

GERALD BAEHLER

IBLA 78-542

Decided July 31, 1979

Appeal from a May 2, 1978, decision of the Eastern States Office, Bureau of Land Management, setting the purchase price to be paid under Color of Title Application ES-15315.

Set Aside and Remanded.

1. Color or Claim of Title: Appraised Value

Where the purchase price for a tract of land applied for under the Color of Title Act is based upon a Bureau of Land Management appraisal of the fair market value of the land at the date of appraisal, and no allowance is made for equitable factors which appear on the record in favor of the applicant, the case will be remanded to the Bureau of Land Management for consideration of such equities.

APPEARANCES: Vernon Lubinski, Esq., Lubinski, Rottier and Lubinski, Seymour, Wisconsin.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Gerald Baehler, by application dated June 30, 1975, seeks to purchase certain lands in Outagamie County, Wisconsin, namely, the NE 1/4 SW 1/4 sec. 20, T. 24 N., R. 18 E., fourth principal meridian, Wisconsin. Baehler's application, made pursuant to the provisions of the Color of Title Act of December 22, 1928, 45 Stat. 1069, as amended by the Act of July 28, 1953, 67 Stat. 227, 43 USC 1068, 1068(a), under claim of Class 1, indicates that the lands applied for have been openly and peaceably occupied by the Baehler family ever since a deed was recorded to Jacob Baehler (applicant's grandfather) on March 16, 1909. According to the Outagamie County records, the chain of title upon which Jacob Baehler relied in purchasing the NE 1/4 SW 1/4, sec. 20 stretches back to a May 20, 1860, conveyance by Outagamie County, Wisconsin, presumably a tax sale conveyance. This conveyance

in turn, appears to have been made on the strength of an erroneous notation on the county records indicating that the NE 1/4 SW 1/4, sec. 20 was conveyed to one Elijah Low, Jr. by the United States, on November 24, 1852. The records of the General Land Office concerning Military Bounty Lands, however, indicate that this parcel was never conveyed by the United States, and an April 29, 1959, letter from the Eastern States Office, Bureau of Land Management (BLM), to appellant's attorney gives the following information:

Our records show that Elijah Low, Junior, at the Manasha Land Office, November 24, 1852, entered the NE 1/4 SW 1/4 sec. 22, T. 24 N. R. 18 E., 4th P. M., containing 40 acres, under location of warrant 1080. The warrant location, the Register and Receiver's certificate, the tract book posting, the original warrant, and the patent record of December 1, 1854 (volume 260, page 370), on file here, all describe this land. The former district land office plat, now on file in the National Archives and Records Service of this city, shows the entry number 1080 posted in the NE 1/4 SW 1/4 sec. 22. This is the Low entry number.

Our records further disclose a letter dated April 8, 1856, to the Commissioner of the General Land Office, by Isaac Hodsdon, attorney for Elijah Low, Jr., advising that the duplicate certificate under warrant 1080 was incorrect and that the mistake was not discovered because it had not been examined at the time it was received. Hodsdon, in a letter dated May 10, 1855, returned the duplicate certificate which described the land as the NE 1/4 SW 1/4 sec. 20. This receipt is filed here with the case record and is probably the one referred to in your correspondence to this office.

The tract book in this office does not show any posting for the NE 1/4 SW 1/4 sec. 20, and it appears to be vacant.

It thus appears that the patent which initially issued to Low and which incorrectly described the lands entered as being in section 20 was recorded on the county records in 1852. When, in 1856, the mistake was corrected by the issuance to Low of a corrected patent, the erroneous section 20 entry was not removed from the county records and a subsequent tax sale by the county began the false chain of title which results in this appeal.

[1] Baehler takes issue with the decision below only insofar as it requires him to pay \$5,200 for the lands in question. This figure, he contends, is excessive and he argues that nominal consideration only should be required or that the consideration should be based upon

a valuation of the property at the time that the Baehler family acquired title to the parcel in 1909.

We note at the outset that the fair market value used by BLM in this case was determined by an appraisal which appears to be regular in all respects. This appraisal valued the lands at \$20,000 and allowed a credit of \$14,800 for development and improvement (clearing and stump removal), leaving a purchase price of \$5,200 from which no further deduction was made.

Further deductions, we find, should have come from a consideration of the equities surrounding Baehler's application. As the Assistant Secretary of the Interior stated in A. F. Dantzler, A-31038 (May 12), 1970), the equities of an applicant which may be considered in determining the purchase price of a tract to be sold under the Color of Title Act are not limited to those items for which there is a determinable monetary value, but, rather, include all factors which, in a spirit of fairness, a court of equity would recognize. In the case before us, such factors would include the fact that appellant's title stretches back nearly 120 years, the fact that appellant's family has been on the land for almost 70 years, the fact that the lands were entered under a deed acquired in good faith and for value, and the fact that the false chain of title upon which appellant's grandfather relied was caused by errors and omissions of the General Land Office.

While it may be difficult to assign a monetary value to the above factors, we note that the appraiser, BLM Denver Service Center, by a letter of July 31, 1978, advised the Eastern States Office, BLM, of his intention to use a standardized equity allowance table in connection with a color-of-title application in Florence County, Wisconsin. See Ralph Dickinson, 39 IBLA 258 (1979). This table, originally drafted for use in a large color-of-title project in New Mexico, quantifies the value of an applicant's equities by allowing a percentage deduction from fair market value, the percentage being tied to the number of years that the subject property has been held by the applicant. This schedule for time-in-possession is as follows:

Expressed As	Equity Allowance	
<u>Time</u>	<u>Percentage of Fair Market Value</u>	
5 years or less	0%	
5-10 years	15%	
10-15 years	30%	
15-20 years	50%	
20-30 years	70%	
30-40 years	90%	
More than 40 years	* 100%	

* Payment will be \$1.25 per acre.

As we stated in Dickinson, supra, use of a formula based solely on the longevity of applicant's claim does not satisfy the Congressional mandate that the Department consider and give full effect to the equities of any applicant under the Color of Title Act, supra. As was stated in Dantzer, supra, other factors to be considered include whether the applicant and his grantors paid the then fair market price for the land, the degree of reasonableness of applicant's belief that he had acquired good title, the length of time of the chain of title, how the errors relied upon to initiate the chain of title arose, payment of taxes on the land, and for what period, and such other factors as a court of equity, in a spirit of fairness, would recognize.

Longevity should be given consideration in this case, but this is not to say that it is the sole method by which equity values can be calculated. We recognize that different cases might present equitable considerations which could be recognized and compensated upon an entirely different basis, as the concept of equity requires that remedies be sufficiently flexible to afford a just result consistent with the circumstances peculiar to the individual case.

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 set aside, and the case remanded for further consideration consistent with this opinion.

Douglas E. Henriques
Administrative Judge

We concur.

Newton Frishberg
Chief Administrative Judge

Edward W. Stuebing
Administrative Judge

