

MONICA V. ROWLAND

IBLA 85-93

Decided February 26, 1986

Appeal from a decision of the Alaska State Office, Bureau of Land Management denying petition for reinstatement of noncompetitive oil and gas lease AA-48601-S.

Affirmed.

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

Under 30 U.S.C. § 188(c) (1982), BLM has no authority to reinstate a noncompetitive oil and gas lease terminated automatically for nonpayment of annual rental where the rental payment was not tendered at the proper office within 20 days after the anniversary date.

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

BLM may properly condition class II reinstatement, under 30 U.S.C. §§ 188(d) and (e) (1982), of a noncompetitive oil and gas lease terminated automatically for nonpayment of annual rental upon tender of the required back rental, computed at the increased rate of \$ 5 per acre set forth in 30 U.S.C. § 188(e)(2) (1982), within 60 days after receipt of a notice of termination.

APPEARANCES: Monica V. Rowland, pro se.

OPINION BY ADMINISTRATIVE JUDGE IRWIN

Monica V. Rowland has appealed from a decision of the Alaska State Office, Bureau of Land Management (BLM), dated October 16, 1984, rejecting her petition for reinstatement of noncompetitive oil and gas lease AA-48601-S.

The record shows that BLM originally issued noncompetitive oil and gas lease AA-48601, effective June 1, 1983, to Chapin & Associates, Inc., for 1,920 acres of land located in Alaska, pursuant to section 17 of the Mineral Leasing Act, as amended, 30 U.S.C. § 226 (1982). Effective February 1, 1984,

BLM approved a partial assignment of 40 acres to Monica V. Rowland. The terms of the assignment form signed by Rowland on January 20, 1984, stated in part IIB:

B. ASSIGNEE AGREES That, upon approval of this assignment by the authorized officer of the Bureau of Land Management, he will be bound by the terms and conditions of the lease described herein as to lands covered by the assignment, including but not limited to the obligation to pay all rentals and royalties due and accruing under said lease. [Emphasis added.]

In addition, the instructions in paragraphs 4 and 5 specifically noted:

4. EFFECT OF ASSIGNMENT - Approval of assignment of a definitely described portion of the leased lands creates separate leases of the retained and the assigned portions. It does not change the terms and conditions of the lease or the lease anniversary date for purposes of payment of annual rental.

5. A copy of the lease out of which this assignment is made should be obtained from the assignor. [Emphasis added.]

By notice of August 2, 1984, and received by appellant on August 7, 1984, BLM informed appellant that her oil and gas lease had terminated effective June 1, 1984, for failure to pay the annual rental on or before the lease anniversary date. 43 CFR 3108.2-1(a). However, BLM stated that appellant had the right to petition for reinstatement of the lease under the provisions of either 30 U.S.C. § 188(c) (1982) ("Class I" reinstatement) or 30 U.S.C. § 188(d) and (e) (1982) ("Class II" reinstatement), upon compliance with certain specified conditions.

Appellant filed her petition for reinstatement August 15, 1984, contending the reason she did not send in the rental fee because she was told the lease was in suspension and she did not know it could be saved. She submitted the \$ 40 rental payment and the \$ 25 filing fee which were credited to her as of August 16, 1984.

In its October 16, 1984, decision BLM denied appellant's petition for class I reinstatement under 30 U.S.C. § 188(c) (1982), because "[t]he rental payment received August 16, 1984 was not paid or tendered within 20 days of the anniversary date of the lease which is the first requirement of a class I reinstatement." BLM also stated that appellant had not demonstrated that the failure to pay the annual rental timely was either justifiable or not due to a lack of reasonable diligence. The decision further stated that BLM had determined that the failure to pay timely was inadvertent and that the lease could be reinstated under the provisions of class II reinstatement provided certain conditions were met, i.e., if by November 19, 1984, she agreed to amended lease terms and paid \$ 796 to cover the difference in back annual rental between the old rate (\$ 1 per acre) and the new rate (\$ 5 per acre),

administrative costs of reinstatement, and the cost of publishing a notice in the Federal Register of the proposed reinstatement. BLM further noted that if appellant did not comply with these conditions, reinstatement would be denied without further notice and her \$ 40 payment of back rental would be refunded.

