

STANLEY I. OKUN
ALAN L. SCHWARTZBERG

IBLA 85-644

Decided October 30, 1986

Appeals from decisions of the Wyoming State Office, Bureau of Land Management, holding oil and gas lease W-73376 to have terminated by operation of law for nonpayment of rental.

Affirmed.

1. Oil and Gas Leases: Assignments or Transfers--Oil and Gas Leases: Termination

An oil and gas lease on which there is no well capable of production in paying quantities terminates automatically by operation of law for failure to pay the annual rental on or before the lease anniversary date. Where no rental is tendered timely either for the entire lease or for the acreage embraced in a pending unapproved assignment of record title, the lease is properly held to have terminated.

2. Oil and Gas Leases: Assignments or Transfers--Oil and Gas Leases: Reinstatement

Where a proposed assignment of an oil and gas lease has not been approved by BLM and the lease has automatically terminated by operation of law for failure to pay rental timely, only the original lessee as holder of record of the lease, and not the potential assignee, may petition to have the lease reinstated pursuant to 30 U.S.C. § 188(c), (d), and (e) (1982).

APPEARANCES: Stanley I. Okun, pro se; Robert E. Kleinpeter, Esq., Baton Rouge, Louisiana, for Alan L. Schwartzberg.

OPINION BY ADMINISTRATIVE JUDGE GRANT

Stanley I. Okun and Alan L. Schwartzberg appeal from similar decisions of the Wyoming State Office, Bureau of Land Management, holding that oil and gas lease W-73376 terminated by operation of law for failure to timely submit rental payment.

Lease W-73376 was originally issued to Ted Simola effective June 1, 1981. On March 24, 1983, Ted Simola assigned the lease to Wyoming Land and Minerals Corporation (Wyoming Land), and BLM approved the assignment effective August 1, 1983. Wyoming Land then assigned the lease to Leland Capital Corporation (Leland) on August 17, 1983, and BLM approved this assignment effective September 1, 1983.

From November 1983 to September 1984, BLM received applications for approval of partial assignments of record title to tracts within the lease to 10 different assignees including appellants herein. 1/ By letter dated April 30, 1984, BLM informed Leland that requests for record title assignments of less than 640 acres would not be approved, pending a review of BLM policies for approving such applications; accordingly, BLM suspended the processing of the assignment applications. 2/

On September 5, 1984, BLM notified Leland that lease W-73376 had terminated for failure to pay rental on or before the lease anniversary date, June 1, 1984. That notice also provided detailed information about the conditions necessary for obtaining either a class I reinstatement under 30 U.S.C. § 188(c) (1982) and 43 CFR 3108.2-1(c) or a class II reinstatement under 30 U.S.C. § 188(d) and (e) (1982). Leland responded with a letter dated September 13, 1984, stating the matter had been resolved with BLM, and referred to a copy of the check remitted to BLM to cover the annual rental due June 1, 1984. According to BLM's responsive letter to Leland dated September 28, 1984, that check was actually dated June 1, 1984, was postmarked June 2, 1984, and was received by the Minerals Management Service on June 5, 1984. BLM's letter further reiterated that Leland "must petition for reinstatement under either the Class I provisions if [Leland's] reasons for the late payment [were] justifiable or under the Class II provisions if the rental was inadvertently paid late." (Emphasis in original.)

1/ The 10 assignees all received decisions similar to those under appeal declaring lease W-73376 to have terminated for nonpayment of rent. Only Stanley I. Okun and Alan L. Schwartzberg perfected appeals of BLM's decision, having filed their notices of appeal and statement of reasons in accordance with 43 CFR Part 4. Paul F. Wubbens, Jr. filed a notice of appeal with BLM on May 29, 1985, stating that "[s]upporting reasons for the appeal will follow shortly." The applicable regulation, 43 CFR 4.412, provides that if the notice of appeal was not accompanied by a statement of reasons for the appeal, such a statement must be filed with the Board of Land Appeals within 30 days after the notice was filed. Accordingly, Wubbens statement of reasons was due in the office of the Board on or before June 23, 1985. His failure to file a statement of reasons subjects his appeal to summary dismissal. 43 CFR 4.402(a). Therefore, we dismiss Wubbens' appeal.

2/ BLM should have notified the assignees as it is the assignee who is making the application for approval of assignment, regardless of who submits the application. See Petrol Resources Corp., 65 IBLA 104 (1982).

By a series of similar decisions dated April 24, 1985, BLM informed the ten assignees that "[r]ental was not timely paid on or before the anniversary date of June 1, 1984; therefore, the lease automatically terminated by operation of law in accordance with Regulation 43 CFR 3103.2-2 and 3108.2-1(a)." Those decisions referred to the notice provided Leland dated September 5, 1984, that Leland had 60 days in which to petition for reinstatement of the subject lease. The decision further stated Leland, the lessee of record, had not petitioned for reinstatement and, hence, the lease was considered to have terminated, effective June 1, 1984.

Okun and Schwartzberg, two of the assignees of lease W-73376, appealed the April 24, 1985, decisions. In his statement of reasons, Okun states that by letter dated May 24, 1984, Leland instructed Okun to send it a check for his portion of the rental due on lease W-73376. Okun complied with Leland's instructions, but Leland failed to remit that rental to BLM by June 1, 1984. Okun states:

In retrospect, I realize that I should have sent the rental check directly to the BLM; however, at that time I had no reason to question this last letter of instructions. * * * I then received this "Decision" and discovered that Leland was contacted as lessee of record and given 60 days to reinstate the lease.

