

LARRY CHAMBERS

IBLA 83-492

Decided November 22, 1983

Appeal from decision of the New Mexico State Office, Bureau of Land Management, declaring oil and gas lease NM 45977 terminated by operation of law for failure to pay annual 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: Reinstatement--Oil and Gas Leases: Termination

Sec. 401 of the Federal Oil and Gas Royalty Management Act, P.L. 97-451, 96 Stat. 2447, amending sec. 31 of the Mineral Leasing Act of 1920, 30 U.S.C. § 188 (1976), affords an additional opportunity to reinstate a lease terminated by operation of law where the rental was not tendered within 20 days of termination if certain additional conditions are met. For a lease which terminated prior to enactment of sec. 401 (Jan. 12, 1983), the lessee must have tendered the rental to BLM prior to the date of enactment to qualify the lease for reinstatement.

APPEARANCES: Larry Chambers, pro se.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

Larry Chambers appeals from the March 10, 1983, decision of the New Mexico State Office, Bureau of Land Management (BLM), which gave notice that oil and gas lease NM 45977 terminated because the annual rental which

was due on the anniversary date of the lease, December 1, 1982, was not timely paid.

Included with the case file is a BLM memorandum dated March 1, 1983, which acknowledges that Chamber's address had erroneously been changed "by a new employee in the Accounts Unit" and that the courtesy billing of October 1982 for oil and gas lease NM 45977 was sent to the wrong address and was returned to BLM as undeliverable.

The memorandum further provides:

The Accounts Unit personnel verify the address on any undeliverable courtesy billings to the Bureau Lease Management Printouts and if the address differs to [sic] that on the courtesy billing, they mail the courtesy billing to the address shown on the Printout. If the address is the same on the Printout and the courtesy bill, the courtesy billing is tossed out.

The memorandum states that Chambers first called the Accounts Unit during the week of February 21, 1983, regarding payment on the lease.

On March 1, 1983, Chambers forwarded the rental to BLM and in an accompanying letter refers to "discussions with [BLM]." He states that the nonpayment of rental was a result, "at least in part," of the erroneous change of address on the part of BLM because he neither received a "rental notice" nor would have received a rental receipt had the rental been paid. ^{1/} Chambers states that funds with which to pay the rental amount of \$952 had been "ordered" together with other funds from his bank. In the March 1 letter Chambers states that "[w]e have just now located these funds which were being held by the office secretary," and he asserts that the funds were being held "awaiting the arrival of the rental notice." Included with the letter is a photocopy of a receipt issued by the American Express Company for \$952, dated November 17, 1982, for "NM-459-77." The receipt lists BLM in the space labeled "sent to." Chambers states "You will note that funds were purchased on November 17th 1982, and although funds did not reach you, we have of course paid out the funds to our bank as of November 17th 1982."

Chambers rental payment was received by BLM on March 7, 1983, more than 3 months after it was due. On March 10, 1983, BLM sent Chambers a termination notice and advised him of his right to petition for reinstatement.

In response to the BLM decision which gave notice that the lease had terminated, Chambers submitted an "appeal" and statement of reasons dated March 21 which referenced the information contained in the March 1 letter. Chambers further provided that due to the erroneous address change he "was denied access to [his] lease" in that had another party checked the records for the purpose of seeking an assignment or had he attempted to assign the lease or made a technical inquiry regarding the lease the erroneous address

^{1/} Chambers states: "We felt that lease payment had been made but we could not locate rental notice or more importantly, rental receipt."

would have prevented such information from reaching him. Chambers requests that the rental be accepted and the lease be reactivated in his name.

In the decision which gave notice that the oil and gas lease had terminated, BLM cites the Mineral Leasing Act, as amended, 30 U.S.C. § 188 (1976), and the regulation, 43 CFR 3108.2-1(c), which implements the Act.

The cited regulation, 43 CFR 3108.2-1(c), provided, at the time relevant here, as follows:

(c) Reinstatement. (1) Except as hereinafter provided, the authorized officer may reinstate a terminated lease which has been or is hereafter terminated automatically by operation of law for failure to pay on or before the anniversary date the full amount of rental due, provided that (i) such rental was paid or tendered within 20 days thereafter, and (ii) it is shown to the satisfaction of the authorized officer that such failure was either justifiable or not due to a lack of reasonable diligence on the part of the lessee, and (iii) a petition for reinstatement, together with the required rental, including any back rental which has accrued from the date of termination of the lease, is filed with the appropriate office within 15 days after receipt of Notice of Termination of Lease due to late payment of rental. The Notice of Termination will be sent by certified mail, return receipt requested. [2/]

[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 for a lease on which there is no well capable of production of oil or gas in paying quantities on or before the lease anniversary date, the lease terminates automatically by operation of law. This Department has no authority under the reinstatement provision of 30 U.S.C. § 188(c) (1976) 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. Francis X. Furlong II, 73 IBLA 67 (1983). Thus, reinstatement is foreclosed in this case under that provision because payment was not received within that time period. 3/

2/ Effective Aug. 22, 1983, the Federal oil and gas leasing regulations were revised. 48 FR 33648-82 (July 22, 1983), Subpart (iii) of the above regulation now reads:

"(iii) A petition for reinstatement, together with a nonrefundable filing fee of \$25 and the required rental, including any back rental which has accrued from the date of the termination of the lease, is filed with the proper BLM office within 15 days after receipt of Notice of Termination of Lease due to late payment of rental. The Notice of Termination shall be sent only if the rental is actually paid."

