

FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
WASHINGTON 25, D. C.

IN THE MATTER OF THE CLAIM OF

ROBERT C. FOSTER
MINNIE G. FOSTER
HEDY M. SHENK
c/o Coudert Brothers
488 Madison Avenue
New York 22, New York

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CZ-2,090
Claim No. CZ-2,091
Claim No. CZ-2,092

Decision No. CZ- 3396

Counsel for Claimants:

Coudert Brothers
488 Madison Avenue
New York 22, New York

PROPOSED DECISION

ROBERT C. FOSTER, MINNIE G. FOSTER and HEDY M. SHENK, claimants herein, nationals of the United States since their naturalization on December 18, 1944 and November 23, 1945, seek compensation in the aggregate amount of \$459,853.65 pursuant to the provisions of Section 404, Title IV, of the International Claims Settlement Act of 1949, as amended. The claims are based on the asserted nationalization or other taking by the Government of Czechoslovakia of property in which they had various interests. The property involved is as follows:

I. Business Enterprise

Partnership known as "Brueder Loewenthal" (hereinafter called firm), a wholesale seed company located at 8/10 Nadacni, Brno, Czechoslovakia, in which ROBERT C. FOSTER asserts a two-thirds ($\frac{2}{3}$) interest;

II. Improved Real Property

- (a) Building located at No. 146 V Hlinkach, Brno, Czechoslovakia, recorded in folio No. 803 for the cadastral area of Krizova, in which ROBERT C. FOSTER and MINNIE G. FOSTER assert one-half ($\frac{1}{2}$) interests each;
- (b) Building located at No. 120 V Hlinkach, Brno, Czechoslovakia, recorded in folio No. 102 for the cadastral area of Krizova, in which MINNIE G. FOSTER and HEDY M. SHENK assert a three-eighths ($\frac{3}{8}$) interest each;

- (c) Building located at No. 76 Udolni, Brno, Czechoslovakia, recorded in folio No. 1859 for the cadastral area of Krizova, Czechoslovakia, in which MINNIE G. FOSTER and HEDY M. SHENK assert three-eighths (3/8) interests each;

III. Blocked Accounts in Czechoslovak Banks

- (a) Accounts totalling 78,420.80 crowns with the Kreditanstalt der Deutschen, Prague (61,620 crowns), Bohemian Union Bank, Prague (9,840 crowns), First Moravian Savings Bank, Brno (6,100 crowns), and Postal Savings Bank (860.80 crowns), all allegedly owned by ROBERT C. FOSTER;
- (b) Accounts totalling 473,843.80 crowns with the Prague Credit Bank, Brno (116,250 crowns), Zivnostenska Banka, Brno (35,040 crowns), and Bohemian Discount Bank, Brno (322,553.80 crowns), all assertedly owned by MINNIE G. FOSTER;
- (c) An account having a balance of 929,453.53 crowns with the Bohemian Discount Bank, Brno, assertedly owned by HEDY M. SHENK;

IV. Life Insurance Policy

Policy No. 1213914 issued by the Victoria Zu Berlin, having a cash value of 73,214 crowns, in favor of ROBERT C. FOSTER; and

V. Other Personal Property

Collection of antiques consisting of chasubles, dalmatics and other church vestments, assertedly owned by MINNIE G. FOSTER.

Section 404 of the Act provides, inter alia, for the determination by the Commission in accordance with applicable substantive law, including international law, of the validity and amount of claims by nationals of the United States against the Government of Czechoslovakia for losses resulting from the nationalization or other taking on and after January 1, 1945, of property, including any rights or interests therein, owned at the time by nationals of the United States.

Item I - Business Enterprise

The Commission finds that ROBERT C. FOSTER owned a two-thirds (2/3) interest in the subject firm as alleged; that ownership of this firm was transferred under duress during the occupation of Czechoslovakia by the German forces; and that such property was never restored to claimant after the war, although he was entitled to restitution. Claimant states that he filed a petition for such restitution.

The Commission has consistently held that the failure by the Government of Czechoslovakia to restore property to American owners who were eligible

for restitution constituted a taking of property within the meaning of Section 404 of the Act; and that the date of such taking in such cases may be determined to have been December 21, 1949, the date when all restitution proceedings in Czechoslovakia were suspended with respect to American owned property pending a claims settlement agreement with the United States. Thus, inasmuch as there is no evidence to establish that claimant's rights with respect to the firm were restored, the Commission finds that his interest in the said firm was taken without compensation by the Government of Czechoslovakia on December 21, 1949.

Claimant ROBERT C. FOSTER asserts that the value of his two-thirds (2/3) interest in the firm at the time of the taking thereof was \$300,000.00. . . Thus the total value is asserted to have been \$450,000.00. This valuation is based upon a 1939 financial statement which, according to claimant, shows a net worth of 9,810,000 crowns. Added to this amount is the sum of 3,500,000 crowns for "good will" (computed at three (3) times the net profit of 800,000 crowns per annum prior to the war). The record also contains a letter dated April 3, 1946 from one Dr. Frantisek Sobotka, claimant's attorney in Czechoslovakia, in which it is reported that the firm had a value of about 7,810,000 crowns in 1939 and that the firm was sold (under duress) in February 1939 for the sum of 7,925,000 crowns. These estimates of the value or net worth of the firm as of 1939 include fixed assets, as well as current assets, including cash balances, accounts receivable, etc. Claimant has not submitted any balance sheet, financial data, or other evidence from which conclusions may be made with respect to current assets, such as cash balances, inventories, etc., owned by the firm at the time of taking by the Government of Czechoslovakia.

