

Appeal from a decision of the District Manager, Jackson District Office, Bureau of Land Management, cancelling a Private Maintenance and Care Agreement for a wild horse with Freeze Mark No. 84509009.

Affirmed.

1. Wild Free-Roaming Horses and Burros Act

Under 43 CFR 4750.5(b), BLM is required to transfer title to a wild horse when, after 12 months, the adopter has complied with the terms and conditions of the private maintenance and care agreement and the authorized officer determines, based on a field inspection, or the adopter provides a certification of a qualified official, that the animal has received proper care and humane treatment. However, when, prior to transfer of title, the adopter sells the animal in violation of the terms and conditions of the agreement, BLM may properly cancel the agreement.

APPEARANCES: John Posey, Esq., Double Springs, Alabama, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

G. W. Elliott has appealed from a decision of the District Manager, Jackson District Office, Bureau of Land Management (BLM), dated September 9, 1989, cancelling his Private Maintenance and Care Agreement (Agreement) with BLM for a wild horse identified by Freeze Mark No. 84509009. 1/ The basis

---

1/ BLM referred to the Agreement as Form 4710-9, which it states was executed by Elliott on Aug. 23, 1986. The case file contains that document, which states "([t]erms and Conditions on reverse of Adopter's Copy)." The case file copy is blank on the reverse. However, there is also in the file a Form 4710-10, signed by Elliott on Aug. 23, 1986. That form is entitled "APPLICATION FOR ADOPTION OF WILD HORSE(S) AND BURRO(S)." A BLM official approved the application on that same date. The reverse side of the application contains terms of adoption which the application states "apply to all wild horses and burros adopted under this Private Care and Maintenance Agreement" (Emphasis added). It is clear, therefore, that Form 4710-10 contains the same terms and conditions as the adopter's copy of Form 4710-9. References in this decision to terms and conditions will be to those found on Form 4710-10 in the case file.

for the BLM cancellation was the alleged sale of the adopted horse prior to receipt of legal title. BLM stated that its action was authorized by 43 CFR 4770.2(b).

In his statement of reasons for appeal, Elliott states: (1) that he agreed to maintain and care for the horse in question for a period of 1 year; (2) that he did, in fact, maintain and care for the horse for almost 3 years, from "August 26, 1986, until approximately June 1, 1989;" and (3) that he fulfilled the spirit of the Agreement. However, Elliott does not deny that he did, in fact, sell the horse.

[1] The Wild Free-Roaming Horses and Burros Act of 1971, as amended, 16 U.S.C. § 1333(b)(2)(B) (1988), 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. Title to horses placed in private care remains with the Government for a minimum of 1 year after placement and execution of the Agreement and until BLM issues a Certificate of Title. 16 U.S.C. § 1333(c) (1988); 43 CFR 4750.4 and 5.

When BLM cancelled the Agreement, the regulations prohibited: "(d) Selling or attempting to sell, directly or indirectly, a wild horse or burro or its remains" 43 CFR 4770.1.

In addition, 43 CFR 4760.1(a) requires the adopter to comply with the Agreement and the regulations. The Agreement specifically provides that certain acts are prohibited, including "[s]elling or attempting to sell a wild horse or burro or its remains." The regulation relied upon by BLM in its decision, 43 CFR 4770.2(b), provides:

An adopter's failure to comply with the terms and conditions of the Private Maintenance and Care Agreement may result in cancellation of the agreement, repossession of wild horses and burros included in the agreement and disapproval of requests by the adopted [sic] for additional excess wild horses and burros.

In his statement of reasons, appellant asserts that he maintained and cared for the horse for almost 3 years. The applicable regulation, 43 CFR 4750.5, provides:

(b) The authorized officer shall issue a Certificate of Title after 12 months, if the adopter has complied with the terms and conditions of the agreement and the authorized officer determines, based either on a field inspection or a statement provided by the adopter from a veterinarian, extension agent, local humane official, or other individual acceptable to the authorized officer, that the animal or animals covered by the Agreement have received proper care and humane treatment.

This regulation clearly indicates that after the passage of 1 year, BLM is to issue a Certificate of Title to the adopter, provided that the animal in question has received proper care and humane treatment. <sup>2/</sup> The regulations provide at 43 CFR 4750.5(a) that "[t]he adopter shall apply for title, using a form designated by the Director, upon signing the Private Maintenance and Care Agreement." <sup>3/</sup> The record indicates a Form 4710-11, "APPLICATION FOR TITLE TO WILD HORSE(S) AND BURRO(S)," containing Elliott's name and address and the identification of the horse, was on file with BLM. Sometime in the summer of 1989, BLM forwarded the application for title to Elliott, requesting that he have his veterinarian or the county agent verify the condition of the animal and execute the bottom of the application. <sup>4/</sup> On August 5, 1989, Elliott signed the application certifying that he had provided the horse with proper care and treatment for no less than a year. On the same day, his veterinarian executed the qualified official's certification. BLM received the completed application on August 10, 1989. <sup>5/</sup>

The fact is undisputed in this case that Elliott sold the horse in question before he had title thereto. That fact is decisive. BLM's decision must be affirmed. Clearly, Elliott was eligible to obtain title to the horse in late August 1987, and if he had forwarded the necessary certification to BLM after that date, BLM would have been required to transfer the title to him. Although he did provide that information in August 1989, at that time he had sold the horse. Both Elliott's Agreement and the regulations at 43 CFR 4770.2(b) provide that such action may result in cancellation of the Agreement. BLM's action in cancelling the Agreement was proper under the circumstances.

---

<sup>2/</sup> The regulations, prior to their revision in 1986, provided that one who had provided "humane conditions, treatment, and care" for an animal for at least 1 year could apply for title. 43 CFR 4740.5(b) (1985). The actual granting of title, however, was discretionary. 43 CFR 4740.5(a) (1985); see Cecil McCandless, 64 IBLA 76, 81 (1982). The present regulation removes the discretion and makes the passage of title mandatory, conditioned only upon the necessary showing.

<sup>3/</sup> The preamble to the 1986 regulation changes explained that language by stating that "[a]pplication for title has been incorporated in the adoption process so that an adopter applies for title to an animal automatically at the time the Private Maintenance and Care Agreement is signed." 51 FR 7414 (Mar. 3, 1986).

<sup>4/</sup> At the bottom of the application was a space containing the heading "QUALIFIED OFFICIAL'S CERTIFICATION." Beneath that was the statement: "I, (please print or type), am qualified by education, training and/or experience to assess the physical condition of horses and burros. I CERTIFY that I have examined the animal(s) described above. The animal(s) is/are in good health and is/are receiving proper care and treatment."

<sup>5/</sup> Elliott does not allege that he sought to secure title to the horse at any time prior to August 1989.

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.

---

Bruce R. Harris  
Administrative Judge

I concur:

---

Will A. Irwin  
Administrative Judge