

PAUL R. SCOTT
BETTY F. SCOTT

IBLA 83-279

Decided September 26, 1983

Appeal from decision of the Oregon State Office, Bureau of Land Management, setting the purchase price to be paid under color-of-title application. OR 24389.

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 solely 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: Paul R. and Betty F. Scott, pro sese.

OPINION BY ADMINISTRATIVE JUDGE GRANT

Paul R. and Betty F. Scott, by application dated August 7, 1980, seek to purchase certain lands in Baker County, Oregon, namely the E 1/2 NE 1/4 NE 1/4 sec. 22, T. 11 S., R. 39 E., Willamette meridian, Oregon. The Scotts' application was made pursuant to the provisions of the Color of Title Act of December 23, 1928, as amended, 43 U.S.C. §§ 1068, 1068(a) (1976). Their application is a class 1 claim. 1/ The application indicates that the lands applied for have been openly and peacefully occupied by the claimants and their grantors for more than 20 years, and that valuable improvements had been placed on the land.

1/ The distinction between class 1 and class 2 claims is set forth in the regulations at 43 CFR 2540.0-5. The categories embrace the different types of claims authorized by the statute. Claims in class 1 require peaceful adverse possession in good faith by claimant or his grantors for a minimum of 20 years coupled with placement of valuable improvements on the land or cultivation of the land.

By decision dated December 8, 1982, the Oregon State Office, Bureau of Land Management (BLM), informed appellants that they met the requirements of the Color of Title Act for a valid class 1 claim.

The Scotts take issue with the decision below only insofar as it requires them to pay \$15,000 for the land in question. Appellants state that real estate brokers that they have consulted contend that the real estate market in eastern Oregon is severely depressed, thereby making the land worth less than the BLM appraised value. Appellants have not submitted any appraisal of the land in rebuttal. However, a member of appellants' family has submitted, on behalf of claimants, a letter emphasizing certain equitable considerations which favor appellants. Among these factors is the substantial cabin built on the land in 1960 and the knowledge of this improvement by at least one Government representative. Other factors which support the reasonableness of appellants' belief that this tract was private land include the significant amount of timber which had been cut by private occupants, the substantial price paid for the land by appellants' predecessor in interest, and the long history of payment of taxes on the land. Although a mining claim was located on this land on two occasions, 2/ it is asserted that there is no sign of recent mining or prospecting on the land which would alert one to the fact that this was public land open to mining.

The BLM decision states in part:

1. The purchase price of the land has been determined to be \$15,000 based upon a recent appraisal of the fair market value of the land. The purchase price, in this amount, must be submitted to this office within 60 days from the date you receive this decision. Checks should be made payable to the Bureau of Land Management and should be sent to the above address.

[1] 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, except that it does not reflect whether it incorporates an adjustment for the reservation of mineral rights and a right-of-way to the United States. This appraisal, using the market data approach, 3/ valued the lands

2/ The original location of a claim on the land was made by Eugene Way in 1902. It was his contest of the patent application of Frances E. Reynolds which cause the subject land to be omitted from the Reynolds patent. See Paul R. Scott, 53 IBLA 75, 77 (1981). Although appellants' effort to record a mining claim which culminated in our decision in Paul R. Scott, supra, reflected knowledge that this was public land, appellants contend in their color-of-title application that they had no knowledge of this prior to the verified statement proceedings initiated by BLM in 1977 under section 5 of the Surface Resources Act of 1955, 30 U.S.C. § 613 (1976). It is also important to note that appellants' color of title is not derived from a mining claim, but rather relates back to a 1920 sheriff's sale.

3/ The market data approach involves an analysis of comparable sales and is a reflection of what buyers pay for similar properties, and the price the sellers receive for similar properties.

at \$15,000. However, it does not appear from the record or decision that BLM in determining a purchase price gave any consideration to the equities of the applicants as called for by the applicable regulation, 43 CFR 2541.4(a), which states in part:

[I]n determination of the price payable by the applicant, value resulting from improvements or development by the applicant or his predecessors in interest will be deducted from the appraised price, and consideration will be given to the equities of the applicant. In no case will the land be sold for less than \$1.25 per acre. [Emphasis supplied.]

Both the Color of Title Act, 43 U.S.C. § 1068a (1976), and the regulation 43 CFR 2541.4(a), require the Department to "consider and give full effect to the equities of any * * * applicant." There are many factors which should be considered in determining the equities of the applicant. These factors include the amount the applicant and his grantors paid for the land and whether they paid fair market value, the degree of reasonableness of the applicant's belief that good title to the land was acquired, the length of time covered by the chain of title, the payment of taxes on the land and the period of time over which they were paid, and any other factors which in a spirit of fairness, a court of equity would recognize. Gerald Baehler, 42 IBLA 36 (1979); Ralph and Ruth Dickinson, 39 IBLA 258 (1979).

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.

C. Randall Grant, Jr.
Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

James L. Burski
Administrative Judge