The Commission has also made an independent investigation of the value of the fixed assets of this firm.

In the absence of a postwar balance sheet or other evidence of a persuasive nature to establish that the firm had assets other than fixed at the

time of the taking by the Government of Czechoslovakia, the value of the subject firm must be based upon the value of the fixed assets as shown on the prewar balance sheet or other reliable evidence.

With respect to the contention that "good will" should be made a part of the award for the taking of the firm, it is noted that the Commission on numerous occasions has considered this matter and held that "good will", as a general rule, may not properly be regarded as a compensable item within the meaning of the Act. Loss of "good will" is an indirect damage which is not susceptible of accurate determination. In effect, it is a claim for loss of prospective earnings.

Claims based upon loss of "good will" are, generally, not allowed under international law. Edwin M. Borchard discusses this matter in his recognized treatise entitled "Diplomatic Protection of Citizens Abroad". In Section 172 thereof, Mr. Borchard cites the historic "Alabama Arbitration", and goes on to say:

"This award (in the Alabama case), including the finding that 'prospective earnings cannot properly be made the subject of compensation, inasmuch as they depend in their nature upon future and uncertain contingencies,' has been regarded as a reliable precedent by numerous other arbitral tribunals, which have disallowed indirect claims based upon loss of anticipated profits, loss of credit, and similarly consequential elements of loss."

"Acts of Congress authorizing domestic commissions to distribute international awards have followed the general rule excluding anticipated profits and indirect losses from consideration as elements of damage.---Domestic commissions have reached the same conclusion without specific direction from Congress." 1/

After having considered all of the evidence submitted by claimant, the results of the independent investigation and the foregoing statement with respect to "good will", the Commission finds that the total value of the

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fixed assets of the subject firm at the time of the taking thereof was \$176,358.00, computed as follows:

Buildings and land	\$126,500.00
Machinery and equipment	49,858.00
Total	\$176,358.00

Thus, the value of the two-thirds (2/3) interest of ROBERT C. FOSTER in the assets of the firm was \$117,572.00.

Item II - Improved Real Property

The Commission finds that claimants were the owners of the subject improved real property, items II(a) through (c) as alleged and recited above; and that all of the said property was taken by the Government of Czechoslovakia on December 29, 1949 for the same reasons stated above under item I.

Claimants ROBERT C. FOSTER and MINNIE G. FOSTER assert that the total value of the property referred to in item II(a) was \$40,000.00. Very little evidence, other than a photograph of the said building, has been submitted in connection with such value. The Commission has also made an independent investigation of the value of this property as well as other properties of a similar type in Brno.

After having considered claimants' evidence, the photograph and the results of the independent investigation, the Commission finds that the value of item II(a) was \$20,000.00 at the time of the taking thereof. Thus the value of each one-half (1/2) interest owned by ROBERT C. FOSTER and MINNIE G. FOSTER was \$10,000.00.

Claimants MINNIE G. FOSTER and HEDY M. SHENK assert that the total values of the buildings referred to in items II(b) and (c) were \$45,000.00 and \$60,000.00, respectively. They have submitted a photograph of the building referred to in item II(b), statements describing the properties and affidavits concerning the values. Additionally, the record contains a document described by claimants as a "Memorandum on the Proceedings of the Estate" of Johan Bloch, their late father from whom their interests were acquired. This document discloses that the two (2) properties were appraised on January

15, 1940 by an official court appraiser and the values were declared to have been 471,300 crowns and 1,017,407.50 crowns, for items II(b) and (c), respectively. From the appraised value of 1,017,407.50 crowns for item II(c), there was deducted a mortgage due the Mährische Escompte Bank, Brno, leaving a net value of 665,466 crowns. The exchange rate prevailing at the time that the appraisals were made was \$0.025 per crown. Thus the total dollar values of items II(b) and (c) were declared to have been \$11,782.50 and \$16,636.65, respectively.

After having considered the entire record, the Commission finds that the appraised values declared during the estate proceedings represent the values of the houses at the time of taking and that the values of each of the three-eighths (3/8) interests in items II(b) and (c), the ownership interests of subject claimants, were \$4,418.43 and \$6,238.74, respectively, or \$10,657.17 for each owner of the said houses.

Item III - Blocked Deposits

The Commission finds that claimants owned deposits in the banks referred to in items III(a) through (c) in the total amounts as alleged, which were made on or before November 15, 1945 in so-called "old crown" currency. Bank deposits of this type were annulled by the Government of Czechoslovakia pursuant to Section 7 of Law 41/53 Sb., effective June 1, 1953.

The Commission has held that the right to payment of such deposits was property within the meaning of Section 401(1) of the Act; that the annulment of this right pursuant to the aforesaid Law 41/53 Sb. was a taking of property on the effective date of the decree; and that the dollar equivalent of such deposits should be ascertained by converting at the official exchange rate of \$1.00 per 50 crowns. Thus in the instant claims the Commission finds that the dollar equivalent of the deposits of ROBERT C. FOSTER, MINNIE G. FOSTER and HEDY M. SHENK were \$1,568.42, \$9,476.88 and \$18,589.07, respectively.

