

ROBERT AND EILEEN TAYLOR

IBLA 85-508

Decided November 14, 1986

Appeal from a decision of the Wyoming State Office, Bureau of Land Management, dismissing protest of the return of unapproved assignments of oil and gas lease W-75043.

Affirmed.

1. Oil and Gas Leases: Assignments or Transfer--Oil and Gas Leases: Reinstatement--Oil and Gas Leases: Termination

Except as provided at 43 CFR 3108.2-1(b) (nominal payment deficiencies), any lease on which there is no were capable of producing oil or gas in paying quantities shall automatically terminate by operation of law if the lessee fails to pay the rental at the proper office on or before the anniversary date of the lease.

APPEARANCES: Brien Piper, Secretary-Treasurer, Apache Group, Inc., Beverly Hills, California, for appellants.

OPINION BY ADMINISTRATIVE JUDGE KELLY

Robert and Eileen Taylor appeal from a decision of the Wyoming State Office, Bureau of Land Management (BLM), dated February 15, 1985, dismissing a protest of BLM's return of unapproved assignments for oil and gas lease W-75043. That lease terminated on May 1, 1984, because the lessee, Steven B. Belkin, failed to pay the rental due for this lease on or before the lease anniversary date (May 1). 30 U.S.C. § 188(b) (1982). Despite the termination of this lease on May 1, 1984, requests for approval of record title assignments to Michael J. Mathieu, Austin Joy, and appellants were submitted to BLM months later. 1/ BLM's refusal to approve these assignments provoked the protest giving rise to the decision on appeal. Following BLM's protest dismissal, the Taylors filed a notice of appeal bearing their signatures. 2/

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1/ Correspondence from BLM in the record indicates that BLM received a request for approval of assignment to Joy on Oct. 9, 1984, to Mathieu on Oct. 29, 1984, and to the Taylors on Nov. 26, 1984.

2/ The protest at issue was signed by the president of Apache Group, Inc. (Apache) on behalf of Mathieu, Joy, and appellants. According to the BLM decision of February 15, it was also Apache who forwarded to BLM the assignments that BLM refused to approve. The statement of reasons in this case,

[1] On the basis of the record before us, we hold that the State Office correctly found lease W-75043 to have terminated as a matter of law upon the lessee's failure to pay rental on or before May 1, 1984. 30 U.S.C. § 188(b) (1982). Regulation 43 CFR 3108.2-1 provides:

(a) Except as provided in paragraph (b) of this subsection [nominal payment deficiencies], any lease on which there is no well capable of producing oil or gas in paying quantities, shall automatically terminate by operation of law (30 U.S.C. 188) if the lessee fails to pay the rental at the proper BLM office or the designated Service office, as appropriate, on or before the anniversary date of such lease.

The record shows that on May 7, 1984, the Minerals Management Service (MMS) received a check drawn on Apache's account and dated April 27, 1984. <sup>3/</sup> There being no lease in existence when appellants sought to have the assignments at issue approved, BLM had no choice but to return such assignments unapproved. Had lessee Belkin filed a petition for reinstatement within 60 days of receipt of BLM's notice of termination, a different result would have been possible. Howard H. Vinson, 90 IBLA 280, 283 (1986). However, since no petition for reinstatement was timely filed, BLM's actions were correct.

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 Wyoming State Office is affirmed.

John H. Kelly  
Administrative Judge

We concur:

Franklin D. Arness  
Administrative Judge

C. Randall Grant, Jr.  
Administrative Judge

fn.2 (continued)

signed by the secretary-treasurer of Apache, identifies Apache as the agent for Mathieu, Joy, appellants, and one Harvey Guerin, a stranger to the record. There is no indication in the record Apache is qualified to practice before the Department as required by Departmental regulation 43 CFR 1.3. But for the fact appellants filed a notice of appeal on their own behalf, this appeal would be subject to dismissal.

<sup>3/</sup> Contrary to the statements of Secretary-Treasurer Brien Piper on appeal, the rental payment was not sent by regular mail prior to May 1, 1984. The file contains a receipt from Federal Express, dated May 4, 1984, for an overnight letter from Apache apparently shipped on Friday, May 4, but not date stamped by MMS until the following Monday. The provision of regulation 43 CFR 3108.2-1(a) regarding payment postmarked on or before the anniversary date is, therefore, not applicable to the facts at hand.