3/ For this same reason, BLM's notice of termination decision was misleading because it invited a petition for reinstatement when the granting of such a petition under 30 U.S.C. § 188(c) (1976) was impossible. Likewise, when Chambers filed his "appeal" on Mar. 23, it was actually his petition submitted in response to the notice of termination. Rather than issuing a decision

Further, even had Chamber's rental payments been received within 20 days after the date of termination of the lease, *i.e.*, December 1, 1982, under 30 U.S.C. § 188(c) (1976), Chambers would have been required to show that the failure to timely pay the rental was either justifiable or not due to a lack of reasonable diligence on his part. This Board has long held that the failure to receive a courtesy billing notice for the lease rental will not justify the late payment of rental. Ruth Eloise Brown, 60 IBLA 328 (1981). ^{4/} As stated by Chambers in his March 1, 1983, letter, sufficient funds had been obtained for payment of the rental "as of November 17th, 1982." It was Chambers' duty to ensure that those payments were received timely by BLM.

[2] Although reinstatement is precluded under 30 U.S.C. § 188(c) (1976), we must consider the implications of the Federal Oil and Gas Royalty Management Act (the Act), P.L. 97-451, 96 Stat. 2447 (enacted Jan. 12, 1983), which provides for reinstatement of leases where it is shown to the satisfaction of the Secretary that failure to pay the rental timely was inadvertent, provided certain criteria are met. Section 401 of the Act amends section 31 of the Mineral Leasing Act of 1920, 30 U.S.C. § 188 (1976), by adding a new subsection which provides in pertinent part as follows:

(d)(2) No lease shall be reinstated under paragraph (1) of this subsection unless --

(A) with respect to any lease that terminated under subsection (b) of this section prior to enactment of the Federal Oil and Gas Royalty Management Act of 1982:

(i) the lessee tendered rental prior to enactment of such Act and the final determination that the lease terminated was made by the Secretary or a court less than three years before enactment of such Act, and

(ii) a petition for reinstatement together with the required back rental and royalty accruing from the date of termination, is filed with the Secretary on or before the one hundred and twentieth day after enactment of such Act, or

fn. 3 (continued)

on the petition and informing Chambers of the reasons why a petition could not be granted, BLM treated Chambers' submission as a notice of appeal and forwarded the case file to the Board.

^{4/} As stated in the March 1 memorandum placed in the file by BLM, the erroneous address change was made by an employee of BLM's "Accounts Unit." There is no indication that a similar change was made in the "Bureau Lease Management Printouts," rather the memorandum provides that undeliverable courtesy billings are verified against the management printouts. In fact, a duplicate copy of the courtesy billing notice is contained in the case file with the incorrect address struck out and the correct address manually added. Although there is no record that a corrected courtesy notice was actually sent to Chambers, as BLM's memorandum states is the policy, there is no indication that the error affected anything other than the mailing of the original courtesy notice itself.

(B) with respect to any lease that terminated under subsection (b) of this section on or after enactment of the Federal Oil and Gas Royalty Management Act of 1982, a petition for reinstatement together with the required back rental and royalty accruing from the date of termination is filed on or before the earlier of --

(i) sixty days after the lessee receives from the Secretary notice of termination, whether by return of check or by any other form of actual notice, or

(ii) fifteen months after termination of the lease.

Chambers does not qualify for reinstatement under section 401 of the Act. Section 401 sets out two categories of leases for reinstatement: leases which terminated prior to enactment of the statute and those which terminated on or after enactment. Since the lease in this case terminated effective December 1, 1982, it falls into the former category. To qualify for reinstatement of such a lease, the lessee must have "tendered rental prior to the enactment of such Act." The record shows in this case that such tender reoccurred subsequent to enactment. ^{5/} Therefore, there can be no reinstatement. See R. K. O'Connor, 76 IBLA 376 (1983).

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.

Bruce R. Harris
Administrative Judge

We concur:

Franklin D. Arness
Administrative Judge
Alternate Member

R. W. Mullen
Administrative Judge

^{5/} A "tender" is made when a lessee submits payment to the proper BLM office and BLM has the opportunity to either receive or decline payment. Mobil Oil Corp., 35 IBLA 265 (1978).