Item IV - Life Insurance Policy

The Commission finds that ROBERT C. FOSTER was the beneficiary of life insurance policy No. 1213914 issued by Victoria Zu Berlin; that said policy

had a cash value of 73,214 crowns which was placed into a blocked account pursuant to Czechoslovak Law 141/47 Sb.; that such account was annulled by the Government of Czechoslovakia on June 1, 1953 pursuant to Law 41/53 Sb.; that this annulment constituted a taking of property within the meaning of the Act; and that the dollar equivalent of the cash value of the policy placed in the blocked account at the time of the annulment was \$1,464.28.

Item V - Other Personal Property

A portion of the claim by MINNIE G. FOSTER is based upon the asserted taking by the Government of Czechoslovakia of a "collection of antiques" consisting of certain chasubles, dalmatics and other church vestments, work of the 18th Century mostly in French brocade, which were deposited for safekeeping shortly prior to the occupation of Czechoslovakia with the Museum of Arts and Crafts of the Chamber of Commerce and Trades in Prague. It appears that the Director of the Museum refused to release the collection to claimant's attorney and that such action which occurred on or about November 22, 1948 might be construed to be a taking of property on that date within the meaning of the Act.

Claimant asserts that the collection had an estimated value of \$10,000.00. No evidence has been submitted to corroborate this allegation.

Property of the type herein involved may be placed in the general category of "objects of art", which are not susceptible to accurate proof of value. The burden of proof with respect to this matter clearly is the responsibility of the claimant.

The Commission finds that claimant's uncorroborated "estimate" of the value of this "collection of antiques" is not sufficient to form the basis for a finding by the Commission of the value thereof and concludes, therefore, that this part of the subject claim must be and it hereby is denied.

Accordingly, the Commission concludes that claimants are entitled to awards pursuant to Title IV of the Act commensurate with their respective interests in the property hereinbefore found to have been taken by the

Government of Czechoslovakia, plus interest thereon at the rate of 6% per annum from the respective dates of taking to August 8, 1958, the effective date of Title IV of the Act.

RECAPITULATION

ROBERT C. FOSTER

<u>Property</u>	<u>Value of Claimant's Interest</u>	<u>Date of Taking</u>	<u>Interest</u>	<u>Total</u>
Firm	\$117,572.00	12/21/49	\$60,883.48	\$178,455.48
Real Property	10,000.00	12/21/49	5,178.30	15,178.30
Bank Accounts	1,568.42	6/1/53	488.05	2,056.47
Insurance Policy	1,464.28	6/1/53	455.64	1,919.92
Totals	\$130,604.70		\$67,005.47	\$197,610.17

MINNIE G. FOSTER

Real Property	\$ 20,657.17	12/21/49	\$10,696.91	\$ 31,354.08
Bank Accounts	9,476.88	6/1/53	2,948.92	12,425.80
Totals	\$ 30,134.05		\$13,645.83	\$ 43,779.88

HEDY M. SHENK

Real Property	\$ 10,657.17	12/21/49	\$ 5,518.61	\$ 16,175.78
Bank Accounts	18,589.07	6/1/53	5,784.36	24,373.43
Totals	\$ 29,246.24		\$11,302.36	\$ 40,549.21

A W A R D S

Pursuant to the provisions of Title IV of the International Claims Settlement Act of 1949, as amended, an award is hereby made to ROBERT C. FOSTER in the principal amount of One Hundred Thirty Thousand Six Hundred Four Dollars and Seventy Cents (\$130,604.70) plus interest thereon at the rate of 6% per annum from the respective dates of taking to August 8, 1958, the effective date of Title IV of the Act, in the amount of Sixty-seven Thousand Five Dollars and Forty-seven Cents (\$67,005.47), for a total award of One Hundred Ninety-seven Thousand Six Hundred Ten Dollars and Seventeen Cents (\$197,610.17);

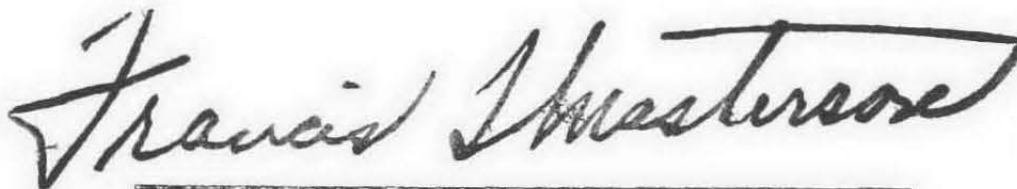
and an award is made to MINNIE G. FOSTER in the principal amount of Thirty Thousand One Hundred Thirty-four Dollars and Five Cents (\$30,134.05) plus interest thereon at the rate of 6% per annum from the respective dates of taking to August 8, 1958, the effective date of Title IV of the Act, in the amount of Thirteen Thousand Six Hundred Forty-five Dollars and Eighty-three Cents (\$13,645.83), for a total award of Forty-three Thousand Seven Hundred Seventy-nine Dollars and Eighty-eight Cents (\$43,779.88);

and an award is made to HEDY M. SHENK in the principal amount of Twenty-nine Thousand Two Hundred Forty-six Dollars and Twenty-four Cents (\$29,246.24) plus interest thereon at the rate of 6% per annum from the respective dates of taking to August 8, 1958, the effective date of Title IV of the Act, in the amount of Eleven Thousand Three Hundred Two Dollars and Thirty-six Cents (\$11,302.36), for a total award of Forty Thousand Five Hundred Forty-nine Dollars and Twenty-one Cents (\$40,549.21).

