

TED L. BARBER, SR.

IBLA 2001-364

Decided December 5, 2001

Appeal from a decision of the Wyoming State Office, Bureau of Land Management, cancelling a private maintenance and care agreement and repossessing three wild horses with freeze mark Nos. 97830066, 97830223, and 98830104.

Affirmed.

1. Wild Free-Roaming Horses and Burros Act

A BLM decision cancelling a private maintenance and care agreement and repossessing three wild horses will be affirmed where the evidence establishes that the adopter violated the terms of the agreement by selling horses covered by agreement before he obtained title to them and by failing to notify BLM within 7 days of the discovery of the death of one of the horses he sold.

APPEARANCES: Ted L. Barber, Sr., Afton, Wyoming, pro se; John R. Kunz, Esq., Office of the Regional Solicitor, U.S. Department of the Interior, Lakewood, Colorado, for the Bureau of Land Management.

DECISION BY ADMINISTRATIVE JUDGE HEMMER

Ted L. Barber, Sr., has appealed the August 3, 2001, decision of the Wyoming State Office, Bureau of Land Management (BLM), cancelling a private maintenance and care agreement (PMACA) and repossessing three wild horses with freeze mark Nos. 97830066, 97830223, and 98830104.

On August 21, 2000, Barber filed an application for the adoption of wild horses or burros. BLM approved that application on August 25, 2000, and on August 26, 2000, Barber and BLM entered into a PMACA for four wild horses with freeze mark Nos. 96830242, 97830066, 97830223, and 98830104. 1/ The terms set forth in the application for adoption and the PMACA 2/

1/ The horses were a gray (or, according to Barber, blue roan) mare (freeze mark No. 96830242), a red roan gelding (freeze mark No. 97830066), a sorrel mare (freeze mark No. 97830223), and an Appaloosa stud (freeze mark No. 98830104).

2/ The copy of the PMACA contained in the case file states "(Terms and Conditions on reverse side of the Adopter's Copy)." The reverse side of

provided, among other things, that the adopter was financially responsible for providing proper care, that the adopter must notify BLM within 7 days of the discovery of a horse's death, and that title to the horses remained with the Federal Government for at least one year after the execution of the PMACA and until a certificate of title was issued by BLM. The application for adoption advised that failure to comply with the terms of adoption could result in the cancellation of the PMACA, repossession of the animals, and disapproval of requests for adoption of additional animals. The application identified prohibited acts subject to fines and/or imprisonment, including violating any term of the PMACA and selling or attempting to sell a wild horse or burro or its remains. In response to an "Adoption Questionnaire," signed by him on August 21, 2000, Barber checked that he understood that the horses "CANNOT be sold, traded, or given away" until he received title, and that he "must notify the BLM within 7 days of an adopted, but untitled, animal dies."

BLM conducted a compliance inspection on May 23, 2001. In the report documenting that inspection, BLM inspector Brian Waldron noted that the red roan gelding was not present and that Barber did not know the address or phone number of the facility where the horse had been sent for training. Waldron recommended that the Appaloosa stud's feet be trimmed before the next inspection.

Waldron's activity log included in the case file reveals the following information. On July 31, 2001, BLM learned that someone in Afton was abusing his wild horses by letting a halter grow into a horse's head and by not feeding it properly. On August 1, 2001, a brand inspector reported that wild horses adopted by Barber were being abused, specifically that one horse had been euthanized because it had broken a leg while being treated by a veterinarian for a maggot-infested wound created when a halter had grown into its head. Waldron contacted Barber, advised him that a complaint had been filed, and asked him to produce the horses within 7 days. Barber told Waldron that one of the horses had died because of a broken leg two weeks earlier but he didn't know the name of the veterinarian who euthanized the horse, ^{3/} that the red roan gelding was being trained in the mountains and he wasn't sure if it would be back in 7 days since he did not know who had it, that the Appaloosa stud and the sorrel mare were

fn. 2 (continued)

the case file copy of the PMACA was not copied. However, the reverse of the executed and approved application for adoption found in the case file contains terms of adoption which the application states "apply to all wild horses and burros adopted under this Private Care and Maintenance Agreement." As we found in G. W. Elliott, 117 IBLA 134, 134 n.1 (1990), "it is clear, therefore, that Form 4710-10 [the adoption application] contains the same terms and conditions as the adopter's copy of Form 4710-9 [the PMACA]." References in this decision to terms and conditions will be those found in the adoption application contained in the case file. ^{3/} The case log indicates that, although he contacted all the veterinarians in the area, Waldron was unable to find the veterinarian who had euthanized the gray mare.

at his facility, and that he had trimmed the Appaloosa's feet as requested. On August 2, 2001, Waldron picked up the red roan gelding from a man named Mike Clark and dropped it off at a temporary corral for the night. On August 3, 2001, Waldron learned from a deputy sheriff that a case had been filed against Barber for the custody of the sorrel mare. Waldron also discovered seven newspaper advertisements for the sale of Barber's adopted horses. Waldron met with Barber, had him sign a termination of the PMACA and voluntarily relinquish the horses, and gave him a notice of decision to repossess the horses. After loading the sorrel mare and the Appaloosa stud, he picked up the red roan gelding and delivered the horses to the Rock Springs Corral.

The compliance record prepared by Waldron memorializing the August 3, 2001, inspection stated that Barber had sold three of his adopted horses: the gray mare that had been euthanized, the red roan gelding that was found at another facility, and the sorrel mare that was still located at Barber's facility. The compliance record also stated that Barber had failed to trim the feet of the Appaloosa stud as requested. The compliance record indicated that these actions constituted unauthorized transfer, failure to notify, inhumane treatment, and sale/commercial use, and noted that the horses had been repossessed.

