

Appeal from decision of the Wyoming State Office, Bureau of Land Management, denying petition for reinstatement of oil and gas lease W 58160-A.

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 upon failure to pay the annual rental on or before the anniversary date of the lease. The date of receipt of the rental and not the date of mailing controls in determining whether rental on an oil and gas lease was timely paid. A terminated lease may be reinstated pursuant to 30 U.S.C. § 188(c) (1976) only if the failure to pay the rental timely was either justifiable or not due to a lack of reasonable diligence on the part of the lessee.

2. Oil and Gas Leases: Termination

The automatic termination of an oil and gas lease for failure to pay timely the annual rental is not subject to the general principle of law that forfeitures are viewed with disfavor and will be enforced only when circumstances require it. Courts have held in connection with oil and gas leases that forfeitures are favored by the law so that such leases are to be construed liberally in favor of the lessor and provisions for forfeiture strictly enforced.

3. Oil and Gas Leases: Reinstatement

To show that late payment was not due to a lack of reasonable diligence, a lessee must ordinarily show that payment was mailed sufficiently in advance of the due date to account for normal delays in the collection, transmittal, and delivery of the payment. Mailing the rental payment the day before it is due does not constitute reasonable diligence.

4. Oil and Gas Leases: Reinstatement

For late submission of an oil and gas lease rental payment to be justifiable within the meaning of 30 U.S.C. § 188(c) (1976), factors outside the control of the lessee must have arisen which prevented the lessee from meeting the objective reasonable diligence test. Inadvertence or lack of awareness that payment had to be received by the due date are not matters beyond the lessee's control and do not justify late payment.

APPEARANCES: John E. Conner, pro se.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

John E. Conner has appealed from the April 28, 1982, decision of the Wyoming State Office, Bureau of Land Management (BLM), denying reinstatement of oil and gas lease W 58160-A which was held to have terminated by operation of law on April 1, 1982, the date on which the lessee's rental payment was due but was not received. Appellant's payment was mailed on March 31, 1982, from Seattle, Washington, to Cheyenne, Wyoming. It was not received by BLM until April 5, 1982.

[1] An oil and gas lease on which there is no well capable of producing oil or gas in paying quantities automatically terminates upon failure to pay the annual rental on or before the anniversary date of the lease. 30 U.S.C. § 188(b) (1976); 43 CFR 3108.2-1(a). This termination occurs by operation of law, not by the action of the Department. The date of receipt of the rental and not the date of mailing is controlling in determining whether rental on an oil and gas lease was paid timely. 43 CFR 1821.2-2(d), (f); Ruth Eloise Brown, 60 IBLA 328 (1981). Because appellant's rental was not received on April 1, 1982, the due date, the lease terminated automatically. A terminated lease may be reinstated pursuant to 30 U.S.C. § 188(c) (1976) only if, among other requirements, the lessee shows that failure to pay on time was either justifiable or not due to a lack of reasonable diligence on the part of the lessee. 30 U.S.C. § 188(c) (1976); 43 CFR 3108.2-1(c).

Appellant's statement of reasons makes clear he was not aware that the payment actually had to be received by BLM on April 1. He contends that if payment on a real estate or mortgage contract is due on the first day of the month and the check is mailed before the first day, it is never considered delinquent. He suggests that the policy adopted by the Department is different from accustomed business practice and could entrap almost anyone who was not intimately familiar with it.

[2] Although these rules may vary somewhat from other commercial practices, they are not inconsistent with private oil and gas lease transactions. Although it may be suggested that the automatic termination of the lease constitutes a forfeiture, the provision is not subject to the familiar rule that forfeitures are viewed with disfavor and will be enforced only when circumstances require it. Courts have held that in connection with oil and gas leases, forfeitures are favored by the law so that such leases are to be construed liberally in favor of the lessor and provisions for forfeiture strictly enforced. See Kernco Drilling Co., 71 IBLA 53 (1983); Bert O. Peterson, 58 I.D. 661, 666 (1944), aff'd, Peterson v. Ickes, 151 F.2d 301 (D.C. Cir.), cert. denied, 326 U.S. 795 (1945); see also 38 Am. Jur. 2d Gas and Oil § 99 (1968).

In cases upholding the automatic termination of non-Federal leases for failure to pay timely the delay rental, some courts have avoided the equitable rule favoring relief from forfeitures by refusing to characterize the automatic termination of a lease as a forfeiture. See, e.g., Gillespie v. Bobo, 271 F. 641, 643-44 (5th Cir. 1921) (holding that an oil and gas lease automatically terminated where delay rental was one day late because of an improperly addressed envelope). In general, the automatic termination of Federal leases is not inconsistent with private practice with respect to termination of oil and gas leases for failure to submit timely rental. See 3 H. R. Williams, Oil and Gas Law § 606.2 pp. 154-59 (1981). Resolution of this appeal is not based on commercial practices, however, but on applicable statutes, regulations, and decisional precedents.

