

LYNDA FOWLER

IBLA 2003-173

Decided July 19, 2005

Appeal from a decision of the Jackson Field Office, Bureau of Land Management, cancelling a Private Maintenance and Care Agreement for wild horses.

Appeal Dismissed.

1. Wild Free-Roaming Horses and Burros Act

An employer does not have a right of appeal from the cancellation of a Private Maintenance and Care Agreement that was issued to an employee because the employee may not serve as the employer's agent in filing an application to adopt or in signing a maintenance and care agreement.

APPEARANCES: Lynda Fowler, Tampa, Florida, pro se; Patricia A. Woods, Esq., Office of the Field Solicitor, U. S. Department of the Interior, Knoxville, Tennessee, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE IRWIN

Lynda Fowler has appealed the January 21, 2003, decision of the Jackson Field Office, Bureau of Land Management (BLM), to cancel a Private Maintenance and Care Agreement for three wild horses that BLM issued to Carrie Secret on January 5, 2002.^{1/} On that date BLM sponsored an event for the adoption of wild horses and burros under the Wild Free-Roaming Horses and Burros Act, 16 U.S.C. §§ 1331-1340 (2000), in Ocala, Florida. Secret signed the application to adopt the horses while she was an employee of appellant, who is the owner of In The Breeze Horseback Riding Ranch and Childrens Camp (ITB). See 43 CFR 4750.3-1. BLM approved Secret's application and she selected the three horses and signed the Private Maintenance and Care Agreement (PMACA). See 43 CFR 43 CFR 4750.3-4 and 4750.4-1.

^{1/} The freemarkers for the horses governed by the agreement are 98013216, 95572227, and 94013615.

On August 17, 2002, BLM Inspector Fran Edwards went to ITB to determine if Secret was in compliance with the PMACA. After completing the inspection, Edwards concluded that the horses were being inhumanely treated.^{2/} Edwards tried to reach Secret but did not succeed until January 21, 2003. During a phone conversation that day, Secret told Edwards she was not allowed on ITB's property. Edwards told Secret that she was in violation of the PMACA and had a choice of either voluntarily terminating the agreement or having the horses re-possessed as abandoned. Secret reportedly agreed to have the horses re-possessed by BLM. (Record at 6.) On January 21, BLM sent a certified letter to Secret stating that the PMACA had been cancelled because she had abandoned the horses in violation of 43 CFR 4770.1(g). On January 25, 2003, the horses were picked up and transported to a BLM facility in Tennessee.

Fowler appealed. She states that BLM's authorized officer had signed an application form she had completed and sent to BLM before the January 5, 2002, event, and provides a copy of the form. On that form she answered the question "[w]ill someone other than you select or care for the animals requested" in the affirmative. She states she understood the signature of BLM's authorized officer to mean she did not have to attend the event but could have her representative select the horses, so she sent Secret and another employee and paid their salaries and expenses for the trip. Fowler relates that the BLM person who had signed her application form refused to accept it at the event and required Secret to fill out an application in her own name. She states that Secret never thought of herself as owner of the horses and that she, Fowler, considers the horses to be hers. She disputes BLM's finding that the horses were abandoned or underfed.

On May 21, 2004, BLM moved to dismiss the appeal on the grounds that Fowler does not have a right to appeal BLM's January 21, 2003, decision.

Pursuant to 43 C.F.R. § 4.410, Appellant does not have standing to appeal the BLM decision to cancel the Secret PMCA. Appellant has no legally cognizable interest in the three mustangs which were repossessed by BLM and which are the subject of this appeal. Although Appellant was an approved applicant, Appellant did not attend the

^{2/} Edwards noted the following:

"Horses were found to be in poor shape. Horses were very thin, ribs and hip bones were visible. Sanitation in their pen was very poor, there was no grass, no signs of water, hay, or feed."

(Record at 6.)

adoption event. Appellant did not execute a PMCA and did not apply for a Certificate of Title for these animals. The Appellant is a stranger to the PMCA between the Agency and Secret. As a contract, the PMCA establishes both obligations and rights to the three mustangs.

(Motion to Dismiss and Answer at 3.)

[1] BLM's motion must be granted. In 1998, BLM promulgated a regulation eliminating "the use of a power of attorney or any other instrument or writing authorizing one person to act as an agent for another in the adoption of wild horses and burros." 43 CFR 4750.3-3(b); see 63 FR 18338, 18340 (April 15, 1998). It did so because it found that the regulations it adopted in 1986 to implement Pub. L. 95-514, section 14, which "limited adoptions to four animals per year per person, but also allowed a person to adopt animals on behalf of another person through use of a power of attorney," had been abused. 63 FR 18338-39 (April 15, 1998). "The use of power of attorney to adopt large numbers of animals has been shown in specific cases to result in either mistreatment of the animals or abuse of the adoption program for the purpose of profiting from the sale of adopted animals, or both." 63 FR at 18339.

One person who commented on BLM's proposed rule "suggested that in cases where a person would have to travel a long distance to the site of an adoption facility, it would be convenient to allow that person to use a power of attorney. The commenter suggested limiting the potential for abuse by allowing power of attorney 'to be used for one person for one horse (or burro).'" Id. BLM rejected the suggestion

because it would not eliminate the potential for abuse. Elimination of the use of power of attorney for adoption essentially limits qualified adopters to those individuals who are willing and able to travel to the adoption location. Adopting a horse or burro is a serious endeavor that entails a significant commitment of time and money. BLM does not believe that having to travel to the adoption location will be a hindrance to those who are undertaking the larger commitment to humane care and treatment.

Id. BLM adopted the language of the regulation set forth above to "clarify that no document in which one person gives authority to another to act as an agent, whether or not it is styled 'power of attorney,' will be acceptable for purposes of adoption of wild horses and burros." Id. at 18339-40.

Apparently, Fowler misunderstood BLM's signature on the application form she submitted before the event. Presumably, BLM expected her to attend the event but would have allowed one of her employees to select the animals she wished to adopt. It would then have asked her to sign the maintenance and care agreement.

However, because Secret filed the application and signed the agreement, the horses were her responsibility. Legally, Fowler has no interest in them. Without a legally cognizable interest, she does not have a right of appeal under 43 CFR 4.410 from BLM's decision cancelling the agreement.

Therefore, pursuant to the authority delegated to the Interior Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, BLM's motion to dismiss is granted.

Will A. Irwin
Administrative Judge

I concur:

H. Barry Holt
Chief Administrative Judge