

GRI EXPLORATION CORPORATION

IBLA 91-237

Decided October 27, 1993

Appeal from a decision of the California State Office, Bureau of Land Management, declaring geothermal lease terminated for late payment of rental. CACA 12975.

Affirmed.

1. Geothermal Leases: Reinstatement--Geothermal Leases: Termination

A late rental payment by a geothermal lessee was not entitled to the benefit of a grace period provided by 43 CFR 3244.2-2(b)(1) because the payment bore a private postal meter mark. Bankruptcy administration was not shown to justify the late payment under provision of 43 CFR 3244.2-2(b) because there was no showing that the late payment was caused by the bankruptcy or any other agency beyond the control of the geothermal lessee.

APPEARANCES: Marina H. Park, Esq., San Francisco, California, for appellant.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

GRI Exploration Corporation (GRI) has appealed from a March 4, 1991, decision of the California State Office, Bureau of Land Management (BLM) finding that geothermal lease CACA 12975 automatically terminated by operation of law when lease rental in the amount of \$5,098 was not received by Minerals Management Service (MMS) on or before November 1, 1990. The March 1991 decision explained that, pursuant to 43 CFR 3244.2-2(b), the lease could nonetheless be reinstated, provided that GRI could show "the failure to pay the yearly rental timely was either justifiable or not due to a lack of reasonable diligence." GRI filed a timely appeal.

It is admitted that payment was not timely received by MMS. Payment was transmitted through the United States mail in an envelope postmarked by a private postage meter. Nonetheless, GRI contends that payment was actually mailed by Coldwater Creek Operator Corporation (CCOC), acting on behalf of GRI, at about 4:30 p.m. on October 31, 1990, and that such mailing complied with applicable regulations providing that "mailing the rental payment 'on or before' the lease anniversary date constitutes reasonable diligence" (Statement of reasons (SOR) at 3). GRI argues that "[o]nce the

Lessee has established that the payment was mailed on or before the lease anniversary date, the lease should be reinstated" (SOR at 4). GRI also contends that late payment was justifiable, given the fact that GRI is a bankrupt whose rent payments are handled by CCOC under an order of the bankruptcy court. In this connection, it is argued that "GRI Exploration's consequent loss of control over payments of rent, constituted justifiable, extenuating circumstances, affecting its actions in paying the rental fee." Id. at 4.

The March 1991 BLM decision rejected similar arguments, finding that use of a private postage meter in this case deprived GRI of the ability to rely on 43 CFR 3244.2-2(b)(1) that allows proof of payment before the due date if the payment envelope was "postmarked by the U.S. postal service * * * (not including private postal meters) on or before the lease anniversary date." The BLM decision found that the applicable provision of the regulation was 43 CFR 3244.2-2(b)(2), providing that a showing of "[r]easonable diligence normally requires sending * * * payments sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the payment." In this case, BLM found, that meant "three to five days prior to the due date" (Decision at 3).

Concerning the argument by GRI that administration of its petition in bankruptcy had interfered with timely delivery of the rental payment and that the late payment was therefore justified under 43 CFR 3244.2-2(b), BLM found that no such showing had been made. The March 1991 decision concluded, concerning this contention, that "although the Chapter 11 bankruptcy proceedings were cited in the petition, the lessee furnished no evidence showing that these proceedings actually prohibited the payment of the rentals. Indeed, the rental was paid -- the error was that it was paid late" (Decision at 2).

[1] GRI has failed to show error in the decision from which appeal was taken. Although GRI contends that it should be entitled to claim the benefit of that portion of the Departmental regulation that allows a grace period for geothermal lease payments that bear a postal service postmark, it admits that the payment sent in this case carried a private postal meter mark, a circumstance specifically excepting such payments from the operation of 43 CFR 3244.2-2(b)(1). As a result, the applicable rule is that appearing at subparagraph (b)(2) of the cited rule, which provides, as BLM found, that "reasonable diligence" required the lessee to account for normal delays in the mail. Such diligence was not shown by a mailing accomplished on the afternoon of the day before payment was due.

Nor has GRI established that BLM erred in finding that there was no justification for the late payment to be found in the bankruptcy proceedings described. GRI quotes from Hydra-Co Enterprises, Inc., 102 IBLA 46, 48 (1988), for the proposition that "circumstances outside the lessee's control which affected its actions in paying the rental" may justify reinstatement. In the Hydra-Co decision, however, we found that computer malfunction and a coincident change of business offices were circumstances that served to establish inadvertence but did not justify late payment of rental. The

appellant there failed to show how events "outside the lessee's control" caused the late payment. See also James P. Miner, 109 IBLA 220, 221 (1989) (a case where a check-writing error that delayed payment past the due date was also found wanting as an excuse for late payment). A similar situation is presented here: while it is clear that the bankruptcy administration was a fact affecting the GRI operation at the time late payment occurred, it has not been shown that the bankruptcy caused the late payment to occur.

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.

Franklin D. Arness
Administrative Judge

I concur:

David L. Hughes
Administrative Judge

