

ANDREW HELAL

IBLA 90-203

Decided March 11, 1992

Appeal from a decision of the Alaska State Office, Bureau of Land Management, denying petition for reinstatement of oil and gas lease AA 67727.

Vacated.

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

Under sec. 31(b) of the Mineral Leasing Act, as amended, oil and gas leases are subject to automatic termination by operation of law for failure to pay the annual rental in advance by the lease anniversary date. 30 U.S.C. § 188(b) (1988). The automatic termination provision does not apply to rental charges becoming due at a time other than the anniversary date due to the termination of a suspension of the lease.

APPEARANCES: Andrew HeLal, pro se.

OPINION BY ADMINISTRATIVE JUDGE GRANT

Andrew HeLal has appealed from a decision of the Alaska State Office, Bureau of Land Management (BLM), dated January 8, 1990, denying his petition for class I reinstatement of oil and gas lease AA 67727. BLM had previously advised appellant by notice dated October 27, 1989, that the lease had terminated on its anniversary date of September 1, 1989, for failure to pay the full rental on or before that date.

Lease AA 67727 was issued effective September 1, 1985, but the record indicates it was suspended effective May 21, 1986, due to a lawsuit filed by the National Wildlife Federation. <sup>1/</sup> BLM issued a notice on March 8,

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<sup>1/</sup> Section 39 of the Mineral Leasing Act (MLA) provides authority for the Secretary of the Interior to suspend oil and gas leases "in the interest of conservation of natural resources." 30 U.S.C. § 209 (1988). Where as a result of litigation subsequent to lease issuance a court order has been entered precluding development of issued leases, BLM has on occasion suspended the affected leases. See Paul C. Kohlman, 111 IBLA 107 (1989). In the event of such a suspension, the obligation to pay acreage rental is also suspended during the suspension and the lease is extended by adding the period of suspension to the term of the lease. 30 U.S.C. § 209 (1988).

1989, lifting the suspension of lease AA 67727, effective January 1, 1989.

The notice informed appellant that the expiration date for lease AA 67727 had been changed to March 31, 1998, reflecting a 31-month extension due to the suspension period, but that the lease anniversary date of September 1 would remain unchanged. This BLM notice also informed appellant that, while rent had not been required during the lease suspension, it would now be due on or before the anniversary date and warned that the amount due might be larger than the annual rental. The notice stated further that the lessee would receive a courtesy billing notice from the Minerals Management Service (MMS) and that the calculation of rental due for the remainder of the lease year would include credit for any unused portion of rental paid before or during the suspension of the lease.

It appears from the record on appeal that MMS sent appellant a courtesy billing which listed the rental as \$1 per acre for the 640 acres of lease AA 67727 and, accordingly, showed the "annual rental amount" to be \$640. 2/ The notice also disclosed a balance of rent due in the amount of \$906.67. This higher figure was not explained by the MMS notice although an 800 telephone number was given for any inquiries.

Appellant sent a check for \$640, which was the usual annual rental for lease AA 67727. The rental was received on July 24, 1989. On October 27, 1989, BLM issued a notice to appellant that lease AA 67727 had automatically terminated on its anniversary date of September 1, 1989, because the full rental was not received on or before that date. The notice informed appellant that the rental received had been deficient by \$266.67. The notice also informed appellant of the procedures to petition for class II reinstatement of the lease. 3/ Appellant received the termination notice on October 31, 1989, and promptly responded on November 6, 1989, with a check for the additional rental due. Appellant explained in his letter that he had "paid the stated 'annual rent amount: \$640' as shown" on the Notice of Rent Due. He explained that he did not understand at the time that additional rental was due as well. 4/ This check and letter were received by BLM on November 13, 1989. BLM treated the letter as a petition for class I reinstatement, 5/ which it denied in a January 8, 1990, decision in which it again set out the conditions for class II reinstatement of lease AA 67727.

2/ The only copy of this courtesy billing in the file is the one submitted by appellant.

3/ Reinstatement of terminated oil and gas leases where the rental is not paid within 20 days of the anniversary date pursuant to the authority of 30 U.S.C. § 188(d) and (e) (1988) is described in the regulations as class II reinstatement. See 43 CFR 3108.2-3.

4/ Appellant's prompt challenge to the notice of termination on the ground that the annual rental had been paid but the amount included in the bill had been misread distinguishes this case from PRM Exploration Co., 90 IBLA 63, 92 I.D. 617 (1985), where the appellant was held barred from litigating the termination issue on appeal from denial of reinstatement.

5/ Reinstatement of terminated oil and gas leases where the rental payment is received within 20 days of the anniversary date pursuant to the authority

In his statement of reasons for appeal, appellant argues that his deficient payment was not a failure to pay the annual rental because he did pay the correct amount of the annual rental which he understood to be due. He contends that he misread the billing notice to the extent it also required payment of an additional \$266.67. This mistake was promptly corrected with his second check.

