

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

IN THE MATTER OF THE CLAIM OF
ERIC LENHART and FELIX A. LENHART
Individually, and as Administrators,
With Will annexed, Estate of
EMILIE LENHART, Deceased
99 Lupine Avenue
San Francisco 18, California

Claim No. CZ-2,122

Claim No. CZ-4,111

Decision No. CZ- 3479

Under the International Claims Settlement
Act of 1949, as amended

Counsel for Claimants:

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70 Pine Street
New York 5, New York

PROPOSED DECISION

These claims, in the aggregate amount of \$610,800.00, were filed by ERIC LENHART, a/k/a HANUS ERICH LENHART, and FELIX A. LENHART, individually and as Administrators, with will annexed, in the Estate of EMILIE LENHART, Deceased. The claimants herein became nationals of the United States upon their naturalization on January 17, 1944, and January 15, 1945, respectively, and the late EMILIE LENHART, nee LOBL, mother of claimants herein, became a national of the United States when naturalized on April 2, 1945. The claims are based upon the asserted nationalization or other taking of certain personal property, including stocks and bonds, and real property, including a residence and an office building at or near Prague, Czechoslovakia, as well as a business enterprise operated under the firm name of Efraim Lobl, Prague, Czechoslovakia.

The aforesaid claims were filed against the Government of Czechoslovakia pursuant to the provisions of Section 404, Title IV, of the International Claims Settlement Act of 1949, as amended. In brief, Section 404 of the Act provides for the determination by the Commission, in conformance with applicable substantive and international law, of the validity and the amount of those claims filed by nationals of the United

States for their losses arising on or subsequent to January 1, 1945, which resulted from nationalization or other taking by the Government of Czechoslovakia of property which was owned at the time of such loss by nationals of the United States.

I. Real Property

The record discloses that the late EMILIE LENHART owned a one-half interest, and claimants herein owned respective one-fourth interests, in house cp. 388, a six story office building, located at 1 Prikopy, near Wencel's Square, Prague, Czechoslovakia; and that claimants herein also owned respective one-half interests in house No. cp. 124/128, a residence, at Roztocky, near Prague, Czechoslovakia.

Czech Law 80/52 Sb., effective January 1, 1953, compelled owners of buildings with a gross annual rental income of 15,000 crowns or more to deposit the rent in special accounts. From such accounts, a real property tax (45 to 50% of the gross rent) and an inheritance tax, if any, were deducted. Additionally, at least 30% of the rent was then transferred into a building repair account. Thus, in Czechoslovakia, the owner of buildings having a gross rental income per unit of 15,000 crowns or more, was and is precluded from the free and unrestricted use of his realty or the fruits of such realty. To all intents and purposes, the owner of the property, despite the fact that he may have remained the record owner, in whole or in part, lost all control over the property and was little more than a collecting agent for the Czechoslovakian Government. In view of the foregoing, the Commission has considered that improved real property having a gross annual rental income of 15,000 crowns or more per year is considered as constructively taken by the Government of Czechoslovakia on January 1, 1953.

The Commission finds that the gross annual rental income value for each of the above described buildings was in excess of 15,000 crowns per annum, and concludes that the said improved real property was taken by the Government of Czechoslovakia without compensation on January 1, 1953.

The record establishes that EMILIE LENHART died testate on June 28, 1960, at Sonoma, California, and that claimants herein were named Administrators, with the will annexed, of her estate, according to an Order of the Superior Court of California in and for the County of Sonoma, California, dated November 16, 1960.

In arriving at the value of the aforesaid real property, the Commission considered the evidence submitted by the claimants, including pictures of the properties, a sketch of the residents, affidavits of claimants and a former Czechoslovakian resident, as well as 1938 rental data on the office building. Additionally, the Commission considered the results of its own independent investigation with respect to property values at or near Prague, Czechoslovakia. Based on the entire record herein, the Commission finds that at the time of the taking by the Czechoslovakian State the office building at 1 Prikopy Street, Prague, was worth \$85,000.00, and the residence at Roztocky was valued at \$18,000.00; and the Commission concludes that the claimants herein, in their representative and individual capacities, are entitled to awards under Section 404 of the Act for such losses in those amounts which are commensurate with their respective interests in the subject real property.

II. Personal Property

Claim was made by the claimants herein for the alleged nationalization or other taking of certain stock interests in Czechoslovakian corporations, and bonds stated in crowns, which claimants left on February 15, 1939, in the care of J. FORREST INGLE, then residing in Prague, Czechoslovakia. The record includes a receipt for certain securities which is signed by Mr. Ingle on February 15, 1939, stating that he accepted such items for safe-keeping at the risk of the owners.

The record also includes correspondence between Mr. Ingle and Czechoslovakian residents, including FRANK JIRSA and PREMYSL FRIC, as well as correspondence between Mr. Ingle and the Commission and between ERWIN P. WERNER, counsel for Mr. Ingle, and counsel for the

claimants. The allegations contained in the correspondence are to the general effect that the securities were being retained in Czechoslovakia at the direction of Mr. Ingle, and that such securities had been registered with the National Bank of Czechoslovakia.

The Commission finds that claimants herein have failed to submit primary proof of their ownership of the personalty in question, such as the stock certificates, registration certificates ("prihlaskas", with verification stamp), official correspondence, or similar documentary evidence. Further, such securities may have been lost, looted or sold in whole or in part during the course of World War II. It is clear that Section 404 of the Act provides only for claims resulting from the nationalization or other taking of property by the Czechoslovakian State which occurred on or after January 1, 1945, and not for wartime losses. The Commission finds that insufficient evidence has been submitted to form the basis for findings essential to an award under the Act. Claimants have failed to establish that specific securities belonging to them were nationalized or otherwise taken on or subsequent to January 1, 1945. Accordingly, these portions of the instant claims must be and are hereby denied.

