

ENERGY RESEARCH ASSOCIATES, INC.

IBLA 86-1474

Decided June 3, 1988

Appeal from a decision of the Alaska State Office, Bureau of Land Management, denying class I reinstatement of noncompetitive oil and gas lease AA-49660.

Affirmed.

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

A terminated oil and gas lease may be reinstated pursuant to 30 U.S.C. | 188(c) if the full rental is paid within 20 days after the lease anniversary date, provided failure to pay timely was justifiable and not due to lack of reasonable diligence. Termination for failure to make timely payment occurs despite possession by BLM, in another lease account, of sufficient money to cover the missed payment. Failure of the lessee to make payment within 20 days of the lease anniversary forecloses reinstatement pursuant to 30 U.S.C. | 188(c), where, prior to termination, the lessee has neither directed BLM to transfer funds to cover payment of the annual rental payment nor indicated that it seeks to use funds from another lease account to pay the annual lease rental.

APPEARANCES: Thomas S. Tucker, Esq., Los Angeles, California, for Energy Research Associates, Inc.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

Energy Research Associates, Inc., appeals from that portion of a decision of the Alaska State Office, Bureau of Land Management (BLM), dated June 19, 1986, denying its petition for class I reinstatement of noncompetitive oil and gas lease AA-49660 pursuant to 30 U.S.C. | 188(c).

Effective July 1, 1984, BLM issued a noncompetitive oil and gas lease to appellant for 2,560 acres of land which included all of secs. 25, 26, 35, and 36, T. 16 S., R. 7 W., Kateel River Meridian, Alaska. By notice dated March 19, 1985, BLM informed appellant that its lease had terminated on July 1, 1985, the anniversary date of the lease, for failure to pay the annual rental on or before that date.

BLM's notice outlined two possible procedures for reinstatement of the lease, pursuant either to 30 U.S.C. | 188(c) (1982) (class I reinstatement) or 30 U.S.C. | 188(d) and (e) (1982) (class II reinstatement).

In a petition for class I reinstatement filed on May 23, 1986, appellant explained that it had applied for another lease (AA-67192) for which it paid \$2,560 rental. ^{1/} Although BLM received that money on August 13, 1984, according to appellant, no lease was ever issued for AA-67192. By letter dated June 4, 1985, appellant requested a refund of the \$2,560 rental paid in connection with oil and gas lease application AA-67192. Appellant stated that it intended, upon receipt of the refund check, to endorse it over to BLM to obtain credit towards the rental due on July 1, 1985, for lease AA-49660.

BLM did not refund the money from lease AA-67192 to appellant. Appellant states that it did not, however, consider itself to be in default in payment of the \$2,560 rental for lease AA-49660 because BLM had \$2,560 on deposit for application AA-67192. Appellant now says it believed, based upon this circumstance, that the \$2,560 from application AA-67192 had been credited towards the July 1, 1985, rental due for lease AA-49660.

In the decision of June 19, 1986, BLM denied appellant's petition for class I reinstatement because rental had not been tendered within 20 days of the anniversary date of the lease. BLM stated that the rental payment was due July 1, 1985, but was not paid until May 23, 1986. BLM also found that appellant had not shown reasonable diligence in mailing the payment or a justifiable reason for delay in making the payment. Citing 43 CFR 3108.2-2(3)(b), BLM denied appellant's class I petition for reinstatement. However, BLM determined that appellant's failure to pay the rent on time was inadvertent and that lease AA-49660 could be reinstated, under the provisions of class II provided certain conditions were met.

On appeal to this Board, appellant contends that upon withdrawal of appellant's lease offer AA-67192, BLM ceased to hold appellant's funds as a rent deposit on that lease, but did not refund the money to appellant. Therefore, according to appellant, on July 1, 1985, the anniversary date of lease AA-49660, BLM was in possession of funds belonging to appellant sufficient to satisfy the annual lease payment and such funds were not being held by BLM for any other purpose. Appellant contends that this situation is similar to the situation presented in Starkeys, Inc., 77 I.D. 207 (1970). ^{2/}

^{1/} Also on May 23, 1986, appellant filed a petition for class II reinstatement.

^{2/} In Starkeys, Inc., *supra*, the lessee timely tendered his annual rental payments each year but only identified the checks by land description. The land office erroneously credited the payments to different leases and then refunded the payment to the lessee when the lease to which the payment had been attributed was relinquished. The lessee accepted the refund without

Also citing Husky Oil Company of Delaware, 79 I.D. 17 (1972), appellant asserts that equity and fairness require allowance of class I reinstatement.

[1] Upon the failure of the lessee to pay the annual rental on or before the anniversary date of any lease on which there is no well capable of producing oil or gas in paying quantities, the lease terminated automatically by operation of law. 30 U.S.C. | 188(b) (1982); 43 CFR 3108.2-1. 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.

Payment of the annual rental within 20 days of the lease anniversary date is a statutory prerequisite to class I reinstatement under the terms of 30 U.S.C. | 188(c) (1982). Anna Beitman, 94 IBLA 148 (1986); Luceal Robert, 90 IBLA 182 (1986). Since the late rental payment was not offered until 11 months after the July 1, 1985, anniversary date, appellant is not eligible for class I reinstatement.