The calculation of the amount of the additional rental billed by MMS beyond the amount of the normal annual lease rental was not explained by the BLM decision. However, we think an understanding of the basis of this rental obligation is necessary to a proper resolution of this appeal. As noted previously at footnote 1, supra, the suspension of the lease pursuant to section 39 of MLA, 30 U.S.C. § 209 (1988), had the effect of suspending the obligation to pay acreage rental for the duration of the suspension. Having paid the annual rental of \$640 in advance for the first lease year commencing September 1, 1985, appellant was entitled to a credit for unearned rental from the date of the suspension on May 21, 1986, through the end of the first lease year on August 30, 1986 (approximately 3 months). With the lifting of the suspension effective January 1, 1989, the acreage rental obligation was again invoked. By the next anniversary date on September 1, 1989, rental had accrued for 8 months. Accordingly, over the 8-month period from January through August rent in the amount of 8/12 of \$640 or \$426.67 accrued. Appellant was entitled to a credit for a 3-month period of unearned rental payments in the amount of 3/12 of \$640 or \$160, leaving a balance due of \$266.67.

[1] Section 31(b) of MLA, as amended, 30 U.S.C. § 188(b) (1988), provides that upon the "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." The automatic termination provision of this statute was added by amendment in 1954, Act of July 29, 1954, ch. 644, § 1(7), 68 Stat. 585. 6/ Enacted in part for the purpose of relieving lessees of the burden of continued rental liability on leases which the lessee in fact intended to terminate by nonpayment of rental, the automatic termination provision was intended "to apply to the regular, annual rental payment, the necessity for which the lessee had continuous notice." Solicitor's Opinion, 64 I.D. 333, 336 (1957); see Husky Oil Co., 5 IBLA 7, 79 I.D. 17 (1972). Accordingly, the Department has held that this automatic termination provision does not apply in a situation where, due to other contingencies, additional rental may become due on a date other than the anniversary date of a lease. C. W. Trainer, 69 I.D. 81 (1962); see American Resources Management, 36 IBLA 157 (1978). Upon

fn. 5 (continued)

of 30 U.S.C. § 188(c) (1988) is identified in the regulations as class I reinstatement. See 43 CFR 3108.2-2. 6/ In the absence of automatic termination, a lease is subject to cancellation by the Secretary of the Interior after 30 days notice upon the

careful analysis of the rental obligation at issue here, we find these precedents control the result in this case. The rent in the amount of \$266.67 accrued over the period from January through August 1989. Although as an administrative matter MMS decided to include the bill for this rental when it sent the advance reminder of the annual rental requirement, this amount is properly distinguished from the annual advance rental payment which was required to avoid automatic lease termination under the terms of 30 U.S.C. § 188(b) (1988). <sup>7/</sup>

The fact that the automatic termination provision of 30 U.S.C. § 188(b) (1988) does not apply in this type of situation does not mean that the lease may not be cancelled. As noted previously, the statute provides for "cancellation by the Secretary after thirty days' notice upon the failure of the lessee to comply with any of the provisions of the lease." 30 U.S.C. § 188(b) (1988). The regulations provide that the "lease may be canceled only after notice to the lessee in accordance with section 31(b) of the Act and only if default continues for the period prescribed in that section after service of 30 days notice of failure to comply." 43 CFR 3108.3(b).

Failure to pay rental when due is a failure to comply with the lease provisions. Appellant effectively received notice of his failure when BLM issued its Notice of Termination on October 27, 1989. However, appellant took corrective action through his check of November 6, 1989. BLM received appellant's check on November 13, 1989, which is well within the 30 days provided for by the statute and regulations. Receipt of that check by BLM brought appellant into compliance with the provisions of the lease. Therefore, the lease may not be cancelled for failure to pay the \$266.67.

Since the lease did not terminate automatically and the lease could not be cancelled because appellant brought his lease into compliance by paying the deficiency within 30 days of notice, the lease was still held by appellant when BLM issued its decision denying reinstatement. Hence, BLM's decision denying reinstatement is vacated.

fn. 6 (continued)

failure of the lessee to comply with any provisions of the lease. 30 U.S.C. § 188(b) (1988).

<sup>7/</sup> This analysis is also consistent with the proviso to the automatic termination provision added to the statute by the Act of May 12, 1970, P.L. 91-245, § 1, 84 Stat. 206. The proviso is to the effect that if the rental payment due under a lease is paid on or before the anniversary date and "the payment was calculated in accordance with the acreage figure stated in the lease \* \* \* and such figure \* \* \* is found to be in error resulting in a deficiency, such lease shall not automatically terminate unless \* \* \* the lessee fails to pay the deficiency within the period prescribed in a notice of deficiency sent to him by the Secretary." 30 U.S.C. § 188(b) (1988).

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 vacated.

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C. Randall Grant, Jr.  
Administrative Judge

I concur:

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Franklin D. Arness  
Administrative Judge