

Appeal from a decision of the Alaska State Office, Bureau of Land Management, denying request for approval of partial assignment of noncompetitive oil and gas lease. AA-48667-D.

Affirmed as modified.

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

Approval of an assignment of record title interest to a portion of the lands embraced in an oil and gas lease has the effect of segregating the assigned tract into a separate lease effective on the first day of the month following the filing of all necessary documents in the proper BLM office. Although the termination of the parent lease for failure to pay the annual rental by the anniversary date, subsequent to the filing of the assignment, will not preclude approval of the assignment where the annual rental for the assigned tract has been timely tendered, a decision denying approval of the assignment will be affirmed where the parent lease has terminated for failure to pay the annual rental and the assignee has not continued to tender the annual rental for the assigned tract.

APPEARANCES: Gary L. Baird, pro se.

OPINION BY ADMINISTRATIVE JUDGE GRANT

Gary L. Baird has appealed from a September 29, 1987, decision of the Alaska State Office, Bureau of Land Management (BLM), denying his request for approval of a partial assignment of noncompetitive oil and gas lease AA-48667. Approval of the assignment of record title to a 40-acre tract (AA-48667-D) embraced in the parent lease (AA-48667) was denied because the lease had previously terminated by operation of law for failure to pay the annual rental for the lease. Resolution of this matter is facilitated by an understanding of the somewhat complex background of this case which has previously been before the Board.

Noncompetitive oil and gas lease AA-48667 was issued with an effective date of August 1, 1983, to Charles M. Lusk. Lusk executed a limited power of attorney dated May 13, 1983, to Mark Travers Browne to transfer leases thereafter acquired by Lusk. This power of attorney was filed with BLM on May 16, 1983. On March 30, 1984, Browne executed a partial assignment of the lease to appellant which was filed with BLM on April 2, 1984. The assignment purported to transfer 100 percent of the record title to a 40-acre tract within the lease to appellant and was serialized by BLM as AA-48667-D. On November 1, 1984, BLM approved the assignment.

Lusk, however, had revoked the limited power of attorney on March 14, 1984, prior to Browne's execution of appellant's assignment, and had filed the instrument revoking the power of attorney with BLM on May 11, 1984. Although the revocation was overlooked when BLM initially approved the assignment, BLM subsequently issued a decision vacating its approval of the assignment, rejecting the assignment, and cancelling the segregated lease when it became aware of the overlooked revocation. Appellant appealed this decision to the Board as did others who were similarly situated.

On August 20, 1986, the Board issued its decision in response to the appeal. Jack W. Stahl, 93 IBLA 207 (1986). The Board noted that as of May 11, 1984, BLM had two documents, *i.e.*, the assignment forms signed by Browne and the revocation of the Browne power of attorney, which indicated that a conflict regarding title to the lease tract existed between assignor Lusk and the assignees, and, consequently, we found BLM should have taken no action on the assignment until the conflict was resolved. See Petrol Resources Corp., 65 IBLA 104 (1982). Therefore, the Board affirmed BLM's decision to the extent it vacated the approval of the assignment and cancelled the segregated lease created by the approval. However, the Board vacated BLM's decision to deny approval of the assignment, holding that action on the assignment should be suspended. The Board directed that the request for assignment remain pending and instructed BLM "to not approve any assignment in issue until the parties claiming an interest in the lease have filed with the State Office evidence of either an agreement or a court order that shows a resolution of their dispute." Jack W. Stahl, 93 IBLA at 209.

Subsequent to the Board's decision, on November 25, 1986, BLM returned appellant's assignment form to him so that he could obtain an acceptable signature by the assignor. BLM informed appellant that all three forms must be signed and dated by the lessee of record, Lusk, as assignor; re-signed and re-dated by appellant as assignee; and returned to BLM within 90 days of the date signed by Lusk in order for it to process the assignment request for approval. BLM noted that appellant had tendered two rental payments to it during the pendency of the appeal, one received on July 12, 1985, and one received on July 28, 1986, and stated that the rental payments would be held until a final disposition on the assignment was reached.

