

MARK SALISBURY

IBLA 87-604

Decided March 15, 1989

Appeal from a decision of the Alaska State Office, Bureau of Land Management, denying reinstatement of oil and gas leases AA-49100-H and AA-49073-P.

Affirmed as modified.

1. Oil and Gas Leases: Reinstatement

Under 30 U.S.C. | 188(c) (1982), the so-called "Class I" reinstatement authority, BLM has no authority to reinstate a noncompetitive oil and gas lease terminated by operation of law for failure to pay annual rental timely unless the full amount of the rental due is submitted within 20 days after the anniversary date and other requirements are met. This restriction applies regardless of the circumstances surrounding the failure to submit the rental timely.

2. Oil and Gas Leases: Reinstatement

If an oil and gas lease has terminated by operation of law for failure to make timely payment of the annual rental, it may be reinstated pursuant to the provisions of 30 U.S.C. | 188(d) (1982), provided that the failure to pay on time was "inadvertent," and the other requirements are met. A failure to timely submit rental is properly deemed not to be inadvertent only when it is the result of an intentional and knowing choice of the lessee or the lessee lacked the resources to pay the rental. If the lessee has evidently attempted to pay rental, but failed because his payment was lost in the mail, the failure was inadvertent.

APPEARANCES: Mark Salisbury, pro se.

OPINION BY ADMINISTRATIVE JUDGE HUGHES

Mark Salisbury has appealed from the June 9, 1987, decision of the Alaska State Office, Bureau of Land Management (BLM), denying petitions for class I and class II reinstatement of oil and gas leases AA-49100-H and AA-49073-P. Appellant's leases were originally part of larger leases

(AA-49100 and AA-49073) issued in 1984. Assignment of portions of these leases to appellant was approved in 1985. Both new leases had anniversary dates of March 1.

The annual rental for these leases that was due on March 1, 1987, was not received timely by the Minerals Management Service Bonus and Rental Accounting Support System (MMS-BRASS). The failure to pay the rental due on or before March 1, 1987, triggered the following provision of 30 U.S.C. | 188(b) (1982): "[U]pon failure of a 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 any action taken by a BLM administrative official. Herbert J. Stinnett, 90 IBLA 239 (1986). Thus, appellant's oil and gas leases automatically terminated on March 1, 1987.

On April 23, 1987, BLM issued notices of termination of these oil and gas leases. The notices informed appellant that the leases had terminated because of the failure to pay annual rental in a timely manner. It further informed appellant of his statutory right to petition for reinstatement of the leases under either "Class I," as authorized by 30 U.S.C. | 188(c) (1982), or "Class II," as authorized by 30 U.S.C. | 188(d) (1982). On May 5, 1987, appellant filed a petition expressly asking for class I reinstatement, explaining the failure to pay timely as follows:

[I] had mailed a check #988 on February 27, 1987. This was for the annual rental on both leases. It was not until after I had received my March bank statement that I found that the check had not been cashed. Upon calling the Denver office I was informed that they had no record of receiving my check in payment of the rentals. As a result I issued a stop payment order on that check and supplied them with a subsequent check #997 in the amount of \$300.00. Subsequently I have received copies of your notice regarding procedures for oil and gas lease termination.

I hereby request reinstatement of the above referenced leases under your class one provisions. Although the Denver office of Minerals Management Service may not have recorded receipt of my check within 20 days after the anniversary date I have attempted to make payment on two occasions and would ask that you consider this.

By its decision of June 9, 1987, BLM denied appellant's request for class I reinstatement, ruling that the rental payments had not been received within 20 days of the anniversary date of the leases. Although he had not expressly requested relief under the class II provisions, BLM also ruled that appellant had not met the requirements of these provisions. Specifically, although BLM evidently accepted appellant's explanation that his

failure to pay timely resulted from mishandling of his rental payment, BLM ruled that he had not shown that his failure to file the payment timely was "inadvertent."