Okun asserts that "[s]ince Leland is defunct, I should have received this notice of 60 days to reinstate the lease."

Schwartzberg states that Leland assured him the annual rental had been paid, and asserts he called BLM to verify that fact. He objects to the fact BLM notified Leland that annual rental had not been paid timely, and that BLM extended the 60-day reinstatement period to Leland. He argues:

If any notice was to be given, it was to be given to Mr. Schwartzberg, who had filed all appropriate documents, as well as the \$ 25.00 fee, with the Bureau eleven (11) months before the last opportunity was given to cure the non-payment of the rental fee. Not only should Mr. Schwartzberg have been "lessee of record" following a reasonable length of time after his November 29, 1984 communication with the Bureau, but certainly should have been after the lease was recorded in the public records in Crook County, Wyoming, on May 29, 1984, five months before the last opportunity was given to cure the non-payment defect.

* * * * *

No reason has been given why the lease assignment was not approved except for the untimely payment. For the Bureau to hold Mr. Schwartzberg's assignment unapproved for eighteen (18) months while in the meantime, allowing the lease to terminate [sic]

because the lease assignment was not recognized and no notice was given to him, is a very questionable practice, and has overtones of a Due Process violation.

[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, and there is no well capable of producing oil or gas in paying quantities on the leased premises, 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 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 3108.2-1(c) (class I). ^{3/} E.g., Harry L. Bevers, 84 IBLA 158, 160-61 (1984); Leo M. Krenzler, 82 IBLA 205, 207 (1984); Kay Fink, 81 IBLA 381, 382 (1984); Arthur M. Solender, 76 IBLA 70, 72 (1984). However, in the absence of a showing that the required payment had been received, or at least postmarked, on or before June 1, 1984, a class I reinstatement could not be granted in this case. I. Edward Hollington, 86 IBLA 345 (1985); see Jerry D. Powers, 85 IBLA 116 (1985).

Although the legal basis for the refusal of BLM to act on appellants' partial assignments is questionable (see 30 U.S.C. § 187a (1982); North Central Oil Corp., 62 IBLA 38 (1982)), the fact remains that appellants were not directly prejudiced by this action, but by their failure to tender the amount of the rental required to keep their lease viable. In addressing a similar situation in which BLM declined to act on partial assignments, the Board specifically held the assignee under an unapproved assignment filed with BLM prior to the lease anniversary date may tender the annual rental required for the assigned acreage prior to the anniversary date in order to protect the assigned acreage and the assignment may be approved by BLM after termination of the base lease for nonpayment of the rental. Ladd Petroleum Corp., 70 IBLA 313 (1983). However, appellants failed to timely tender the rental for their assigned acreage.

[2] With respect to the right of the assignee to petition for reinstatement, the Board has held:

In Grace Petroleum Corp., 62 IBLA 180 (1982), the Board ruled that where a proposed assignment of an oil and gas lease has not been approved by BLM and the lease has automatically terminated by operation of law for failure to pay rental timely, only the lessee who is holder of record of the lease, and not the

^{3/} The oil and gas regulations were amended July 30, 1984 (effective Aug. 29, 1984), to provide specific regulations for reinstatement under various classes. 49 FR 30446-50. Class I regulations are found at 43 CFR 3108.2-2(a). 49 FR 30448-49. There is no substantive change from the previous requirements in 43 CFR 3108.2-1(c). 48 FR 33673 (July 22, 1983). New regulations at 43 CFR 3108.2-3 (49 FR 30449) govern class II reinstatements.

potential assignee, may petition to have the lease reinstated on the ground that reasonable diligence was exercised or that late payment was justified. There are two statutory bases for this holding. Under 30 U.S.C. § 188(c) (1976), as noted above, a terminated lease may be reinstated only if the failure to make timely payment "was either justifiable or not due to a lack of reasonable diligence on the part of the lessee." (Emphasis added.) Furthermore, the statutory provision governing assignments, 30 U.S.C. § 187a (1976), states that until approval of an assignment, "the assignor or sublessor and his surety shall continue to be responsible for the performance of any and all obligations as if no assignment or sublease had been executed." Thus, under the holding of Grace Petroleum Corp., supra, it is not relevant whether assignee's efforts to make timely payment of the rental constituted reasonable diligence or justifiable delay. The holder of record of the lease did not file a timely petition for reinstatement, and there is no allegation that any action by [lessee] would meet the requirements for reinstating the lease. [Footnote omitted.]

Victory Land & Exploration Co., 65 IBLA 373, 374-75 (1982); accord, Otto C. Svancara, 87 IBLA 319, 321 (1985). As holders of an unapproved assignment, appellants could not petition for reinstatement of the lease. Only Leland could exercise the right to petition for reinstatement of the terminated lease, but it failed to do so. Accordingly, BLM properly declared lease W-73376 terminated by operation of law, and returned the unapproved assignments to the assignees.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are affirmed.

C. Randall Grant, Jr.
Administrative Judge

We concur:

Gail M. Frazier
Administrative Judge

R. W. Mullen
Administrative Judge