Appellant does not argue that it was reasonably diligent or that the failure to pay timely was justifiable. ^{3/} Rather, it argues that it paid on time. It contends that rental was paid prior to the anniversary date of

fn. 2 (continued)

question. The leases for which the payments were intended terminated. On appeal the Department held that the leases had been properly terminated. Appellant asserts that the Starkeys decision was based on the fact that when the error was discovered by the land office it refunded the payments to the leaseholder who cashed the checks without further inquiry. The Department found that the leaseholder had not been diligent and determined that reinstatement of the lease was not proper. Appellant interprets this to mean that but for the lack of diligence on the part of the lessee, BLM's error may have justified reinstatement. Appellant mistakenly asserts that this infers reinstatement would have been proper more than 20 days after the anniversary date if the lessee had made inquiry upon receiving the refunds; we have previously made clear that payment of annual rental within 20 days of the anniversary is essential. Anna Beitman, *supra*.

^{3/} By making this argument, appellant adopts a similar position to that taken by the appellant in Nancy Wohl, 91 IBLA 327 (1986). There, too, Wohl argued that she had made timely payment. Unlike appellant here, however, Wohl contended that BLM had erred when it found her lease had terminated. Instead, she argued, the lease merely continued in effect, and reinstatement was unnecessary. By petitioning for reinstatement an appellant generally concedes the lease sought to be reinstated has terminated.

lease AA-49660 because BLM had the exact amount in its possession in the form of the unused rental paid toward lease application AA-67192. This argument would be more convincing had appellant directed BLM to transfer the money from lease account AA-67192 to payment of the annual rental on AA-49660. It did not do so, however, nor did it indicate an intention to use the lease money from the unissued lease to pay the rental due on the instant lease.

Even if appellant were entitled to a refund, ^{4/} its argument that the refund money should be applied to annual rental for lease AA-49660 is without merit. A somewhat analogous situation was presented in Wilfred Plomis, 51 IBLA 125 (1980). In that case, some of the land for which appellant had applied was unavailable for oil and gas leasing and appellant was entitled to a refund of excess rental paid. BLM failed to return the excess rental to the appellant after the lease issuance and prior to the next anniversary date. Appellant argued that the excess of the prior rental payment should have been considered advance rental for the next year and applied against the amount due. The Board rejected appellant's argument and held that the lease had terminated for the following reasons:

Orderly administration of the oil and gas leasing program demands that rentals be paid to BLM in a manner consonant with administrative convenience. This necessarily requires that BLM not, without prior written instruction, transfer money paid for one purpose to another use, e.g., money paid for the first year's rental to a subsequent year's rental. Logic dictates this result. It is not inconceivable that, even though a lessee is entitled to refunds from BLM exceeding the annual rental which has become due, the lessee intends positively by his nonaction to permit the lease to terminate by operation of law. 30 U.S.C. | 188(b) (1976). BLM should not be called upon to hazard guesses as to the intentions of the lessee. This view is consonant with earlier decisions of this Department refusing to have BLM guess as to a party's intentions in oil and gas matters and making such a party bear the consequences of ambiguous conduct. [Citations omitted.]

Id. at 126, 127.

Appellant's case presents even greater administrative difficulty than did Plomis, because two separate lease accounts are involved. The Board has held that a net-credit balance reflected in statements of account covering

^{4/} Appellant indicates that it is entitled to interest on the money which BLM has not refunded. The statutory authorization for refunds is provided by section 304(c) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. | 1734(c) (1982). However, in the absence of statutory provisions, no interest may be paid by the Government on such refunds. See Romola A. Jarett, 63 IBLA 228, 89 I.D. 207 (1982).

other leases does not constitute payment of the annual rental for the lease in question, absent a written request, timely received, that monies from a particular account be applied as rental for another lease. 5/ Consolidated Crude Oil Co., 51 IBLA 217 (1980).

Even assuming that the circumstances of this appeal amounted to a showing the rental had been submitted within 20 days of the lease anniversary, appellant would not qualify for class I reinstatement. A failure to make timely payment may be justifiable if it is demonstrated that at or near the anniversary date there existed circumstances outside the lessee's control which affected payment. But a late payment is not justified because appellant assumes that BLM will transfer funds from one lease account to another prior to the anniversary date of the lease. See NP Energy Corp., 72 IBLA 34 (1983), in which a late payment was found not justified where the lessee assumed in error that a pending assignment of a lease had been approved. The subsequent lease termination was found to be the result of the lessee's neglect, not BLM's delay.

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

5/ Appellant refers to National Wildlife Federation v. Burford, 676 F. Supp. 280 (D.D.C. 1986), aff'd, 835 F.2d 305 (D.C. Cir. 1987), in which the U.S. District Court for the District of Columbia issued an order, effectively precluding BLM from issuing mineral leases on lands covered by the injunction. The lawsuit was not filed until July 15, 1985, and the court's order was not effective until Feb. 10, 1986. We fail to see what relevance this order has to events occurring prior to July 1, 1985. We note, however, that lease AA-49660 is affected by the NWF-ordered suspension. If appellant's lease is reinstated under a class II reinstatement, the lease will be suspended at the time it is reinstated.