Dated at Washington, D. C.

MAY 23 1962

BY DIRECTION OF THE COMMISSION:



Francis T. Masterson
Clerk of the Commission

THIS DECISION WAS ENTERED AS THE COMMISSION'S
FINAL DECISION ON JUN 29 1962



Clerk of the Commission

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Counsel for Claimants:

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II. Improved Real Property

- (a) Building located at No. 146 V Hlinkach, Brno, Czechoslovakia, recorded in folio No. 803 for the cadastral area of Krizova, in which ROBERT C. FOSTER and MINNIE G. FOSTER assert one-half ($\frac{1}{2}$) interests each;
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Section 404 of the Act provides, inter alia, for the determination by the Commission in accordance with applicable substantive law, including international law, of the validity and amount of claims by nationals of the United States against the Government of Czechoslovakia for losses resulting from the nationalization or other taking on and after January 1, 1945, of property, including any rights or interests therein, owned at the time by nationals of the United States.

Item I - Business Enterprise

The Commission finds that ROBERT C. FOSTER owned a two-thirds (2/3) interest in the subject firm as alleged; that ownership of this firm was transferred under duress during the occupation of Czechoslovakia by the German forces; and that such property was never restored to claimant after the war, although he was entitled to restitution. Claimant states that he filed a petition for such restitution.

The Commission has consistently held that the failure by the Government of Czechoslovakia to restore property to American owners who were eligible

for restitution constituted a taking of property within the meaning of Section 404 of the Act; and that the date of such taking in such cases may be determined to have been December 21, 1949, the date when all restitution proceedings in Czechoslovakia were suspended with respect to American owned property pending a claims settlement agreement with the United States. Thus, inasmuch as there is no evidence to establish that claimant's rights with respect to the firm were restored, the Commission finds that his interest in the said firm was taken without compensation by the Government of Czechoslovakia on December 21, 1949.

Claimant ROBERT C. FOSTER asserts that the value of his two-thirds (2/3) interest in the firm at the time of the taking thereof was \$300,000.00. . . . Thus the total value is asserted to have been \$450,000.00. This valuation is based upon a 1939 financial statement which, according to claimant, shows a net worth of 9,810,000 crowns. Added to this amount is the sum of 3,500,000 crowns for "good will" (computed at three (3) times the net profit of 800,000 crowns per annum prior to the war). The record also contains a letter dated April 3, 1946 from one Dr. Frantisek Sobotka, claimant's attorney in Czechoslovakia, in which it is reported that the firm had a value of about 7,810,000 crowns in 1939 and that the firm was sold (under duress) in February 1939 for the sum of 7,925,000 crowns. These estimates of the value or net worth of the firm as of 1939 include fixed assets, as well as current assets, including cash balances, accounts receivable, etc. Claimant has not submitted any balance sheet, financial data, or other evidence from which conclusions may be made with respect to current assets, such as cash balances, inventories, etc., owned by the firm at the time of taking by the Government of Czechoslovakia.

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time of the taking by the Government of Czechoslovakia, the value of the subject firm must be based upon the value of the fixed assets as shown on the prewar balance sheet or other reliable evidence.

With respect to the contention that "good will" should be made a part of the award for the taking of the firm, it is noted that the Commission on numerous occasions has considered this matter and held that "good will", as a general rule, may not properly be regarded as a compensable item within the meaning of the Act. Loss of "good will" is an indirect damage which is not susceptible of accurate determination. In effect, it is a claim for loss of prospective earnings.

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After having considered all of the evidence submitted by claimant, the results of the independent investigation and the foregoing statement with respect to "good will", the Commission finds that the total value of the

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Thus, the value of the two-thirds (2/3) interest of ROBERT C. FOSTER in the assets of the firm was \$117,572.00.

Item II - Improved Real Property

The Commission finds that claimants were the owners of the subject improved real property, items II(a) through (c) as alleged and recited above; and that all of the said property was taken by the Government of Czechoslovakia on December 29, 1949 for the same reasons stated above under item I.

Claimants ROBERT C. FOSTER and MINNIE G. FOSTER assert that the total value of the property referred to in item II(a) was \$40,000.00. Very little evidence, other than a photograph of the said building, has been submitted in connection with such value. The Commission has also made an independent investigation of the value of this property as well as other properties of a similar type in Brno.

After having considered claimants' evidence, the photograph and the results of the independent investigation, the Commission finds that the value of item II(a) was \$20,000.00 at the time of the taking thereof. Thus the value of each one-half (1/2) interest owned by ROBERT C. FOSTER and MINNIE G. FOSTER was \$10,000.00.

