

YOSE CATTLE COMPANY

IBLA 76-345

Decided April 23, 1976

Appeal from Wyoming State Office, Bureau of Land Management (BLM), decision rejecting a preference right claim W-26217 to purchase land at a public sale.

Affirmed.

1. Public Sales: Preference Rights -- Public Sales: Sales under Special Statutes

An assertion of a preference right to purchase public land offered for public sale pursuant to the Unintentional Trespass Act of September 26, 1968 (43 U.S.C. § 1431-1435 (1970)), is properly rejected when the applicant fails to submit satisfactory evidence of his ownership of contiguous lands within the time specified by the authorized officer as provided by regulation.

APPEARANCES: Richard S. Fox, Esq., of Poelman, Fox, Edwards & Oswald, attorneys-at-law, for appellant.

OPINION BY ADMINISTRATIVE JUDGE RITVO

The Yose Cattle Company has appealed from a decision by the Wyoming State Office (BLM), dated November 17, 1975, rejecting its preference right claim for a 24.67-acre tract described as lot 3, sec. 19, T. 26 N., R. 113 W., 6th P.M., Wyoming.

The tract was offered for public sale pursuant to the Unintentional Trespass Act of September 26, 1968. 43 U.S.C. §§ 1431-1435 (1970). The Act authorizes the Secretary of the Interior to sell at public auction a tract of public land, not exceeding 120 acres, where such land is not needed for public purposes and upon which there was an unintentional trespass on or before September 26,

1968. It also provides that subject to certain conditions any owner of contiguous lands shall have a preference right to buy the land.

In response to a petition application (W-26317) filed October 12, 1970, by the Yose Cattle Company, a preference right applicant, the sale was held September 18, 1975. At the sale Frank K. Bartlett, Jr., and Beverly B. Bartlett were declared the high bidders for the parcel in the amount of \$7,400.

By notice dated September 19, 1975, the State Office suspended the sale for 30 days from the day after the sale to allow owners of contiguous land to assert a preference right to purchase at the high bid price plus the cost of publication. The notice required that the preference right bid must be received by October 18, 1975, and that proof of ownership of the whole title to the contiguous land as of that date must also be received within 15 days after that date or the preference right would be lost.

On October 9, 1975, within the time period allowed, the Yose Cattle Company asserted a preference right and tendered the required price plus cost of publication \$7,467. ^{1/} However, the company failed to perfect its preference right bid by a timely submission of the required proof of ownership of the whole title to the lands contiguous to the sale tract. Subsequently, the State Office issued its decision rejecting the Yose Cattle Company's preference right claim.

On appeal, Walter C. Yose, Jr., President of the Yose Cattle Company, contends, in essence, he failed to timely file the required proof of ownership by November 3, 1975, because he was waiting for a response from the Wyoming State Office, BLM, to a note of inquiry he submitted with his tendered payment. Appellant asserts he had obtained the required proof dated October 7, 1975, but was uncertain whether or not that proof from the county clerk had to be dated October 18, 1975. He also indicates he misinterpreted the requirements of the regulations in 43 CFR 2711.4(b) as allowing him 30 days to file proof of ownership. Further, his plans to travel to Cheyenne, Wyoming, to resolve the matter in person were delayed by the untimely death of his mother October 26, 1975. When he finally contacted the BLM, November 13, 1975, to tender the documentation of his ownership and was told the period for filing had

^{1/} The cost of publication was \$117. Since the Yose Cattle Company had already submitted a \$50 publication cost deposit as the initial applicant for the land, it only need to submit an additional \$67 for publication.

passed, he immediately requested an extension which was denied. Based on these circumstances, appellant argues that he acted in good faith and made substantial compliance with the requirements of the Bureau of Land Management and that any irregularity in the compliance or attempted compliance is merely procedural and not of substance. He suggests these procedural irregularities could have been cured if the request for an extension had been granted.

Although appellant's failure to timely file his proof of ownership may have been due to unfortunate circumstances, he is not on that account relieved of the consequences of his late filing. The procedure governing sales under the Act is set out in 43 CFR Subpart 2711. 2/ The requirement that this proof of ownership be filed within the time specified by the authorized officer is mandatory. 43 CFR 2711.4(b)(2) states in pertinent part:

(2) Each preference-right applicant must, within the time specified by the authorized officer, or such extensions of time as he may grant, submit proof of ownership of the whole title to the contiguous lands, that is, he must show that he had the whole title in fee on the last day of the 30-day period. The authorized officer will specify that date. * * *

The regulation is clear and unambiguous. The terminal date for filing was clearly set by the State Office. The September 19 notice of high bid stated:

Within 15 days after October 18, 1975, a preference right bidder must also submit proof of ownership of the whole title to the contiguous land as of October 18, 1975. Do not submit this proof before that date. Failure to submit to the State Office, on time, satisfactory proof

2/ The regulation governing sales under the Unintentional Trespass Act was found in 43 CFR Subpart 2785 (1971). It provided in pertinent part:

"The provisions of Subpart 2710 apply to sales under this section except that the owner of contiguous lands who wishes to assert his preference right must offer to purchase lands at the highest bid received. * * *" 43 CFR 2785.1 (1971).

Subpart 2785 was deleted from the regulations by Circular 2316, 36 CFR 21677, November 12, 1971, because the Act had expired. However, the circular stated that:

"The regulations contained [in Subpart 2785] will be applied to sales initiated under the regulation prior to September 26, 1971, and which in accordance with Section 5 of the [Unintentional Trespass] Act, may still be completed * * *."

of contiguous land ownership as of that date will cause the preference right to be lost. Such proof must consist of (a) a certificate of the county recorder of deeds, or (b) an abstract of title or a certificate of title prepared and certified by a title company or by an abstracting company or by a duly qualified attorney authorized to practice in the State, showing that the claimant owned adjoining land in fee simple on the date shown above. * * * [Emphasis added.]

One who fails to submit satisfactory evidence of his ownership of contiguous lands within the time specified by the authorized officer as provided by the pertinent regulations loses his preference right to purchase the land. Mildred M. Miller, 7 IBLA 363, 364 (1972).

In that and other cases where the recognition of a preference right to purchase land at a public sale has been at issue, a failure to adhere strictly to the requirements has resulted in loss of the preference right. Basil R. Twist, 19 IBLA 75 (1975); James L. and Gordon L. Thompson, 14 IBLA 131, 133 (1974); Robert A. Davidson, 13 IBLA 368, 370 (1973); and Gene Van Matre, 6 IBLA 229 (1972). We have also noted that the rights of a good faith high bidder, as well as those of a contiguous land owner, are involved in this type of case. Robert A. Davidson, *supra* at 371.

In this instance appellant did not file his requisite proof of ownership until the filing of his appeal, November 24, 1975. Nor did he request an extension of time to file that proof until November 13, 1975, again, well after the authorized date. ^{3/} Neither action complies with the requirements of the regulations.

Accordingly, appellant's assertion of preference right was properly rejected.

^{3/} The letter which appellant says accompanied his assertion of a preference right on October 9, 1975, is not in the file. A memorandum of a land law examiner summarizing a conversation she had with appellant on November 13, 1975, says that the letter was not with the document she received relative to his preference bid.

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 Bureau of Land Management is affirmed.

Martin Ritvo
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Anne Poindexter Lewis
Administrative Judge

