

DOMINIC D. DEMICCO

IBLA 85-483

Decided July 8, 1986

Appeal from a decision of the Alaska State Office, Bureau of Land Management, denying Class I reinstatement of oil and gas lease AA-48110-BP.

Affirmed.

1. Oil and Gas Leases: Reinstatement

Congress has enacted two provisions for reinstating a noncompetitive oil and gas lease which has automatically terminated by operation of law pursuant to 30 U.S.C. § 188(b) (1982) for failure to pay the rental timely. In order to qualify for Class I reinstatement under 30 U.S.C. § 188(c) (1982), the rental must be tendered within 20 days of the anniversary date and the lessee must establish that failure to pay on time was either justifiable or not due to a lack of reasonable diligence. If failure to make timely payment was inadvertent, the lease may be eligible only for a Class II reinstatement pursuant to 30 U.S.C. § 188(d) (1982). A lessee who was unaware that his lease would terminate if he did not mail his payment before the anniversary date has neither acted with reasonable diligence nor established that his failure to make timely payment was justifiable.

APPEARANCES: Dominic D. Demicco, pro se.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

Dominic D. Demicco has appealed from the March 15, 1985, decision of the Alaska State Office, Bureau of Land Management (BLM), denying his petition for Class I reinstatement of oil and gas lease AA-48110-BP. Appellant's lease was originally part of a larger lease issued to Anchorage Research and Management Company, of Malibu, California, effective September 1, 1982. The assignment of a portion of that lease to appellant was approved effective September 1, 1983.

Rental for the next year of the lease was due on its anniversary date, September 1, 1984. Because rental for the lease was not paid by the anniversary date, the following provision of 30 U.S.C. § 188(b) (1982) took automatic

effect: "[U]pon failure of the lessee to pay rental on or before the anniversary date of the lease, for any 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." (Emphasis added.) Under the terms of the statute, the termination of the lease occurs automatically when the rental is not received, and does not depend on or result from action by a BLM administrative official. Thus, appellant's lease automatically terminated on September 1, 1984.

[1] Congress has enacted two provisions for reinstating oil and gas leases which have automatically terminated pursuant to 30 U.S.C. § 188(b) (1982). To qualify for Class I reinstatement under 30 U.S.C. § 188(c) (1982), the lessee must have paid or tendered the rental within 20 days after the anniversary date, and he must establish that his failure to pay on time was either justifiable or not due to a lack of reasonable diligence. Late payment is justifiable only if it is attributable to an act which was beyond the lessee's control. A lessee has failed to exercise reasonable diligence if the rental payment was mailed after the lease anniversary date. See Melvin P. Clarke, 90 IBLA 95 (1985). If the failure to make timely payment is not justifiable but is attributable instead to a lessee's inadvertence, the lease is not eligible for Class I reinstatement but may be eligible only for a Class II reinstatement under 30 U.S.C. § 188(d) (1982).

On October 24, 1984, the State Office issued a notice to appellant informing him the lease had automatically terminated. The notice advised appellant of his right to petition for reinstatement of the lease either under Class I or Class II. In response to this notice, appellant stated that he had mailed the rental on September 14, ^{1/} and claimed that the cancelled check showed that it was deposited on September 20. BLM again wrote appellant, advising him that the rental was due on or before the anniversary date and that a petition for reinstatement may be considered if received within 60 days of receipt of the termination notice. In his petition, appellant stated that he was away during the latter part of August and when he returned, the payment notice was misplaced, and he did not come across it until the middle of September. Appellant states that he was under the impression that he had a 30-day grace period.

Appellant did not accompany his petition with the required fees, and on December 17, 1984, BLM advised appellant that a nonrefundable \$25 filing fee was required for a Class I reinstatement petition, and that a Class II reinstatement required a \$500 fee that would be refundable if the petition was not granted. Appellant thereupon submitted the \$25 fee for a Class I reinstatement petition. On March 15, 1985, the State Office issued a decision which denied appellant's Class I petition and set forth the conditions for Class II reinstatement.

^{1/} Although appellant states that he mailed the rental on Sept. 14, 1984, the postmark on the envelope establishes that the rental was not mailed until Sept. 18.

In his petition, appellant states that neither his lease nor information sent him refers to termination of the lease if not paid exactly on the due date. Indeed, except for a parenthetical reference in section 7, the lease form in the file contains no explanation about the automatic termination of a lease for failure to pay the annual rental. Appellant states that the only other rental payment on the lease had been made by the assignor who is now out of business and who did not advise appellant of the requirement for timely payment of the rental. Appellant believes that his being new to Federal oil and gas leasing makes it unfair to penalize him.

Nevertheless, the statutory provisions for automatic termination of leases and the conditions required for their reinstatement have been clearly set forth by Congress. 30 U.S.C. § 188 (1982). They have been further defined by the Department's regulations. See 43 CFR Subpart 3108. It is well established that all persons dealing with the Government are presumed to have knowledge of relevant statutes and duly promulgated regulations. 44 U.S.C. §§ 1507, 1510 (1982); Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947); Phelps v. Federal Emergency Management Agency, 785 F.2d 13, 17 (1st Cir. 1986). We have previously observed that no prudent person would consider purchasing an interest in an oil and gas lease without first learning about the terms and conditions of that lease, particularly the obligation to make timely payment of the rental. Herbert J. Stinnett, 91 IBLA 239, 240 (1986); Otto C. Svancara, 87 IBLA 319, 322 (1985). At best, appellant's failure to inform himself about this matter can be characterized as inadvertence. It does not constitute justification for making late payment within the meaning of 30 U.S.C. § 188(c) (1982). Consequently, BLM correctly denied appellant's petition for Class I reinstatement.

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.

Franklin D. Arness
Administrative Judge

We concur:

Gail M. Frazier
Administrative Judge

John H. Kelly
Administrative Judge.

