

FUNK EXPLORATION

IBLA 83-291

Decided May 23, 1983

Appeal from decisions of the New Mexico State Office, Bureau of Land Management, declaring of oil and gas lease, NM 36982 (OK), automatically terminated and denying petition for reinstatement.

Affirmed.

1. Oil and Gas Leases: Communitization Agreements -- Oil and Gas Leases: Rentals -- Oil and Gas Leases: Termination

Where a lessee represents to BLM that 40 acres of a 48.98 acre lease has been committed to a producing unit and inquires about the rental amount next due, BLM's answer that rental need be paid only on the 8.98 acres outside the unit is correct. But if, in fact, the other 40 acres has not been committed to such a unit on the anniversary date of the lease, the payment of only the fractional rental will result in the automatic termination of the lease.

2. Administrative Authority: Generally -- Appeals -- Evidence: Generally-Oil and Gas Leases: Terminations

Where, on appeal from the automatic termination of an oil and gas lease pursuant to 30 U.S.C. § 188(b), appellant submits an affidavit in support of its assertion that no termination could occur under the statute because there was present on the lease a well capable of producing oil or gas in paying quantities on the anniversary date of the lease, and that statement is absolutely false, the misrepresentation is one of material fact which, if knowingly and willfully made, constitutes a criminal violation of 18 U.S.C. § 1001 (1976).

APPEARANCES: J. Randall Robinson, Esq., Oklahoma City, Oklahoma, for appellant.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Funk Exploration appeals from decisions of New Mexico State Office, Bureau of Land Management (BLM), declaring that oil and gas lease, NM 36982 (OK) automatically terminated on September 1, 1982, for failure to timely pay the full annual rental then due and denying its petition for reinstatement of the lease. Partial payment of the rental was received by BLM on September 1, 1982, and a supplemental payment was made on September 20, 1982.

In its petition, appellant states that it made considerable effort to comply with the terms of the lease but was misled by incorrect information received from BLM employees. It claims that prior to the rental due date, it sought BLM's instructions concerning payment procedures, allegedly explaining to BLM that 40 acres of the lease lands are within the SE 1/4 NE 1/4 of sec. 22, T. 6 N., R. 25 E., Cimarron meridian, Beaver County, Oklahoma, and were within a producing unit. The remaining 8.98 acres in the lease are within secs. 8 and 9, T. 6 N., R. 25 E., Cimarron meridian. Therefore, it paid only \$17.98 which was received by BLM on September 1, 1982. 1/ Appellant alleges that after the due date had passed BLM informed it that since an approved communitization agreement had not been issued on the drilling and spacing unit, the full rental amount was due and that it had until the 20th of September to pay the remainder in order to keep the lease in effect. A payment of \$80.02 was received on September 20, 1982.

In a decision dated November 1, 1982, BLM served notice to appellant that oil and gas lease NM 36982 (OK) had automatically terminated under the provisions of 30 U.S.C. § 188 (1976), because the annual rental had not been timely paid. Appellant's petition for reinstatement was received November 8, 1982, and, in a decision dated November 16, 1982, BLM denied the petition because the requirements for reinstatement, 43 CFR 3108.2-1(c), had not been satisfied.

1/ Effective Sept. 25, 1981, sec. 22, T. 6 N., R. 25 E., Cimarron meridian, was included within the undefined known geological structure (KGS) of the Mocane-Laverne Gas area. Under Departmental requirements, the advance rental for a lease on land wholly or partly within a KGS which was issued noncompetitively under section 17 of the Minerals Leasing Act and is not part of a cooperative or unit plan which include a well capable of producing oil or gas is \$2 per acre or fraction thereof. 43 CFR 3103.3-2(b)(1). Cf. 43 CFR 3103.3-2(a) (rental of \$1 per acre on noncompetitive leases outside of KGS). Appellant attempted to prorate its rental payment by submitting \$17.98 for 8.98 acres. Departmental regulation for advance rental payment, 43 CFR 3103.3-2, does not provide for prorated rentals but requires full per-acre rental for fractional acres. Appellant was liable for \$98 rental (48.98 acres).

3. The aforementioned books and records reveal that said well was completed on September 25, 1981, and first production from said well was obtained on January 27, 1982. Said well has produced in paying quantities and total production obtained during the period January 27, 1982 through November 30, 1982 is 8,470,000 cubic feet of gas.

