigned a 25 percent interest in the lease to Leyland Capital Corporation (Leyland), on forms provided by BLM even though he didn't have a copy of the lease and, on June 10, 1981, he submitted the assignment to BLM for approval. He adds that Leyland forwarded the lease to him in July 1981 in connection

1/ Appellant's drawing entry card reflected his name but Stewart's address, so that the rental and lease documents were sent to Stewart.

with a further assignment to Sun Oil Company. Appellant asserts that during all this time he never received a rental due notice or lease termination notice. 2/

Review of the lease file reveals, as appellant has reported, that the lease was issued on December 31, 1979, with an effective date of January 1, 1980. Under the regulations and practice in force at that time, lessees were not required to execute the actual form. Rather, the lessee's signed entry card represented that he intended to be bound to a lease on the currently approved lease form if the lease were issued to him as a result of the simultaneous drawing. The lease was then issued upon receipt of the first year's rental. See 43 CFR 3112.2-1, 3112.4, 3112.4-1 (1979). The copy of the lease in the file has the following notations: "apln posted 10-5-79 BB" and "Termination posted 4-27-81, CMT." In addition to the unapproved 1981 assignment forms, the file contains a letter from appellant to BLM dated December 10, 1980. With regard to lease ES-22238, he asked: "My lease does not contain referred Schedule A with the legal description. Please provide a copy so that an interested assignee may consider."

Thus, the record reflects that lease ES-22238 was issued to appellant on December 31, 1979, that appellant by his own admission was made aware by Stewart that the lease had issued with an anniversary date of January 1, and that according to his December 10, 1980, letter, he had received a copy of the lease albeit without Schedule A attached. We note that appellant's assertions on appeal are inconsistent with the last.

[1] 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). Since BLM did not ever receive appellant's 1981 rental, BLM has no authority to reinstate the terminated lease. Jack L. Grynberg, 53 IBLA 165 (1981); James Valjalo, 50 IBLA 256 (1980).

Appellant's suggestion that we consider the 1981 rental waived is not appropriate. Under Departmental regulations waiver of rental is considered only upon specific application detailing required information. See 43 CFR 3103.3-7.

2/ Appellant also refers to a leasing moratorium in February 1980. Pursuant to Secretarial Order No. 3049, dated Feb. 29, 1980, the Secretary of the Interior suspended all simultaneous drawings and the issuance of any noncompetitive leases. The suspension on the issuance of pending noncompetitive simultaneous leases was revoked effective Apr. 8, 1980 (Secretarial Order No. 3051, dated Apr. 7, 1980). See 45 FR 30553, 30554 (May 8, 1980). Since lease ES-22238 was issued prior to Secretarial Order No. 3049, the suspension ordered did not affect the lease.

[2] Neither may appellant rely on the absence of a courtesy billing notice or a notice of termination. The fact that appellant did not receive a courtesy notice can neither prevent the lease from terminating nor justify a failure to pay the lease rental timely. Otis Energy, Inc., 52 IBLA 316 (1981); Richard C. Corbyn, 32 IBLA 296 (1977). This Department is under no obligation to provide such notices and they are in no sense "bills" in the common use of that word. Louis J. Patla, 10 IBLA 127 (1973). Furthermore, we note that until December 15, 1980, when BLM received appellant's December 10, 1980, letter, appellant's address of record was that of Stewart. ^{3/} Thus, any notice sent would have been sent to Stewart, as was the lease itself after issuance on December 31, 1979. As noted, appellant was informed of the anniversary date of the lease and had the responsibility to pay it; he cannot shift the blame for his failure to pay to BLM.

[3] Appellant's argument that he received no notice of termination is similarly unavailing. 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, January 1, 1981. 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 a 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. Sun Oil Co., 63 IBLA 26 (1982); C. J. Iverson, 21 IBLA 312, 82 I.D. 386 (1975); Amoco Production Co., 16 IBLA 215, 219 (1974).

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 Eastern States Office is affirmed.

Will A. Irwin
Administrative Judge

We concur:

Bruce R. Harris
Administrative Judge

Edward W. Stuebing
Administrative Judge

^{3/} The regulations have since been changed to require that a simultaneous oil and gas lease application reflect the applicant's personal or business address, not that of a leasing service. 43 CFR 3112.2-1(d).

