

JERRY CHAMBERS EXPLORATION CO.
BLACKBIRD CO.

IBLA 83-788

Decided April 3, 1984

Appeal from a decision of the Utah State Office, Bureau of Land Management, denying a petition to reinstate oil and gas leases U-17064 and U-45912.

Affirmed.

1. Oil and Gas Leases: Reinstatement--Oil and Gas Leases: Rentals--Oil and Gas Leases: Termination

A lessee seeking reinstatement of an oil and gas lease under sec. 401(d)(2)(A)(i) of the Federal Oil and Gas Royalty Management Act of 1982, 30 U.S.C.A. § 188(d)(2)(A)(i) (West Supp. 1983), must tender in full prior to Jan. 12, 1983, the rental due for the lease sought to be reinstated.

APPEARANCES: Laura L. Payne, Esq., Denver, Colorado, for appellants.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

Jerry Chambers Exploration Company (Chambers) and Blackbird Company (Blackbird) appeal from a decision of the Utah State Office, Bureau of Land Management (BLM), dated June 21, 1983, denying their petition to reinstate oil and gas leases U-17064 and U-45912. ^{1/} These leases terminated as a matter of law on December 1, 1982, as a result of the failure to timely pay rentals due. BLM denied appellants' reinstatement petition because it found that appellants did not comply with section 401 of the Federal Oil and Gas Royalty Management Act of 1982, 30 U.S.C.A. § 188(d) (West Supp. 1983).

Appellants sought reinstatement of the subject leases pursuant to section 401 which authorizes the Secretary of the Interior to reinstate a lease when the failure to pay the full amount of rental due on or before the lease anniversary date is inadvertent. Section 401(d)(2)(A) adds the following requirements:

^{1/} Appellants state that Chambers is the record title holder of the lease and that Blackbird has been assigned 8 percent of the record title in the leases. The assignment is pending approval.

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

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(A) with respect to any lease that terminated under subsection (b) of this section prior to January 12, 1983;

(i) the lessee tendered rental prior to January 12, 1983, and the final determination that the lease terminated was made by the Secretary or a court less than three years before January 12, 1983, 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 January 12, 1983. [Emphasis supplied.]

BLM rejected the reinstatement petition because it found that appellants had failed to tender rental prior to January 12, 1983, as required by the above-quoted subsection. Appellants dispute this finding. The rather complicated factual background causing this dispute is set forth in BLM's decision:

Oil and gas lease U-17064 was issued noncompetitively on December 1, 1971, for a primary term of ten years ending November 30, 1981. Effective [May 22,] 1978, the lease was partially committed to the Tin Cup Unit Agreement. The Tin Cup Unit Agreement terminated effective August 25, 1978. On April 14, 1980, U-17064 was partially committed to the Canyon Point Unit Agreement. The lands outside the unit were segregated and given Serial No. U-45912. Lease U-45912 was accordingly extended to and including April 14, 1982. Inasmuch as the effective date of the Canyon Point Unit Agreement had been incorrectly reported by Minerals Management Service, a decision was issued correcting the expiration date for lease U-45912 to April 22, 1982. The Canyon Point Unit Agreement to which U-17064 was committed terminated effective May 21, 1980. This earned U-17064 an extended expiration date of May 21, 1982.

Effective April 9, 1982, leases U-17064 and U-45912 were both committed to the Anasazi Unit Agreement. This unit terminated April 19, 1982, giving both leases an additional extension to and including April 19, 1984.

Prorated rental for lease U-17064 was paid for the period of December 1, 1981 through May 21, 1982. Prior to May 21, a full year's rent was submitted. When BLM issued the decision granting the extension to and including April 19, 1984, the rental due from May 22 through November 30, 1982, was applied and the excess rental was refunded.

Prorated rental for lease U-45912 was paid from December 1, 1981, to and including April 14, 1982, even though the expiration date was April 22, 1982. A full year's rental was paid on April 16, 1982. Again, at the time of the extension decision,

BLM applied unearned money from April 15 through November 30, 1982 and refunded the excess rental. A full year's rental was again due on or before December 1, 1982, the leases' anniversary date. [Emphasis supplied.]

Appellants contend that Chambers' tender of a full year's rent prior to May 21, 1982, for lease U-17064 and its tender of a full year's rent on April 16, 1982, for lease U-45912 satisfy the statutory requirement that "the lessee [tender] rental prior to January 12, 1983." Appellants admit, however, that rental for the balance of the lease year should have been tendered, rather than rental for a full year. Payment of the full year's rent apparently resulted from the mistaken belief of Chambers' lease rental clerk that the anniversary date of the leases had been changed (Petition for Reinstatement at 3).

Appellants openly acknowledge that through Chambers' inadvertence Chambers failed to note on its lease records that BLM refunded in July 1982 a portion of the tendered rentals. With respect to lease U-17064, BLM refunded rent for the period December 1, 1982, to May 21, 1983; a refund for the period December 1, 1982, to April 14, 1983, was received by Chambers for lease U-45912. BLM made the aforementioned refunds, appellants acknowledge, by a U.S. Treasury check dated July 23, 1982, and bearing the words "Excess Rental U-17064 and U-45912." Appellants state that on December 1, 1982, when a full year's rental was due for both leases, no payment was made because it was assumed that the rental had been paid through April 19, 1983.