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By: /s/ Becky Garrison
 Becky Garrison
 Land Manager

Upon inquiry by this Board it was subsequently ascertained that the affidavit and the foregoing quotation from appellant's statement of reasons are absolutely false. There is no producing well on the leased premises. If there were a producing well on the leased lands, there could be no automatic termination of the lease by operation of law pursuant to 30 U.S.C. § 188(b) (1976). Therefore, the misrepresentation made by appellant to this Department is of a material fact. The gravity of such an act is reflected in 18 U.S.C. § 1001 (1976), which provides:

§ 1001. Statements or entries generally

Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals, or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than \$10,000 or imprisoned not more than five years, or both.

See also United States v. Weiss, 431 F.2d 1402 (10th Cir. 1970); Lee S. Bielski, 39 IBLA 211, 86 I.D. 80 (1979).

Following the Board's inquiry concerning the veracity of the allegation that there was a producing well on the leasehold, appellant filed an amendment to its statement of reasons. This supplemental pleading identifies the producing well referred to as being located in the NW 1/4 sec. 22, T. 6 N., R. 25 E., Cimarron meridian. Lease NM 31962 OK covers only the SE 1/4 NE 1/4 of said sec. 22, with the remaining 8.98 acres being in secs. 8 and 9 of the same township. It is clear, therefore, that the well is not on the subject lease. However, it is asserted that because the State Corporation Commission had ordered the establishment of drilling and spacing units of 640 acres, including said sec. 22, on October 16, 1981, appellant intended to, and did, enter into a communitization agreement. But the agreement states in its preamble that it was entered into by the various parties "as of the 1st day of October, 1982." Lease NM 36982 (OK) had terminated a month earlier, on September 1, 1982. Appellant did not execute the communitization agreement until October 25, 1982, and other parties executed it as late as November 2,

1982, more than two months after the lease terminated. The agreement was not submitted to BLM for approval until November 8, 1982, which was after BLM had issued its decision notifying appellant that the lease had terminated.

Nevertheless, appellant points to paragraph 10 of the agreement, where it is provided that "[t]his agreement is effective January 1, 1982, notwithstanding the date of execution, and upon approval by the Secretary of the Interior or by his duly authorized representative * * *." Therefore, appellant contends, "lease NM 36982 (OK) should not be subject to automatic termination because a well capable of producing oil or gas in paying quantities was discovered and existed on lands communitized therewith." We disagree.

First, we note that the communitization agreement has not been approved by the Secretary or by anyone acting on his behalf. Thus, by the very terms of the agreement, the retroactive effective date was not triggered. Moreover, 43 CFR 3105.2-3 provides that a communitization agreement of lands leased from the United States is not effective until approved by the Secretary. Kirkpatrick Oil Co., 32 IBLA 329 (1977), aff'd 675 F.2d 1122 (10th Cir. 1982). Thus, as a matter of regulation, the leased land was not committed to a unit containing a well capable of production as of September 1, 1982, when the lease automatically terminated by reason of the more-than-nominal deficiency in the rental payment.

Second, to accept appellant's argument that a communitization agreement entered into after a lease had terminated, yet allegedly retroactive to a prior date, could be effective nunc pro tunc, would be to allow the lessee, merely by executing a document, to avoid the operation of statutory law which had already occurred.

[3] 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 of the anniversary date 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). Departmental regulation promulgated pursuant to the statute, 43 CFR 3108.2-1(c), in addition to the above requirements, also provides that a petition for reinstatement be filed within 15 days after receipt of the notice of termination. Satisfactory compliance with these requirements is argued by appellant. The records show that the rental and petition were received within the above prescribed time periods. However, in the absence of proof that the failure was justifiable or not due to a lack of reasonable diligence, the petition for reinstatement is properly denied. E.g., Gulf Oil Co., 69 IBLA 263 (1982); Peter R. Buehler, 67 IBLA 242 (1982).

We note that section 401 of the recently enacted Federal Oil and Gas Royalty Management Act of 1982, P.L. 97-451, 96 Stat. 2447, amends section 31 of the Mineral Leasing Act, 30 U.S.C. § 188 (1976), to afford an additional opportunity to reinstate a lease terminated by operation of law. If appellant wishes to avail itself of this provision, it should promptly inquire at the New Mexico State Office, BLM. However, reinstatement under this provision is at the discretion of the Secretary, and is not something to which appellant is entitled as a matter of right.

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 New Mexico State Office is affirmed.

Edward W. Stuebing
Administrative Judge

We concur:

Franklin D. Arness
Administrative Judge
Alternate Member

James L. Burski
Administrative Judge