Claimants MINNIE G. FOSTER and HEDY M. SHENK assert that the total values of the buildings referred to in items II(b) and (c) were \$45,000.00 and \$60,000.00, respectively. They have submitted a photograph of the building referred to in item II(b), statements describing the properties and affidavits concerning the values. Additionally, the record contains a document described by claimants as a "Memorandum on the Proceedings of the Estate" of Johan Bloch, their late father from whom their interests were acquired. This document discloses that the two (2) properties were appraised on January

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Item III - Blocked Deposits

The Commission finds that claimants owned deposits in the banks referred to in items III(a) through (c) in the total amounts as alleged, which were made on or before November 15, 1945 in so-called "old crown" currency. Bank deposits of this type were annulled by the Government of Czechoslovakia pursuant to Section 7 of Law 41/53 Sb., effective June 1, 1953.

The Commission has held that the right to payment of such deposits was property within the meaning of Section 401(1) of the Act; that the annulment of this right pursuant to the aforesaid Law 41/53 Sb. was a taking of property on the effective date of the decree; and that the dollar equivalent of such deposits should be ascertained by converting at the official exchange rate of \$1.00 per 50 crowns. Thus in the instant claims the Commission finds that the dollar equivalent of the deposits of ROBERT C. FOSTER, MINNIE G. FOSTER and HEDY M. SHENK were \$1,568.42, \$9,476.88 and \$18,589.07, respectively.

Item IV - Life Insurance Policy

The Commission finds that ROBERT C. FOSTER was the beneficiary of life insurance policy No. 1213914 issued by Victoria Zu Berlin; that said policy

had a cash value of 73,214 crowns which was placed into a blocked account pursuant to Czechoslovak Law 141/47 Sb.; that such account was annulled by the Government of Czechoslovakia on June 1, 1953 pursuant to Law 41/53 Sb.; that this annulment constituted a taking of property within the meaning of the Act; and that the dollar equivalent of the cash value of the policy placed in the blocked account at the time of the annulment was \$1,464.28.

Item V - Other Personal Property

A portion of the claim by MINNIE G. FOSTER is based upon the asserted taking by the Government of Czechoslovakia of a "collection of antiques" consisting of certain chasubles, dalmatics and other church vestments, work of the 18th Century mostly in French brocade, which were deposited for safekeeping shortly prior to the occupation of Czechoslovakia with the Museum of Arts and Crafts of the Chamber of Commerce and Trades in Prague. It appears that the Director of the Museum refused to release the collection to claimant's attorney and that such action which occurred on or about November 22, 1948 might be construed to be a taking of property on that date within the meaning of the Act.

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Accordingly, the Commission concludes that claimants are entitled to awards pursuant to Title IV of the Act commensurate with their respective interests in the property hereinbefore found to have been taken by the

Government of Czechoslovakia, plus interest thereon at the rate of 6% per annum from the respective dates of taking to August 8, 1958, the effective date of Title IV of the Act.

RECAPITULATION

ROBERT C. FOSTER

<u>Property</u>	<u>Value of Claimant's Interest</u>	<u>Date of Taking</u>	<u>Interest</u>	<u>Total</u>
Firm	\$117,572.00	12/21/49	\$60,883.48	\$178,455.48
Real Property	10,000.00	12/21/49	5,178.30	15,178.30
Bank Accounts	1,568.42	6/1/53	488.05	2,056.47
Insurance Policy	1,464.28	6/1/53	455.64	1,919.92
Totals	\$130,604.70		\$67,005.47	\$197,610.17

MINNIE G. FOSTER

Real Property	\$ 20,657.17	12/21/49	\$10,696.91	\$ 31,354.08
Bank Accounts	9,476.88	6/1/53	2,948.92	12,425.80
Totals	\$ 30,134.05		\$13,645.83	\$ 43,779.88

HEDY M. SHENK

Real Property	\$ 10,657.17	12/21/49	\$ 5,518.61	\$ 16,175.78
Bank Accounts	18,589.07	6/1/53	5,784.36	24,373.43
Totals	\$ 29,246.24		\$11,302.36	\$ 40,549.21

A W A R D S

Pursuant to the provisions of Title IV of the International Claims Settlement Act of 1949, as amended, an award is hereby made to ROBERT C. FOSTER in the principal amount of One Hundred Thirty Thousand Six Hundred Four Dollars and Seventy Cents (\$130,604.70) plus interest thereon at the rate of 6% per annum from the respective dates of taking to August 8, 1958, the effective date of Title IV of the Act, in the amount of Sixty-seven Thousand Five Dollars and Forty-seven Cents (\$67,005.47), for a total award of One Hundred Ninety-seven Thousand Six Hundred Ten Dollars and Seventeen Cents (\$197,610.17);

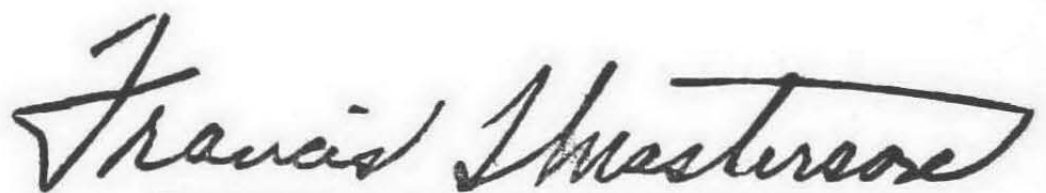
and an award is made to MINNIE G. FOSTER in the principal amount of Thirty Thousand One Hundred Thirty-four Dollars and Five Cents (\$30,134.05) plus interest thereon at the rate of 6% per annum from the respective dates of taking to August 8, 1958, the effective date of Title IV of the Act, in the amount of Thirteen Thousand Six Hundred Forty-five Dollars and Eighty-three Cents (\$13,645.83), for a total award of Forty-three Thousand Seven Hundred Seventy-nine Dollars and Eighty-eight Cents (\$43,779.88);