The first notice that appellants received of lease termination arrived in April 1983 when BLM returned rental checks, drawn in an amount representing a full year's rental, submitted by appellants earlier that month. On May 6, 1983, a petition for reinstatement, together with increased rentals and a reinstatement fee, was submitted to BLM by appellants.

Regulation 43 CFR 3103.3-2 (1982) supports appellants' payment of rent in a prorated amount for the period beginning December 1, 1981, and ending the following April and May for leases U-45912 and U-17064, respectively. ^{2/} That regulation states: "If on the anniversary date of the lease [December 1] less than a full year remains in the lease term, the rentals due shall be in the same proportion to the annual rental as the period remaining in the lease term is to a full year."

When, however, both leases became entitled to a 2-year extension beginning April 19, 1982, as a result of the termination of the Anasazi unit, additional rent was necessary. Regulation 43 CFR 3103.3-2(e)(1) fixes this amount:

^{2/} Regulations effective Aug. 22, 1983, have changed this policy. 48 FR 33648, 33667 (July 22, 1983). Regulation 43 CFR 3103.2-2 now provides, in part: "Rentals shall be paid on or before the anniversary date of the lease. A full year's rental shall be required even if less than a full year remains in the lease term. Failure to make timely payment shall cause a lease to terminate automatically by operation of law."

(1) If the term of a lease for which prorated rentals have been paid is further extended to or beyond the next anniversary date of the lease, rentals for the balance of the lease year shall be due and payable on the date following the date through which the prorated rentals were paid.

On the basis of this regulation, it is clear that BLM properly refunded rents tendered April 16, 1982, which were attributable to the period beyond November 30, 1982, for each of the leases at issue. The anniversary date of the leases at issue was unchanged. 43 CFR 3103.3-2(d) (1982). ^{3/}

It is equally clear that on or before December 1, 1982, appellants were required to pay rents for each lease for the period from December 1, 1982, through and including November 30, 1983. 30 U.S.C. § 188(b) (1976). There being no such payment, automatic termination resulted. The reinstatement provisions that appellants invoke require that "the lessee [tender] rental prior to January 12, 1983." The facts reveal that appellants tendered rental in an amount sufficient to cover the period from the lease anniversary date, December 1, 1982, through April 22, 1983, for lease U-45912 and through May 21, 1983, for lease U-17064. Appellants ask this Board to hold that their tender of a full year's rental on April 16, 1982, which included partial payment for rent for the lease year beginning December 1, 1982, is sufficient to satisfy the requirements of section 401(d)(2)(A)(i).

Although the statute does not in words require that "full rental" be tendered prior to January 12, 1983, we believe such construction to be reasonable. Appellants, however, contend in essence that a partial rental payment, itself a basis for automatic termination had it been timely submitted during the primary term of the lease, should satisfy the more demanding requirements of section 401.

[1] We acknowledge appellants' argument that the reinstatement statute is remedial and, therefore, is to be construed broadly in favor of the group it was intended to benefit. We note, however, that Congress specifically recognized in section 401(d)(1) that a lessee's "failure to pay on or before the anniversary date the full amount of the rental due" results in automatic termination. 30 U.S.C.A. § 188(d)(1) (West Supp. 1983) (emphasis supplied). To be sure, the submission of an amount that is nominally deficient will not result in automatic termination of the lease. 30 U.S.C. § 188(b) (1976). ^{4/} Absent misleading information from BLM, however, there appears to be no congressional purpose to recognize a lease rental deficient by half. 30 U.S.C. § 188(b) (1976). In this case Chambers' tender of rental in April 1982 amounted to only partial payments for the lease year commencing December 1, 1982.

^{3/} "Anniversary date" is defined at 43 CFR 3100.0-5(i), 48 FR 33648, 33659 (July 22, 1983), to mean "the same day and month in succeeding years as that on which the lease became effective."

^{4/} Regulations effective at the time of the events herein characterized a nominal deficiency as one not more than \$10 or 5 percent of the total payment due. 43 CFR 3108.2-1. Revised regulations state that a nominal deficiency is one not more than 5 percent or \$100, whichever is less. 43 CFR 3108.2-1. 48 FR 33648, 33673 (July 22, 1983).

Our construction of section 401(d)(2)(A)(i) is consistent with Board decisions issued prior to the recent amendments to 30 U.S.C. § 188 (1976), wherein we held that full payment of rent within the statutory period was required to invoke the reinstatement provisions of section 188. David Fasken, 48 IBLA 258 (1980); Tenneco Oil Co., 46 IBLA 33 (1980). Appellants' compliance with those portions of the recent amendments requiring that their petition for reinstatement be timely filed, together with back rental and royalty, is not sufficient to invoke the remedial effects of the statute. Tender of a full year's rent for the lease year beginning December 1, 1982, prior to January 12, 1983, was required by statute and never satisfied by appellants. 5/

Therefore, 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 Utah State Office is affirmed.

Bruce R. Harris
Administrative Judge

We concur:

Franklin D. Arness
Administrative Judge

Gail M. Frazier
Administrative Judge

5/ Proposed regulations at 49 FR 4217 (Feb. 3, 1984) do not address the instant facts because the time required for filing a petition for reinstatement has passed. The preamble states at page 4218 that procedures for handling cases of this nature are found in BLM Instruction Memorandum No. 83-355. This citation is in error. Instruction Memorandum Nos. 83-558 (May 24, 1983), and 83-558, Change 1 (Aug. 16, 1983), appear to have been intended.