On September 29, 1987, BLM issued its decision rejecting appellant's request for approval of assignment of lease AA-48667-D. BLM indicated that lease AA-48667 had terminated automatically by operation of law for failure to pay the annual rental by the lease anniversary date. The BLM decision further indicated that the lessee, Charles M. Lusk, had received a notice

of lease termination in January 1987 and had failed to petition for reinstatement of the lease. Because appellant had not returned the corrected assignment forms to BLM, BLM determined that the assignment could not be considered to have been properly filed before the lease terminated. Therefore, BLM denied the request for approval of the assignment.

In his statement of reasons for appeal, appellant asserts that he complied with the instructions in the November 25, 1986, notice and sent a letter with the assignment form to Lusk for his signature, but that Lusk has not returned the form. Appellant contends that Lusk's failure to pay the required rental should be considered proof that appellant is entitled to renew the lease in his own name, and states that he would be happy to pay the rental. Appellant further notes that he has not been refunded any of the \$6,000 he paid to Trans-Alaska Energy 1/ for the rights to this lease.

Section 31(b) of the Mineral Leasing Act, as amended, 30 U.S.C. § 188(b) (1982), provides that an oil and gas lease will "automatically terminate by operation of law" where the lessee fails to pay the annual rental on or before the lease anniversary date and there is no well capable of producing oil or gas in paying quantities. Accordingly, in the absence of evidence that the rental was tendered by the anniversary date, oil and gas lease AA-48667 would have terminated on the August 1 anniversary date for failure to pay the annual rental due on or before that date as BLM indicated in its decision. See Lyman J. Ipsen, 96 IBLA 398 (1987); Ruth L. Schwoerer, 92 IBLA 98 (1986); Dena F. Collins, 86 IBLA 32 (1985).

[1] Notwithstanding the foregoing, an assignment of 100 percent of the record title to a portion of the leased lands segregates the assigned portion and the retained portion into separate leases. 43 CFR 3106.7-5; see Lyman J. Ipsen, supra; Ruth L. Schwoerer, supra. Further, it is provided by statute that, subject to final approval by the Secretary, partial assignments of oil and gas leases may be made and such assignments will take effect on the first day of the month following the filing of all necessary documents in the proper BLM office. 30 U.S.C. § 187a (1982). 2/ Hence, the Board has held that a partial assignment of record title to certain acreage in a Federal oil and gas lease filed by a qualified assignee prior to the lease anniversary date may be approved after the lease anniversary date where the annual rental for the acreage segregated by the assignment was tendered prior to the anniversary date (and to termination of the parent lease). Ladd Petroleum Corp., 70 IBLA 313 (1983). See also Lyman J. Ipsen, supra; Ruth L. Schwoerer, supra. Although appellant tendered the rental due for his 40-acre tract prior to the lease anniversary date in 1985 and 1986,

1/ The request for approval of the assignment executed by Browne was initially submitted to BLM with a cover letter bearing the letterhead of Trans-Alaska Energy Corporation.

2/ This provision has recently been amended to allow the Secretary to disapprove assignments of less than 2,560 acres in Alaska or less than 640 acres outside of Alaska. Omnibus Budget Reconciliation Act of Dec. 22, 1987, § 5103, P.L. 100-203, 101 Stat. 1330-258.

it does not appear from the record that the annual rental was tendered in 1987. Accordingly, we must conclude that the consequence of the termination of lease AA-48667 for failure to pay the annual rental prior to the anniversary date coupled with the failure to continue to tender rental for the lands assigned in AA-48667-D is that there is no lease in existence for which an assignment can be approved. 3/

Accordingly, 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.

C. Randall Grant, Jr.
Administrative Judge

I concur:

James L. Byrnes
Administrative Judge

3/ Our decision does not preclude appellant from pursuing whatever remedies he may have against Trans-Alaska Energy, Browne, or Lusk as a result of their actions in this matter.