and an award is made to HEDY M. SHENK in the principal amount of Twenty-nine Thousand Two Hundred Forty-six Dollars and Twenty-four Cents (\$29,246.24) plus interest thereon at the rate of 6% per annum from the respective dates of taking to August 8, 1958, the effective date of Title IV of the Act, in the amount of Eleven Thousand Three Hundred Two Dollars and Thirty-six Cents (\$11,302.36), for a total award of Forty Thousand Five Hundred Forty-nine Dollars and Twenty-one Cents (\$40,549.21).

Dated at Washington, D. C.

MAY 23 1962

BY DIRECTION OF THE COMMISSION:

A handwritten signature in cursive script, reading "Francis T. Masterson". The signature is written in dark ink and is positioned above the printed name and title.

Francis T. Masterson
Clerk of the Commission

FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
WASHINGTON 25, D. C.

IN THE MATTER OF THE CLAIM OF

ROBERT C. FOSTER
MINNIE G. FOSTER
HEDY M. SHENK
c/o Coudert Brothers
488 Madison Avenue
New York 22, New York

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CZ-2,090
Claim No. CZ-2,091
Claim No. CZ-2,092

Decision No. CZ-3396

Counsel for Claimants:

Coudert Brothers
488 Madison Avenue
New York 22, New York

PROPOSED DECISION

ROBERT C. FOSTER, MINNIE G. FOSTER and HEDY M. SHENK, claimants herein, nationals of the United States since their naturalization on December 18, 1944 and November 23, 1945, seek compensation in the aggregate amount of \$459,853.65 pursuant to the provisions of Section 404, Title IV, of the International Claims Settlement Act of 1949, as amended. The claims are based on the asserted nationalization or other taking by the Government of Czechoslovakia of property in which they had various interests. The property involved is as follows:

I. Business Enterprise

Partnership known as "Brueder Loewenthal" (hereinafter called firm), a wholesale seed company located at 8/10 Nadacni, Brno, Czechoslovakia, in which ROBERT C. FOSTER asserts a two-thirds (2/3) interest;

II. Improved Real Property

- (a) Building located at No. 146 V Hlinkach, Brno, Czechoslovakia, recorded in folio No. 803 for the cadastral area of Krizova, in which ROBERT C. FOSTER and MINNIE G. FOSTER assert one-half (1/2) interests each;
- (b) Building located at No. 120 V Hlinkach, Brno, Czechoslovakia, recorded in folio No. 102 for the cadastral area of Krizova, in which MINNIE G. FOSTER and HEDY M. SHENK assert a three-eighths (3/8) interest each;

- (c) Building located at No. 76 Udolni, Brno, Czechoslovakia, recorded in folio No. 1859 for the cadastral area of Krizova, Czechoslovakia, in which MINNIE G. FOSTER and HEDY M. SHENK assert three-eighths (3/8) interests each;

III. Blocked Accounts in Czechoslovak Banks

- (a) Accounts totalling 78,420.80 crowns with the Kreditanstalt der Deutschen, Prague (61,620 crowns), Bohemian Union Bank, Prague (9,840 crowns), First Moravian Savings Bank, Brno (6,100 crowns), and Postal Savings Bank (860.80 crowns), all allegedly owned by ROBERT G. FOSTER;
- (b) Accounts totalling 473,843.80 crowns with the Prague Credit Bank, Brno (116,250 crowns), Zivnostenska Banka, Brno (35,040 crowns), and Bohemian Discount Bank, Brno (322,553.80 crowns), all assertedly owned by MINNIE G. FOSTER;
- (c) An account having a balance of 929,453.53 crowns with the Bohemian Discount Bank, Brno, assertedly owned by HEDY M. SHENK;

IV. Life Insurance Policy

Policy No. 1213914 issued by the Victoria Zu Berlin, having a cash value of 73,214 crowns, in favor of ROBERT G. FOSTER; and

V. Other Personal Property

Collection of antiques consisting of chasubles, dalmatics and other church vestments, assertedly owned by MINNIE G. FOSTER.

Section 404 of the Act provides, inter alia, for the determination by the Commission in accordance with applicable substantive law, including international law, of the validity and amount of claims by nationals of the United States against the Government of Czechoslovakia for losses resulting from the nationalization or other taking on and after January 1, 1945, of property, including any rights or interests therein, owned at the time by nationals of the United States.

Item I - Business Enterprise

The Commission finds that ROBERT G. FOSTER owned a two-thirds (2/3) interest in the subject firm as alleged; that ownership of this firm was transferred under duress during the occupation of Czechoslovakia by the German forces; and that such property was never restored to claimant after the war, although he was entitled to restitution. Claimant states that he filed a petition for such restitution.

The Commission has consistently held that the failure by the Government of Czechoslovakia to restore property to American owners who were eligible

for restitution constituted a taking of property within the meaning of Section 404 of the Act; and that the date of such taking in such cases may be determined to have been December 21, 1949, the date when all restitution proceedings in Czechoslovakia were suspended with respect to American owned property pending a claims settlement agreement with the United States. Thus, inasmuch as there is no evidence to establish that claimant's rights with respect to the firm were restored, the Commission finds that his interest in the said firm was taken without compensation by the Government of Czechoslovakia on December 21, 1949.

