

INTERIOR BOARD OF LAND APPEALS

Darby L. Ryland

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DARBY L. RYLAND

IBLA 90-164

Decided June 30, 1993

Appeal from a decision of the District Manager, Jackson District Office, Bureau of Land Management, cancelling private maintenance and care agreements for wild horses. ES 4770.2(b).

Affirmed.

1. Wild Free-Roaming Horses and Burros Act

BLM properly canceled a private maintenance and care agreement for three wild horses and took possession of a remaining wild free-roaming horse where the record established that the adopter violated the terms of his agreement by selling the other two horses before title to them was issued by BLM.

APPEARANCES: W. Ross Foote, Esq., Alexandria, Louisiana, for appellant.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

Darby L. Ryland has appealed from a decision of the District Manager, Jackson District Office, Bureau of Land Management (BLM), dated November 27, 1989, cancelling his Private Maintenance and Care Agreement (Agreement) for three wild horses identified by Freeze Mark Nos. 85508979 (sorrel gelding), 83523360 (roan gelding), and 85510793 (sorrel gelding). The reason for BLM's decision was the sale of two of the adopted horses included in the Agreement (Freeze Mark Nos. 85508979 and 85510793) prior to receipt of title. Citing 43 CFR 4770.2(b) as authority, BLM also determined that the third horse (Freeze Mark No. 83523360) was subject to repossession, an action that was taken by BLM.

Ryland signed the Agreement for the three horses on September 23, 1988. Also on September 23, 1988, he signed an "APPLICATION FOR ADOPTION OF WILD HORSE(S) OR BURRO(S)" (Form 4710-10). A BLM official approved the application on that same date. The reverse side of the application contains terms of adoption and prohibited acts. Under terms of adoption (h), the application specifies that "[t]itle shall remain with the Federal Government for at least 1 year after the Private Maintenance and Care Agreement is executed and until a Certificate of Title is issued by the authorized officer." The application warns that "[f]ailure to comply with these terms may result in the cancellation of the agreement, repossession of the animals and disapproval of requests for adoption of additional animals." Included in the list of prohibited acts is "(d) [s]elling or attempting to sell a

wild horse or burro or its remains." On September 26, 1989, Ryland filed an Application for Title to Wild Horse(s) and Burro(s) for the three horses.

The case file contains a report of a telephone conversation dated September 28, 1989, from Darrell R. Musick, BLM Wild Horse and Burro Specialist, to Jack Burnanam of Hodges Stockyard, Alexandria, Louisiana. The report reveals that "Ryland put 2 horses through the ring on Wed. the 20th w[ith BLM] freemark. 1st sold for \$355.73 weighed 930 lbs. for \$38.25/cwt. The second \$297.86 at 845 lbs. at \$35.25 per cwt." Burnanam said the buyer was Johnny Davis, who bought them for Calhoun Packing Company, Winsborough, Louisiana. In another report of a telephone conversation dated September 28, 1989, Royce Villemarette of the Louisiana Livestock Board informed Musick that he had checked two geldings for Ryland that went through the sale Wednesday, September 20, in Alexandria. He confirmed that the horses did sell and that there were no titles with the horses. A report of a telephone conversation on October 3, 1989, between Davis and Musick reveals that Davis bought some horses at Hodges Stockyard on September 20, 1989, that had freemarks. The report stated that "they went directly to Calhoun Packing Co. in Palastine Texas. They [Calhoun Packing Co.] do not feed them out but kill all received immediately. All he [Davis] does is buy killers & canners for Calhoun."

William B. Fairchild, D.V.M., State Veterinarian, Louisiana Department of Agriculture and Forestry, Office of Animal Health Services, provided Musick with a U.S. Department of Agriculture VS Form 1-27 "Permit for Movement of Restricted Animals" dated September 20, 1989, which lists three sorrel geldings identified as 7006, 8643, and 8764 owned by Johnny Davis. Section 6 of the form shows that movement of the horses was to be "interstate" and section 7 showed that movement of the horses was for "slaughter." An entry in the case file log dated October 20, 1989, reveals that Nancy Craft from the Louisiana Livestock Board called to report that sale tag Nos. 7006 and 8764 were sold by Darby Ryland.

Ryland admits that two of the three horses included in the Agreement were sold prior to actual receipt of title but asserts that he was confused by the BLM forms. He thought that there were additional steps required to secure title for horses but noted that the Agreement states "I hereby apply for title to the animals listed above." According to Ryland, he was under the impression that this was a formal application for title. In addition Ryland points out that he submitted a subsequent application for title to the wild horses approximately 1 year after the date of adoption, September 23, 1988.

