

ESTATE OF ARLYNE LANSDALE

IBLA 84-220

Decided October 16, 1984

Appeal of decision by Utah State Office, Bureau of Land Management, denying petition for reinstatement of terminated oil and gas lease U-43642.

Affirmed.

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

Reinstatement of a terminated oil and gas lease pursuant to 30 U.S.C. § 188(c) (1982), referred to as a class I reinstatement, requires a showing by the lessee that the late rental payment was either justifiable or not due to a lack of reasonable diligence. Inadvertent mailing of the rental payment to an improper office without sufficient time for forwarding of the payment or return to the lessee so that payment can be properly sent is not reasonable diligence.

2. Oil and Gas Leases: Bona Fide Purchaser -- Oil and Gas Leases:  
Termination

The provisions of 30 U.S.C. § 184(h)(2) (1982) protecting the interests of bona fide purchasers from certain actions by the Department to cancel an oil and gas lease are not applicable to automatic termination of a lease by operation of law for failure to pay the rental on or before the anniversary date under 30 U.S.C. § 188(b) (1982).

APPEARANCES: Clifton S. Smith, Jr., Esq., Los Angeles, California, for appellant.

OPINION BY ADMINISTRATIVE JUDGE GRANT

Security Pacific National Bank (Security Pacific), Trustee/Receiver for the Estate of Arlyne Lansdale, appeals a November 8, 1983, decision of the Utah State Office, Bureau of Land Management (BLM), denying petition for reinstatement of terminated oil and gas lease U-43642.

Oil and gas lease U-43642 was issued effective September 1, 1979, embracing 160 acres described as N 1/2 NE 1/4, E 1/2 NW 1/4 sec. 20, T. 10 S., R. 23 E., Salt Lake Meridian, in Uintah County, Utah. The lease

was conveyed to Lansdale by an assignment approved effective October 1, 1979. The annual rental payments in 1980, 1981, and 1982 were timely received by BLM. <sup>1/</sup> However, in 1983 the payment was received by the Utah State Office on September 30, 1983. In response to the late payment, BLM issued a notice of automatic termination of the lease. This notice explained the statutory requirements for reinstatement of the lease. <sup>2/</sup> Security Pacific, acting on behalf of the lessee of record, promptly petitioned for reinstatement pursuant to the class I requirements. BLM denied this petition in its November 8, 1983, decision on the ground that the lessee was not reasonably diligent because the rental payment was not sent "sufficiently in advance of the anniversary date to account for normal delays in collection, transmittal and delivery of the payment." More specifically, BLM stated that: "[T]he rental payment was received in the improper office the day before the lease anniversary date. This was not sufficient time to return the payment to the lessee in order for that payment to be timely filed in the Utah BLM office by September 1, 1983."

Security Pacific begins its statement of reasons for this appeal with a discussion of events associated with its payment of the rental for U-43642. The lessee, Security Pacific explains, is "an extremely frail 96 year old woman who, in her earlier life, conducted significant oil and gas operations as a self-trained oil woman." Because of disabling physical ailments, her assets have been subjected to management by trust for the past few years. Because of disagreement among family members over management, the matter of her estate appeared before the California Superior Court. In December 1982, this court declared her incompetent and later appointed Security Pacific as temporary trustee/receiver of the estate. <sup>3/</sup> Since Lansdale's assets had been "languishing" unattended, Security Pacific found it extremely difficult to marshal, inventory, appraise, and manage her estate. Leases and lease documents had "to be culled from shoe boxes, closets, rusted filing cabinets, abandoned buildings and nooks and crannies. Many documents were missing and complete files have had to be reconstructed from public records in many states and government offices." Despite the chaos it has described, Security Pacific was able to prepare and mail a rental payment for U-43642 on August 22, 1983. However, the payment check was inadvertently included in an envelope with other rental payment checks sent to the Wyoming State Office, BLM. The check was date-stamped as received in that office on August 31, 1983. The check and an accompanying explanation were not returned by the Wyoming State Office

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<sup>1/</sup> The 1980 payment was received on July 31, 1980; the 1981 payment was received on Aug. 20, 1981; and the 1982 payment was received on Aug. 27, 1982.

<sup>2/</sup> Reinstatement of terminated oil and gas leases is authorized by statutes codified at 30 U.S.C. § 188 (1982). The BLM notice and subsequent decision referred to reinstatement under subsection (c) of section 188 as a class I reinstatement and reinstatement under the terms of subsections (d) and (e) of section 188 as a class II reinstatement. For clarity, the same terms are used in this decision to distinguish the requirements for reinstatement under the different statutory provisions.

<sup>3/</sup> The court appointed Security Pacific as the permanent conservator of the estate but that action was appealed. Security Pacific is acting by order of the court pending resolution of the several lawsuits.

until September 22, 1983. Upon receipt by Security Pacific on September 27, the check was immediately sent to the Utah State Office, where it was received on September 30. 4/

Security Pacific's arguments for reinstatement of the lease are summarized as follows:

- (1) BLM erred in concluding that Security Pacific failed to act justifiably and with reasonable diligence;
- (2) Security Pacific's payment should be deemed timely for reinstatement of the lease under class I requirements in view of the Wyoming State Office's delay in returning the check;
- (3) the lease has been conveyed to a bona fide purchaser prior to its termination and thus is not subject to termination; and
- (4) alternatively, the lease should be reinstated under class II requirements.