Claimant ROBERT C. FOSTER asserts that the value of his two-thirds (2/3) interest in the firm at the time of the taking thereof was \$300,000.00. Thus the total value is asserted to have been \$450,000.00. This valuation is based upon a 1939 financial statement which, according to claimant, shows a net worth of 9,810,000 crowns. Added to this amount is the sum of 3,500,000 crowns for "good will" (computed at three (3) times the net profit of 800,000 crowns per annum prior to the war). The record also contains a letter dated April 3, 1946 from one Dr. Frantisek Sobotka, claimant's attorney in Czechoslovakia, in which it is reported that the firm had a value of about 7,810,000 crowns in 1939 and that the firm was sold (under duress) in February 1939 for the sum of 7,925,000 crowns. These estimates of the value or net worth of the firm as of 1939 include fixed assets, as well as current assets, including cash balances, accounts receivable, etc. Claimant has not submitted any balance sheet, financial data, or other evidence from which conclusions may be made with respect to current assets, such as cash balances, inventories, etc., owned by the firm at the time of taking by the Government of Czechoslovakia.

The Commission has also made an independent investigation of the value of the fixed assets of this firm.

In the absence of a postwar balance sheet or other evidence of a persuasive nature to establish that the firm had assets other than fixed at the

time of the taking by the Government of Czechoslovakia, the value of the subject firm must be based upon the value of the fixed assets as shown on the prewar balance sheet or other reliable evidence.

With respect to the contention that "good will" should be made a part of the award for the taking of the firm, it is noted that the Commission on numerous occasions has considered this matter and held that "good will", as a general rule, may not properly be regarded as a compensable item within the meaning of the Act. Loss of "good will" is an indirect damage which is not susceptible of accurate determination. In effect, it is a claim for loss of prospective earnings.

Claims based upon loss of "good will" are, generally, not allowed under international law. Edwin M. Borchard discusses this matter in his recognized treatise entitled "Diplomatic Protection of Citizens Abroad". In Section 172 thereof, Mr. Borchard cites the historic "Alabama Arbitration", and goes on to say:

"This award (in the Alabama case), including the finding that 'prospective earnings cannot properly be made the subject of compensation, inasmuch as they depend in their nature upon future and uncertain contingencies,' has been regarded as a reliable precedent by numerous other arbitral tribunals, which have disallowed indirect claims based upon loss of anticipated profits, loss of credit, and similarly consequential elements of loss."

"Acts of Congress authorizing domestic commissions to distribute international awards have followed the general rule excluding anticipated profits and indirect losses from consideration as elements of damage.---Domestic commissions have reached the same conclusion without specific direction from Congress." 1/

After having considered all of the evidence submitted by claimant, the results of the independent investigation and the foregoing statement with respect to "good will", the Commission finds that the total value of the

1/ This Commission has so held "In the Matter of the Claim of UNITED SHOE MACHINERY CORPORATION", Claim No. SOV-40,353, Decision No. SOV-3122 ("Foreign Claims Settlement Commission of the United States, Tenth Semiannual Report to the Congress," at page 238).

fixed assets of the subject firm at the time of the taking thereof was \$176,358.00, computed as follows:

Buildings and land	\$126,500.00
Machinery and equipment	49,858.00
Total	\$176,358.00

Thus, the value of the two-thirds (2/3) interest of ROBERT C. FOSTER in the assets of the firm was \$117,572.00.

Item II - Improved Real Property

The Commission finds that claimants were the owners of the subject improved real property, items II(a) through (c) as alleged and recited above; and that all of the said property was taken by the Government of Czechoslovakia on December 29, 1949 for the same reasons stated above under item I.

Claimants ROBERT C. FOSTER and MINNIE G. FOSTER assert that the total value of the property referred to in item II(a) was \$40,000.00. Very little evidence, other than a photograph of the said building, has been submitted in connection with such value. The Commission has also made an independent investigation of the value of this property as well as other properties of a similar type in Brno.

After having considered claimants' evidence, the photograph and the results of the independent investigation, the Commission finds that the value of item II(a) was \$20,000.00 at the time of the taking thereof. Thus the value of each one-half (1/2) interest owned by ROBERT C. FOSTER and MINNIE G. FOSTER was \$10,000.00.

Claimants MINNIE G. FOSTER and HEDY M. SHENK assert that the total values of the buildings referred to in items II(b) and (c) were \$45,000.00 and \$60,000.00, respectively. They have submitted a photograph of the building referred to in item II(b), statements describing the properties and affidavits concerning the values. Additionally, the record contains a document described by claimants as a "Memorandum on the Proceedings of the Estate" of Johan Bloch, their late father from whom their interests were acquired. This document discloses that the two (2) properties were appraised on January

15, 1940 by an official court appraiser and the values were declared to have been 471,300 crowns and 1,017,407.50 crowns, for items II(b) and (c), respectively. From the appraised value of 1,017,407.50 crowns for item II(c), there was deducted a mortgage due the Mährische Escompte Bank, Brno, leaving a net value of 665,466 crowns. The exchange rate prevailing at the time that the appraisals were made was \$0.025 per crown. Thus the total dollar values of items II(b) and (c) were declared to have been \$11,782.50 and \$16,636.65, respectively.