Ryland asserts that the horses received proper care, feeding, and veterinary attention throughout the year of the Agreement. Having properly cared for the horses for 1 year, signed the documents, and made the application, he asserts that he was entitled to sell them in good faith. Ryland contends that selling the horses 3 days prior to the anniversary date was a "technicality."

Regarding the third horse repossessed by BLM, Ryland argues that it was in "excellent" condition. He contends that he never intended to defraud. Ryland admits that he did not fully comply with regulations, but emphasizes that there were efforts to comply and excellent care was provided for all three animals during the year.

The Wild Free-Roaming Horses and Burros Act of 1971, as amended, 16 U.S.C. § 1333(b)(2)(B) (1988), authorizes the Secretary of the Interior to place wild horses with qualified applicants who can assure humane treatment and care. See 43 CFR Subpart 4750. Title to horses placed in private care remains with the Government for a minimum of 1 year after placement and execution of the Agreement and until BLM issues a Certificate of Title. 16 U.S.C. § 1333(c) (1988); 43 CFR 4750.4 and .5.

Departmental regulation 43 CFR 4770.1 prohibits: "(d) Selling or attempting to sell, directly or indirectly, a wild horse or burro or its remains." In addition, 43 CFR 4760.1(a) requires the adopter to comply with the Agreement and the regulations. The Agreement provides that certain acts are prohibited, including "[s]elling or attempting to sell a wild horse or burro or its remains." The regulation relied upon by BLM in its decision, 43 CFR 4770.2(b), authorizes "cancellation of the agreement [and] repossession of wild horses" for violations of the agreement.

The applicable regulation dealing with application for title to wild horses and burros, 43 CFR 4750.5, provides that after the passage of 1 year, BLM is to issue a Certificate of Title to the adopter, provided that the animal in question has received proper care and humane treatment. The regulations provide at 43 CFR 4750.5(a) that "[t]he adopter shall apply for title, using a form designated by the Director, upon signing the Private Maintenance and Care Agreement."

Ryland executed Form 4710-11, Application For Title To Wild Horse(s) And Burro(s), on September 20, 1989. This document requires the adopter to certify that he has provided his animals with proper care and treatment for no less than a year. Royce Villemarette of the Louisiana Livestock Board executed the qualified official's certification on the same day. Ryland was eligible to obtain title to the horses after September 23, 1989, and had the necessary certification been furnished to BLM after that date, BLM would have been required to transfer title to him. Although he did provide the information in his application for title which was received by BLM on September 26, 1989, by that time the horses had been sold. When, prior to the transfer of title, the adopter sells an animal in violation of the terms and conditions of the Agreement, BLM may properly cancel the Agreement. G. W. Elliott, 117 IBLA 134 (1990).

Ryland admits that he sold the horses in question prior to obtaining title. He claims that the official forms are confusing, but this argument is without merit. The Wild Free-Roaming Horses and Burros Act of 1971, 16 U.S.C. § 1333(c) (1988), Departmental regulation 43 CFR 4750.4 and 4750.5, the Agreement Application for Adoption of Wild Horse(s) or Burro(s),

and the Application for Title to Wild Horse(s) and Burro(s) all provide that title to horses placed in private care remains with the Government for a minimum of 1 year after execution of the Agreement and until BLM issues a Certificate of Title. The case file log for September 12, 1989, states that BLM spoke with Ryland and informed him that he would need titles prior to transferring the geldings to another person. Ryland has not convinced us his alleged confusion was justified in the circumstances of this case.

As for repossession of the horse that was not sold, BLM acted within its authority by reclaiming the animal. Since Ryland violated the terms of his Agreement by selling two horses, BLM could rightfully repossess any remaining horses included in the Agreement. See Susan A. Moll, 101 IBLA 45 (1988). Moreover, information in the case file shows that these horses were sold for slaughter. Under 43 CFR 4770.2(b), BLM may cancel the Agreement and repossess wild horses and burros if the adopter fails to comply with the terms of the Agreement. In light of the sale of two BLM horses for slaughter, the decision to repossess the remaining horse was clearly correct. See generally Animal Protection Institute of America v. Hodel, 860 F.2d 920, 927 (9th Cir. 1988).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the District Manager is affirmed.

Franklin D. Arness
Administrative Judge

I concur:

James L. Byrnes
Chief Administrative Judge