Under the provisions of section 31(b) of the Mineral Leasing Act, as amended, 30 U.S.C. § 188(b) (1982), an oil and gas lease on which there is no well capable of producing oil or gas in paying quantities terminates automatically by operation of law upon failure to pay the annual rental on before the anniversary date of the lease. See also 43 CFR 3108.2-1(a). Departmental regulations operative in September 1983 provided that payment must be timely received by the proper BLM office on or before the due date. 43 CFR 1821.2-1, 3103.1-2(a), 3108.2-1(a) (1983). 5/ Because the rental payment for oil and gas lease U-43642 was not received on September 1, 1983, the anniversary date, the lease terminated automatically.

A class I reinstatement of terminated oil and gas leases is authorized, provided: (1) The rental is received within 20 days after the due date, (2) the lessee petitions for reinstatement timely, and (3) the lessee establishes that the late payment was either justified or not due to a lack of reasonable diligence. 30 U.S.C. § 188(c) (1982); 43 CFR 3108.2-1(c).

Appellant complains that it is the victim of a contemporaneous change in the regulations which precluded the Wyoming State Office from forwarding the misdirected rental payment to the Utah State Office. Effective August 22, 1983, an addition to the regulations provides that payments "made to an improper office shall be returned and shall not be forwarded to the proper

4/ The payment check was received with the return copy of the notice of payment due which reads in pertinent part as follows:

<u>U 43642</u>	<u>Sep. 1, 83</u>	<u>\$160.00</u>
SERIAL NO.	DUE BY	PAY THIS AMOUNT
<u>RETURN THIS NOTICE WITH REMITTANCE TO:</u>		
BUREAU OF LAND MANAGEMENT		
136 E S TEMPLE, SALT LAKE CTY UT 84111		

5/ 43 CFR 3103.1-2 was amended effective Apr. 26, 1984, at 49 FR 11636, 11637 (Mar. 27, 1984), to require lease rental to be paid to the Minerals Management Service after the first year.

BLM office." 43 CFR 3103.2-2 (1983). 48 FR 33667 (July 22, 1983). <sup>6/</sup> However, we believe appellant's concern with the effect of the regulation change with respect to rental forwarding is misplaced. The decision appealed from did not reject the class I petition for reinstatement on the ground of failure to tender the rental within 20 days of the anniversary date, but rather on the ground of absence of reasonable diligence established by the record. The revised regulation effective at the time of the events in this case mandates that a BLM office receiving a misdirected payment shall return it to the sender rather than forward it to the proper office. 43 CFR 3103.2-2. Nevertheless, this does not authorize holding a misdirected payment for 3 weeks without action as was done here. However, this is not dispositive of the issue of whether appellant exercised reasonable diligence in making the rental payment.

[1] A case in point in which the Board considered the issue of misdirected payments is Gulf Oil Co., 69 IBLA 263 (1982). A check for rental payment due in the Wyoming State Office was apparently included in an envelope containing several rental checks sent to the Utah State Office. The checks, all dated February 23, 1982, were received by the Utah State Office on March 1, 1982, the due date. However, unlike the present appeal, the misdirected payment was forwarded on March 2 to the Wyoming State Office where it was received on March 5. The Board noted that, as a general rule, mailing a rental payment to the wrong office precludes a finding of reasonable diligence. 69 IBLA at 268. As the Board noted in Gulf, limited exceptions to this principle have been recognized where the payment was sent to the wrong office but the payment was received sufficiently in advance that it would have been timely received in the proper office anyway had BLM promptly acted to either forward or return the misdirected payment. Monsanto Co. v. Watt, No. 81-272 (D. Col. Jan. 5, 1982), *rev'g.* Monsanto Co., 51 IBLA 271 (1980); <sup>7/</sup> Richard L. Rosenthal, 45 IBLA 146 (1980). We must find in this case, as the Board did in Gulf, that the exception is not applicable as the rental payment was received in the wrong office too close to the due date to allow for receipt of payment in the proper office by the anniversary date even with prompt forwarding. <sup>8/</sup> In the Gulf case the payment was received in the wrong office on the anniversary date itself, whereas in this case the payment was received in the wrong office on the day before the anniversary date. Accordingly, we must find that the cause of the late rental payment was the inadvertent mailing of the check to the wrong BLM office. Thus,

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<sup>6/</sup> 43 CFR 3103.2-2 was amended effective Aug. 22, 1983, by final rulemaking published at 48 FR 33648, 33667 (July 22, 1983). While the rule was not included in the proposed rulemaking at 47 FR 28550 (June 30, 1982), BLM adopted it as an expression of "its policy to return rental payments made to an improper office and not forward them to the proper office." 48 FR at 33652 (July 22, 1983).