As pointed out in Louis Samuel, 8 IBLA 268, 269-70 (1972), there was no provision for the automatic termination of oil and gas leases for failure to pay the full amount of yearly rent prior to the anniversary date of the lease until Congress passed the Act of July 29, 1954, P.L. 555, 68 Stat. 583, 585. Prior to the enactment of this legislation, the Department had considered leases to be still in effect in the absence of a written relinquishment provided by the lessee to the appropriate office, notwithstanding the lessee's failure to pay rental. This practice proved unsatisfactory for several reasons. A number of lessees erroneously assumed they could abandon their leases by failing to pay the rent timely without providing other evidence of their intent, relying on the practice with respect to non-Federal leases. The Department's policy, however, was that regardless of the intent to relinquish the leases, lessees were liable for the full payment of the amount owed and this liability could accumulate for years. When Congress provided for the automatic termination of oil and gas leases for failure to pay timely the annual rental, the statute made such determination mandatory, and the Department held that it lacked the authority to waive the automatic termination, even in cases in which the amount lacking was nominal or when

payment had arrived only 1 day late regardless of the individual circumstances attendant. The harshness of this rule prompted aggrieved lessees to seek help from Congress which passed a number of private relief laws in individual cases. ^{1/}

[3] To alleviate the harshness of this problem, Congress in 1970 gave the Secretary of the Interior limited authority to reinstate oil and gas leases which have terminated for failure to pay timely the annual rental. However, Congress limited reinstatement to those situations where the rental was paid within 20 days and upon proof that failure to make timely payment was either justifiable or not due to a lack of reasonable diligence. 30 U.S.C. § 188(c) (1976). In order to show that late payment was not due to lack of reasonable diligence, a lessee must ordinarily show that payment was mailed 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 rental payment one day before it is due does not constitute reasonable diligence. See Martin Mattler, 53 IBLA 323, 88 I.D. 420 (1981), and cases cited therein.

[4] A terminated lease may still be reinstated if a lessee can demonstrate that his failure to timely pay the lease rental was justifiable. For the late submission of an oil and gas rental payment to be justifiable, factors outside the control of the lessee must have arisen which prevented the lessee from meeting the objective reasonable diligence test. Ram Petroleum, Inc. v. Andrus, 658 F.2d 1349 (9th Cir. 1981); see also Ramoco, Inc. v. Andrus, 649 F.2d 814 (10th Cir.), cert. denied, 454 U.S. 1032 (1981). The only justification appellant gives is his lack of awareness that payment actually had to be received by the anniversary date. This is not a matter beyond the lessee's control. The Department's practice is no secret; it is clearly set forth in Departmental regulations cited in this decision. All persons dealing with the Government are presumed to have knowledge of relevant statutes and duly promulgated regulations. See 44 U.S.C. §§ 1507, 1510 (1976); Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947); Overthrust Oil and Gas Corp., 52 IBLA 119, 88 I.D. 38 (1981). Indeed, it is well settled that the law imputes knowledge when opportunity and interest, combined with reasonable care, would necessarily impart it. Kernco Drilling Co., *supra* at 58; Getty Oil Co., 61 IBLA 226, 89 I.D. 26 (1982). Any leaseholder exercising reasonable care can be expected to learn the conditions for continuing his tenure. Failure to do so cannot justify late payment of rental. Overthrust Oil and Gas Corp., *supra*.

Thus, it is clear that appellant's oil and gas lease cannot be reinstated pursuant to 30 U.S.C. § 188(c) (1976). We note, however, that Congress has enacted another statutory provision to allow reinstatement of oil and gas leases which are not subject to reinstatement under 30 U.S.C. § 188(c) (1976). Section 401 of the recently enacted Federal Oil and Gas Royalty Management Act of 1982, P.L. 97-451, 96 Stat. 2447 (1983), amends section 31 of the Mineral Leasing Act of 1920, 30 U.S.C. § 188 (1976),

^{1/} For an exhaustive analysis of the legislative history of the 1970 amendments to section 188, see Ram Petroleum, Inc. v. Andrus, 658 F.2d 1349, 1351-53 (9th Cir. 1981).

to afford an additional opportunity to reinstate a lease terminated by operation of law. This provision eases the requirements necessary to win reinstatement of a lease; however, reinstated leases would be subject to new rental and royalty requirements as well as other new provisions. Since BLM has not yet promulgated regulations addressing what time limits shall apply under this section to leases terminated before enactment of this new statute, appellant should inquire promptly at the Wyoming State Office, BLM, if he wishes to avail himself of this provision.

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.

Franklin D. Arness
Administrative Judge
Alternate Member

We concur:

C. Randall Grant, Jr.
Administrative Judge

Douglas E. Henriques
Administrative Judge.