In her statement of reasons appellant reiterates she thought that her lease was in suspension and that she was not responsible to pay the rental until further notice. She states:

I didn't receive any paperwork or notice of payment due and since it hasn't been assigned in my name yet I wasn't aware of when the lease rental fee was due and thought it would be paid by the person holding the lease. I called the BLM and they told me a notice of rental fees due would always be sent out, so I felt confident that I would be receiving a notice and until I did everything was just put on hold with the suspension. Some of the companies I invested with have gone out of business and I am at a loss of contact with a representative to let me know what is happening and what to do. I feel I made the effort to find out by calling the BLM and going by the information I received from them it is costing me the denial of my lease.

[1] Section 31 of the Mineral Leasing Act, as amended, 30 U.S.C. § 188(b) (1982), provides that, when the lessee fails to pay rentals on or before the anniversary date of the lease for a lease on which there is no well capable of producing oil or gas in paying quantities, the lease shall automatically terminate by operation of law. If the lessee has paid the full rental within 20 days after the lease anniversary date, and the lessee shows that the failure to pay on or before the anniversary date was justifiable or not due to a lack of reasonable diligence, the Department may, under certain circumstances, reinstate the lease pursuant to 30 U.S.C. § 188(c) (1982) and 43 CFR 3108.2-2(a) (class I). Harry L. Bevers, 84 IBLA 158, 160-61 (1984); Leo M. Krenzler, 82 IBLA 205, 207 (1984); Kay Fink, 81 IBLA 381, 382 (1982); Arthur M. Solender, 79 IBLA 70, 72 (1984).

Even assuming that appellant could show that the failure to pay was justifiable or not due to a lack of reasonable diligence, class I reinstatement is unavailable to appellant because of her failure to pay the rental within 20 days after the anniversary date. Charles F. Egger, 85 IBLA 385, 387 (1985); Jerry D. Powers, 85 IBLA 116, 119 (1985); Samson Resources Co., 71 IBLA 224, 229 (1983). Therefore, the subject lease could only be considered for class II reinstatement.

As previously noted, the terms of the assignment specifically set forth the assignee's responsibility for continued compliance with all the original lease terms, including payment of annual rental. Appellant cannot justify her late payment by virtue of her reliance on the assignor because, once a lease has been assigned, the assignee is responsible for making the rental payment

timely. Hugh Carter Crutchfield Trust, 87 IBLA 27, 29 (1985). Nor may she justify her late payment of rental because she did not receive a courtesy notice from BLM. It is well settled that a courtesy notice is merely a reminder that rental is due and reliance on the receipt of a notice does not justify a failure to pay rental timely. Melbourne Concept Project Sharing Trust, 46 IBLA 87 (1980); William A. Klug, 43 IBLA 255 (1979).

[2] BLM did determine that appellant was eligible for class II reinstatement and set forth the conditions she must meet for that remedy. The terms of 30 U.S.C. § 188(d)(2)(B) (1982) require that, with respect to leases terminated on or after January 12, 1983, a terminated lease will not be reinstated unless, in addition to showing that the late payment was the result of inadvertence, the lessee submits

a petition for reinstatement together with the required back rental and royalty accruing from the date of termination \* \* \* 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

(1) Fifteen months after the termination of the lease. [Emphasis added.]

Since August 16, 1983, both Congress and the Department have consistently interpreted the term "required back rental" to be the minimum future rental set forth in 30 U.S.C. § 188(e)(2) (1982), *i.e.*, \$ 5 per acre per year for noncompetitive leases. This is currently codified in 43 CFR 3108.2-3(b)(1). Thus, in order to be entitled to a class II reinstatement, a lessee must pay back rental at the rate of \$ 5 per acre per year within 60 days of receipt of a termination notice. This requirement, as noted above, was embodied in BLM's October 16, 1984 decision. Failure to do so properly results in denial of a petition for a class II reinstatement. Hugh Carter Crutchfield Trust, *supra*; Kurt W. Mikat, 82 IBLA 71 (1984).

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.

Will A. Irwin  
Administrative Judge

We concur:

James L. Burski  
Administrative Judge

C. Randall Grant, Jr., Administrative Judge