<sup>7/</sup> The precedential value of Monsanto Co. v. Watt, *supra*, involving a misdirected payment which the court held could have been forwarded to the proper office and received there by the anniversary date may be limited by the regulation change mandating the return by BLM of misdirected payments. *See* note 6, *supra*.

<sup>8/</sup> The Gulf case shows that ordinarily more than 1 day is required for a payment to be forwarded between the Wyoming and Utah State Offices.

appellant was not reasonably diligent. Cf. Phillips Petroleum Co., 71 IBLA 105 (1983).

In order for a late payment to be justifiable it must be proximately caused by factors outside the lessee's control. Ram Petroleums, Inc., v. Andrus, 658 F.2d 1349 (9th Cir. 1981); Ramoco, Inc. v. Andrus, 649 F.2d 814 (10th Cir.), cert. denied, 454 U.S. 1032 (1981); Getty Oil Co., 61 IBLA 226, 89 I.D. 26 (1982). The Board has long held that the complexities of the lessee's business operations or a disruption in the conduct of its business affairs which contribute to the failure to pay the annual rental on time will not justify a late payment. See, e.g., Larry W. Ferguson, 81 IBLA 167 (1984) (preoccupied with large business deal); Arthur F. Hovey, 79 IBLA 148 (1984) (away from office on business trip); Crest Oil & Gas Corp., 72 IBLA 370 (1983) (change in corporate offices and personnel). Moreover, the Board has also held that confusion attributable to probate lawsuits concerning management of an estate is not a justifiable cause of late payment. See Zions First National Bank, 67 IBLA 43 (1982). Further, the facts of this case indicate that the difficulties encountered in managing the estate were not the proximate cause of the late rental. The fact that the payment was mailed in time to be received by the anniversary date if properly addressed indicates that the proximate cause of the late payment was the inadvertent failure to use the proper address.

[2] Appellant also alleges that the lease was assigned to a bona fide purchaser prior to the date of termination, and, therefore, under the provisions of 43 CFR 3108.4, the lease cannot be terminated by BLM. The regulation at 43 CFR 3108.4 provides in part that: "A lease or interest therein shall not be canceled to the extent that such action adversely affects the title or interest of a bona fide purchaser even though such lease or interest, when held by a predecessor in title, may have been subject to cancellation." <sup>9/</sup> however, oil and gas lease U-43642 has not been canceled. Appellant's argument confuses the separate and distinct concepts of "cancellation" and "termination," elaborated upon by the Board as follows in Oil Resources, Inc., 28 IBLA 394, 84 I.D. 91 (1977):

In order to cancel a lease, the Department must take specific action, in some instances, judicial proceedings. E.g., 30 U.S.C. § 184(h)(1); 188(a); 188(b) (1970). Rather, appellant, by failing to pay its rental timely, has caused its lease to become subject to the directive of Congress set out in 30 U.S.C. § 188(b) (1970) that in such situation "the lease shall terminate by operation of law." The Department takes no action to cause such termination; it is triggered solely by the failure of the lessee to pay its rental timely. See C. J. Iverson, [21 IBLA 312, 314, 82 I.D. 386, 389 (1970)].

Id. at 405, 84 I.D. at 97. Accordingly, a bona fide purchaser will not preclude an oil and gas lease from terminating for nonpayment of rental.

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<sup>9/</sup> 43 CFR 3108.4 was promulgated to implement provisions of 30 U.S.C. § 184(h) (1982) which provides in part that: "(2) The right to cancel or forfeit for violation of any of the provisions of this chapter shall not apply so as to affect adversely the title or interest of a bona fide purchaser of any lease \* \* \*"

Finally, Security Pacific requests that if reinstatement under class I is denied, the lease should be reinstated under class II. 30 U.S.C. § 188(d) and (e) (1982). Section 401 of the Federal Oil and Gas Royalty Management Act of 1982, P.L. 97-451, 96 Stat. 2447, 2462, amended section 31 of the Mineral Leasing Act, *supra*, to provide for reinstatement of an oil and gas lease where the failure to pay timely was "inadvertent." 30 U.S.C. § 188(d) and (e) (1982). Reinstatement under class II (section 188(d)) is subject to certain conditions, including filing of a petition for reinstatement within 60 days from receipt of the notice of termination together with a processing fee and the rental and royalty due from the date of termination payable at the higher rates as specified in 30 U.S.C. § 188(e) (1982). BLM informed appellant in the November 8, 1983, decision that "[i]f lease U-43642 is to be considered for reinstatement under Class II, a petition together with a \$500 reinstatement processing fee and additional rental of \$640 will be required by December 9, 1983." Although the record does not reflect whether these conditions have been met, Security Pacific has indicated in its appeal that the required funds were "being forwarded under separate cover." In the absence of either a complete record or an adverse adjudication by BLM of appellant's petition for reinstatement under the class II requirements, we must find that such an issue is not properly before us in this appeal. This decision is without prejudice to consideration of appellant's petition under the requirements for a class II reinstatement.

Accordingly, 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.

C. Randall Grant, Jr.  
Administrative Judge

We concur:

Wm. Philip Horton  
Chief Administrative Judge

Will A. Irwin  
Administrative Judge