In the August 3, 2001, notice of decision, BLM informed Barber that he had violated the terms and conditions of the PMACA that require an adopter to notify the authorized officer within 7 days of the discovery of an animal's death and bar selling or attempting to sell a wild horse. BLM found Barber to be in violation of 43 CFR 4770.1(g) which states that violating a term or condition of the PMACA is a prohibited act. Accordingly, BLM advised Barber that, pursuant to 43 CFR 4770.2(b), it had decided to cancel the PMACA and repossess Barber's three remaining horses. BLM placed its decision into immediate full force and effect in accordance with 43 CFR 4770.3(b).

On appeal, Barber admits that he sold some of his adopted horses, explaining that:

I was given a white transportation brand inspector [sic] on 8-26-00. Later I found that I was also given a blue Title too. In the spring of 01 I had some money problems. I first [tried] to use the appy [sic] stud to breed for money or hay. When I had no one even call[,] I asked around about the blue Title I had been given [on] 8-26-00. I was told that it is a valid and legal Title. That it was all I needed to [sell] my horses. So because I would not have [enough] hay to properly feed all four horses, and had been unable to get any takers to breed to the stud[,] [n]ext I [tried] to [sell] some. Any one or two only. So I would hay [sic] the feed I had last longer.

I sold one for I think \$500.00. The blue roan [gray] mare was traded for some repairs to two saddles. No money changed hands. After the person who had her for a few weeks, or a week, [h]e came to me and stated that he had to have her

put down. Because she had broken her leg when a vet was [there] to work on a sore on the back of her head.

While he acknowledges that he unknowingly made a mistake, ^{4/} he denies that he mistreated or underfed any horse in his care. ^{5/} Barber seeks the return of the last two horses. ^{6/}

BLM filed an Answer on November 9, 2001. BLM argues that case is moot because Barber voluntarily terminated the PMACA. (Answer at 2.) Based on the fact that Barber signed the request form to terminate the PMACA and remove the animals simultaneously with the BLM's "notice of decision to repossess the horses" (Case Activity Log for Brian Waldron at 2), and subsequently requested on appeal the return of two of the horses, we are not persuaded that this matter has been rendered moot. Accordingly, we proceed to discuss the merits of the appeal.

[1] The Wild Free-Roaming Horses and Burros Act of 1971, as amended, 16 U.S.C. § 1333(b)(2)(B) (1994), 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; G. W. Elliott, 117 IBLA at 135. Title to horses in private care remains with the government for at least one year after placement and execution of the PMACA and until BLM issues a Certificate of Title. 16 U.S.C. § 1333(c) (1994); 43 CFR 4750.4-1(a) and 4750.5; see, e.g., Stefanie Lee, 151 IBLA 1, 2 (1999); John Sampson, 150 IBLA 92, 95 (1999); G. W. Elliott, 117 IBLA at 135.

Departmental regulation 43 CFR 4770.1(d) prohibits "[s]elling or attempting to sell, directly or indirectly, a wild horse or burro or its remains." In addition, 43 CFR 4760.1(a) requires an adopter to comply with the terms and conditions of the PMACA and the regulations. As noted above, the PMACA in this case identifies "[s]elling or attempting to sell a wild horse or burro or its remains" as a prohibited act. The regulation relied upon by BLM, 43 CFR 4770.2(b), authorizes "cancellation of the agreement [and] repossession of wild horses" for violations of the PMACA. See Darby L. Ryland, 126 IBLA 371, 373 (1993).

Barber admits that he sold some of his four adopted horses, one of which ultimately had to be euthanized, less than a year after he entered into the PMACA. Although he states that he was confused by the documents

^{4/} In hand-written notes on the bottom of a copy of the second page of BLM's decision, Barber states that "[w]hen given two papers on 8-26-00 it is easy to make this [mistake]. One clearly [said] not a title. The other clearly said Title. To not have this happen to someone [else] you may look [into] this."

^{5/} BLM's decision did not identify inhumane treatment as one of the grounds for cancelling the PMACA and repossessing the horses. Barber's denial that he mistreated the horses is therefore irrelevant to this appeal.

^{6/} Barber does not identify which two of the three repossessed horses he would like returned.

he received on August 26, 2000, one of which he contends was a blue "Title," he has not provided a copy of that document, and he now acknowledges that he made a mistake. In any event, the statute, 16 U.S.C. § 1333(c) (1994), the regulations, 43 CFR 4750.5(b), and the terms and conditions of the PMACA all make clear that an adopter is not eligible to receive title to an animal until after 12 months of care, and Barber sold the horses covered by the PMACA before the end of that requisite year of care. Barber's sale of horses covered by the PMACA not only before he actually received title to them, but before he was even qualified to receive title, is dispositive. BLM's decision that Barber violated the terms of the PMACA and that the PMACA should be cancelled must therefore be affirmed. G. W. Elliot, 117 IBLA at 136; see also Darby L. Ryland, 126 IBLA at 373.

The PMACA also requires an adopter to notify BLM within 7 days of the discovery of the death of a horse. See also 43 CFR 4750.4-1(d). Barber does not deny that he failed to notify BLM of the death of the gray mare within the 7-day period. This violation of the PMACA also justifies BLM's decision to cancel the PMACA and repossess the horses. 43 CFR 4770.2(b). Barber has failed to meet his burden of establishing that BLM's cancellation of the PMACA was improper. See Stefanie Lee, 151 IBLA at 2; Larry Vanden Heuvel, 145 IBLA 309, 315 (1998).

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.

Lisa Hemmer
Administrative Judge

I concur:

Gail M. Frazier
Administrative Judge