

DISCOVERY PROPERTIES, INC. & HARRY DODSON

IBLA 87-793

Decided December 4, 1989

Appeal from a decision of the Wyoming State Office, Bureau of Land Management, denying reinstatement of oil and gas lease W-93868.

Affirmed.

1. Oil and Gas Leases: Reinstatement

Under 30 U.S.C. § 188(d), the "Class II" reinstatement authority, BLM may not reinstate an oil and gas lease terminated by operation of law for failure to pay annual rental timely unless all items required for class II reinstatement, including an agreement to amend lease terms signed by all lessees of record, are submitted to BLM within 60 days of receipt of the notice of termination in accordance with 43 CFR 3108.2-3(b)(2)(iv).

APPEARANCES: Bob Burg, for Discovery Properties, Inc.; and Harry Dodson, pro se.

OPINION BY ADMINISTRATIVE JUDGE KELLY

Discovery Properties, Inc., and Harry Dodson have appealed from an August 13, 1987, decision of the Wyoming State Office, Bureau of Land Management (BLM), denying a petition for class II reinstatement of oil and gas lease W-93868.

The record shows that oil and gas lease W-93868 was originally issued, effective September 1, 1985, for 80 acres in T. 49 N., R. 65 W., sixth principal meridian, Crook County, Wyoming, to Discovery Properties, Inc. An assignment of 5 percent of record title interest to Harry Dodson was approved by BLM, effective June 1, 1986.

[1] The \$160 annual rental for this lease due on September 1, 1986, was not received by the Minerals Management Service until September 9, 1986. The failure to pay the rental due on or before September 1, 1986, 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, 91 IBLA 239 (1986). Thus, appellant's oil and gas leases automatically terminated on September 1, 1986.

On April 11, 1987, BLM issued a notice of termination of this oil and gas lease. The notice informed both Discovery Properties, Inc., and Harry Dodson that the lease had terminated because of the failure to pay annual rental in a timely manner. It further informed appellants of their statutory right to petition for reinstatement of the lease 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 June 8, 1987, Discovery Properties, Inc., submitted a petition for reinstatement asking for class II reinstatement explaining that the rental was delivered late because of computer changes in the office and the secretary who was responsible for paying rentals was out of the office for personal reasons.

Discovery Properties, Inc., also remitted \$1,265 which included \$800 for rental; \$500 for administrative fees; and \$125 for Federal Register publication cost. Discovery Properties, Inc., submitted an amendment of lease terms with the petition signed only by Bob Burg on behalf of Discovery Properties, Inc. BLM denied reinstatement stating:

In accordance with 43 CFR 3108.2-3(b)(2)(iv), an agreement, specifying future rentals at the applicable rates for reinstated leases and future royalties at the rates set in 3103.3-1 of this title, must be signed by all lessees of record. Since Harry Dodson did not submit an amendment of lease terms, the petition for reinstatement filed June 8, 1987, is hereby denied.

In their statement of reasons appellants apologize for not properly executing the "Amendment of Lease Terms." Mr. Burg states: "Discovery Properties is the majority owner/lessee, and reference from the Department's notice of April 16, 1987 was primarily to lessee and not lessees, therefore I executed and sent the "Amendment" on Mr. Dodson's behalf. It was my oversight and therefore we are appealing for reinstatement."

Appellants admit and the record confirms that Harry Dodson held a 5-percent record title interest in this lease at the time the annual rental was due. The record also shows that BLM sent notices of lease termination to both Discovery Properties, Inc., and Harry Dodson. The certified return receipt card indicates that Dodson's notice was received at his address of record on April 2, 1987. This notice also apprised him of the procedures necessary for seeking reinstatement, including the time limits for filing. Under these circumstances Dodson cannot claim lack of notice of the strict requirements for reinstatement. Appellants do not dispute that Harry Dodson did not timely execute and submit an amendment of lease terms to BLM. The completed amendment signed by Dodson was not submitted to BLM until this appeal was filed on September 9, 1987.

As properly indicated by BLM, appellants did not satisfy the requirements for class II reinstatement when they did not timely submit an agreement in accordance with 43 CFR 3108.2-3(b)(2)(iv), signed by all lessees of record. In this instance the signature of Bob Burg for Discovery Properties, Inc., on the amendment of lease terms submitted to BLM June 8, 1987, did not purport to represent Harry Dodson's agreement to be bound by these same terms, nor has Burg shown that he had authority to act on Dodson's behalf in this matter. Therefore, Dodson's separate agreement must have been submitted along with Burg's, in addition to other items required for reinstatement, within 60 days of their receipt of the notice of termination. We have held that "compliance with the deadline is mandatory." Mark Salisbury, 107 IBLA 335, 338 (1989); Torao Neishi, 102 IBLA 49 (1988). Thus, appellants' petition for class II reinstatement was properly denied.

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.

John H. Kelly

Administrative Judge

I concur:

R. W. Mullen
Administrative Judge