After having considered the entire record, the Commission finds that the appraised values declared during the estate proceedings represent the values of the houses at the time of taking and that the values of each of the three-eighths (3/8) interests in items II(b) and (c), the ownership interests of subject claimants, were \$4,418.43 and \$6,238.74, respectively, or \$10,657.17 for each owner of the said houses.

Item III - Blocked Deposits

The Commission finds that claimants owned deposits in the banks referred to in items III(a) through (c) in the total amounts as alleged, which were made on or before November 15, 1945 in so-called "old crown" currency. Bank deposits of this type were annulled by the Government of Czechoslovakia pursuant to Section 7 of Law 41/53 Sb., effective June 1, 1953.

The Commission has held that the right to payment of such deposits was property within the meaning of Section 401(1) of the Act; that the annulment of this right pursuant to the aforesaid Law 41/53 Sb. was a taking of property on the effective date of the decree; and that the dollar equivalent of such deposits should be ascertained by converting at the official exchange rate of \$1.00 per 50 crowns. Thus in the instant claims the Commission finds that the dollar equivalent of the deposits of ROBERT C. FOSTER, MINNIE G. FOSTER and HEDY M. SHENK were \$1,568.42, \$9,476.88 and \$18,589.07, respectively.

Item IV - Life Insurance Policy

The Commission finds that ROBERT C. FOSTER was the beneficiary of life insurance policy No. 1213914 issued by Victoria Zu Berlin; that said policy

had a cash value of 73,214 crowns which was placed into a blocked account pursuant to Czechoslovak Law 141/47 Sb.; that such account was annulled by the Government of Czechoslovakia on June 1, 1953 pursuant to Law 41/53 Sb.; that this annulment constituted a taking of property within the meaning of the Act; and that the dollar equivalent of the cash value of the policy placed in the blocked account at the time of the annulment was \$1,464.28.

Item V - Other Personal Property

A portion of the claim by MINNIE G. FOSTER is based upon the asserted taking by the Government of Czechoslovakia of a "collection of antiques" consisting of certain chasuables, dalmatics and other church vestments, work of the 18th Century mostly in French brocade, which were deposited for safekeeping shortly prior to the occupation of Czechoslovakia with the Museum of Arts and Crafts of the Chamber of Commerce and Trades in Prague. It appears that the Director of the Museum refused to release the collection to claimant's attorney and that such action which occurred on or about November 22, 1948 might be construed to be a taking of property on that date within the meaning of the Act.

Claimant asserts that the collection had an estimated value of \$10,000.00. No evidence has been submitted to corroborate this allegation.

Property of the type herein involved may be placed in the general category of "objects of art", which are not susceptible to accurate proof of value. The burden of proof with respect to this matter clearly is the responsibility of the claimant.

The Commission finds that claimant's uncorroborated "estimate" of the value of this "collection of antiques" is not sufficient to form the basis for a finding by the Commission of the value thereof and concludes, therefore, that this part of the subject claim must be and it hereby is denied.

Accordingly, the Commission concludes that claimants are entitled to awards pursuant to Title IV of the Act commensurate with their respective interests in the property hereinbefore found to have been taken by the

Government of Czechoslovakia, plus interest thereon at the rate of 6% per annum from the respective dates of taking to August 8, 1958, the effective date of Title IV of the Act.

RECAPITULATION

ROBERT C. FOSTER

<u>Property</u>	<u>Value of Claimant's Interest</u>	<u>Date of Taking</u>	<u>Interest</u>	<u>Total</u>
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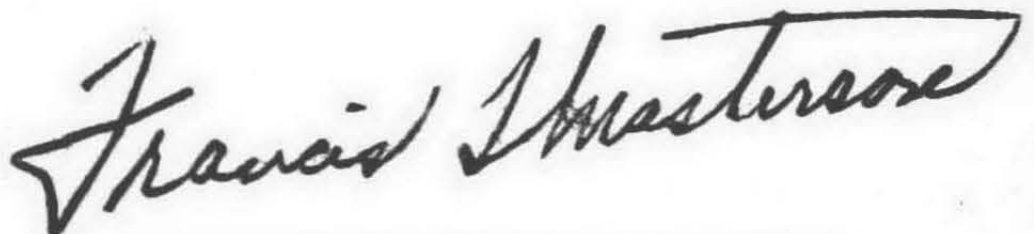
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and an award is made to HEDY M. SHENK in the principal amount of Twenty-nine Thousand Two Hundred Forty-six Dollars and Twenty-four Cents (\$29,246.24) plus interest thereon at the rate of 6% per annum from the respective dates of taking to August 8, 1958, the effective date of Title IV of the Act, in the amount of Eleven Thousand Three Hundred Two Dollars and Ninety-seven Cents (\$11,302.97), for a total award of Forty Thousand Five Hundred Forty-nine Dollars and Twenty-one Cents (\$40,549.21).

Dated at Washington, D. C.

MAY 23 1962

BY DIRECTION OF THE COMMISSION:

A handwritten signature in dark ink, reading "Francis T. Masterson". The signature is written in a cursive style with a large, sweeping initial "F".

Francis T. Masterson
Clerk of the Commission