[1] Although appellant believes that his conduct was reasonably diligent, that is not the sole criterion that must be met before class I reinstatement may be granted. Under 30 U.S.C. | 188(c) (1982), the statutory provision authorizing class I reinstatement, BLM has no authority to reinstate a noncompetitive oil and gas lease terminated by operation of law for failure to pay annual rental timely unless the full amount of the rental due is submitted within 20 days after the anniversary date of the lease and other requirements are met. If the rental payment is received more than 20 days after the due date, the lease may be reinstated only under the class II provisions, regardless of the circumstances of the late payment. John P. Lockridge, 102 IBLA 66 (1988); Herbert J. Stinnett, 91 IBLA 239, 240 (1986). There is no dispute here that the required payment was not received by MMS-BRASS on or before March 20, 1987. Regardless of the circumstances that might have led to the failure of the payment to arrive timely, class I reinstatement could not be granted.

[2] Although class I reinstatement was unavailable, appellant's leases might have been reinstated had he timely complied with the statutory class II requirements. BLM's decision pointed out that a class II reinstatement is available when it is shown to the satisfaction of the authorized officer that the failure to pay the rental on or before the anniversary date was "inadvertent." BLM denied class II reinstatement because it determined that appellant's failure to pay the rental was not inadvertent.

While this appeal was pending, the Board issued a decision clarifying the meaning of the word "inadvertent" and summarizing its holding as follows:

As used in 30 U.S.C. | 188(d) (1982), a failure to timely submit annual rental for an oil and gas lease will be deemed "inadvertent," where the failure was occasioned by forgetfulness or inattention to the requirements of the law. A failure to timely submit the rental will be deemed not to be "inadvertent" only where it is the result of an intentional and knowing choice of the lessee or where the lessee simply lacked the resources to pay the rental.

Torao Neishi, 102 IBLA 49 (1988) (syllabus).

It is clear from this holding that BLM erred in determining that appellant's failure was not "inadvertent." There is no indication here that appellant made an intentional and knowing choice not to pay the rental, or that he lacked the resources to pay. To the contrary, the record shows that the failure to pay timely occurred despite efforts on his part to submit the rental. In these circumstances, his failure to pay was clearly "inadvertent."

Nevertheless, appellant's petition does not satisfy other requirements for class II reinstatement. As noted above, appellant did not file a petition for class II reinstatement. Not surprisingly, he also did not timely submit the required reinstatement fee of \$500 per lease, the Federal Register publication cost of \$130 per lease, or back rental at the rate of \$5 per acre. All of these must be submitted within 60 days of his receipt of the notice of termination; compliance with the deadline is mandatory. 43 CFR 3108.2-3(b)(1)(i); see Torao Neishi, supra at 53.

Strict enforcement of this provision works no injustice here, as appellant was sufficiently apprised of the strict 60-day time period for complying with the class II provisions by BLM's notice of termination. ^{1/} The notice contained the following warning, and provided a method for appellant to preserve his rights by filing both class I and class II petitions:

Filing a petition for a Class I reinstatement DOES NOT STOP the running of the 60 days from receipt of this notice to file a petition for a Class II reinstatement.

Because of the strict time limits imposed by the laws involved, you may want to file your petition under both of the above provisions. If you file an acceptable petition under both Classes, the petition will first be considered for Class I. If it is determined that the petition cannot be granted under the provisions of the applicable law and regulations as Class I, the petition will then be considered under Class II. If the petition meets the criteria under Class I, any monies submitted under the Class II conditions will be refunded. [Emphasis in original.]

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 as modified.

David L. Hughes
Administrative Judge

I concur:

R. W. Mullen
Administrative Judge

^{1/} In Torao Neishi, supra at 53 n.4, we had occasion to observe that BLM's notice of termination was "unclear," but this criticism was restricted to the information it provided as to what rental had to be submitted with the petition for class II reinstatement.