III. Firm of Efraim Lobl

Claim has been asserted for loss of a wholesale and retail textile house which was owned and operated by claimants in the office building, described hereinabove, at 1 Prikopy, Prague, Czechoslovakia, d/b/a Efraim Lobl.

The record, including an excerpt from the Commercial Register of the Circuit Court of Prague, Volume XV, dated July 10, 1947, discloses that claimants herein owned the business in question; that it was seized by the Forces of Germany during World War II; and that after cessation of the war, in 1945, the textile enterprise was placed under national administration by the Government of Czechoslovakia. However, the record further discloses that pursuant to orders of the Ministry of Domestic Trade (IV/6-121/973/47, June 9, 1947), the national administration

was cancelled, and the business enterprise was turned over to claimants herein.

The record also establishes that while the firm was under the management of claimants' representatives, it was nationalized without compensation pursuant to Law 118/48 Sb., stated to be effective as of January 1, 1948. The question arises, however, as to whether the enterprise was in fact taken on January 1, 1948, as stated in Law 118/48 Sb., or on December 29, 1948, the date of the Declaration by the Ministry of Domestic Trade, recited in "Vyhlaska" No. 3520 (Official Gazette of Czechoslovakia), dated December 31, 1948.

The Commission has held that certain Czechoslovakian nationalization laws enacted in 1948 had retroactive effect as of January 1, 1948, because the laws expressly provided that ownership of the nationalized companies passed to the State on January 1, 1948. This holding was based, among other things, upon the premise that the enterprises in question were under the management and control of national administrators on January 1, 1948, and the change over, after such nationalization, was the affirmation of an already accomplished fact.

As stated above, the firm of Efraim Lobl was under national administration until 1947, but on June 9, 1947, national administration was revoked and the business property was returned to the owners. In addition, the record herein discloses that the firm was then actually operated by the owners thereof, through their representatives, until on or about December 29, 1948, and not by a national administrator. Thus, the evidence of record clearly shows that on January 1, 1948, the firm was being operated by claimants, and no effectual change in possession was accomplished by governmental authorities prior to December 28, 1948.

The Commission, therefore, concludes that the retroactive date of January 1, 1948, is not applicable in this instance, and that the

firm of Efraim Lobl was, in fact, nationalized on December 29, 1948. 1/

The Commission finds that at the time of nationalization claimants herein owned respective one-half interests in the aforesaid textile firm; and that the total value of the business enterprise at time of such nationalization was \$23,892.03. The Commission concludes that claimants are entitled to awards for loss of their respective one-half interests, plus interest thereon, as more particularly set forth hereinafter.

In arriving at the value of the business the Commission considered the record as submitted by claimants herein, particularly the financial statement and balance sheet of the firm, dated November 17, 1948, as prepared for the firm by North Bohemian Fiduciary Association. The balance sheet indicates that the net worth of the business enterprise as of November 17, 1948, was 1,194,601.40 crowns, which, if converted at the official rate of currency exchange of 50 crowns to \$1.00, would be \$23,892.03, which is hereby found to be the value of the firm at time of taking.

IV. RECAPITULATION

The awards, with interest thereon at 6% per annum, from the respective dates of taking to August 8, 1958, the effective date of Title IV of the Act are shown in the following recapitulation with respect to the interests of each claimant herein, ERIC and FELIX A. LENHART, in their individual capacities.

1/. A similar finding was made by the Commission in connection with Czechoslovakian Law No. 114/48 Sb. See the Claim of Frank P. Kraus and Alice Stransky, Claim No. CZ-2,890, Decision No. CZ-3,409. See also the Claim of John H. Lusdyk, CZ-3,219, Decision No. CZ-2,517 for another similar finding with respect to Czech Law No. 119/48 Sb.

R E C A P I T U L A T I O N

<u>Item</u>	<u>Ownership interest of each claimant</u>	<u>Value (Principal)</u>	<u>Interest from taking</u>	<u>TOTAL</u>
House (Roztocky-Prague)	1/2	\$ 9,000.00	\$ 3,025.53	\$12,025.53
Office Bldg., Prague	1/4	21,250.00	7,143.61	28,393.61
Firm of Efraim Lobl	1/2	<u>11,946.02</u>	<u>6,886.88</u>	<u>18,832.90</u>
		\$42,196.02	\$17,056.02	\$59,252.04

The claimants in their representative capacities as Administrators with will annexed of the Estate of EMILIE LENHART, are entitled to awards in the principal amount of \$42,500.00, with interest thereon of \$14,287.23, for a total award in the amount of \$56,787.23.

The Commission deems it unnecessary to make determinations with respect to other elements of the portions of the claims asserted herein which were denied.

A W A R D S

An award is hereby made to ERIC LENHART in the principal amount of Forty-Two Thousand One Hundred Ninety-Six Dollars and Two Cents (\$42,196.02), plus interest thereon at the rate of 6% per annum from the respective dates of taking to August 8, 1958, the effective date of Section 404 of the Act, in the amount of Seventeen Thousand Fifty-Six Dollars and Two Cents (\$17,056.02), for a total award in the amount of Fifty-Nine Thousand Two Hundred Fifty-Two Dollars and Four Cents (\$59,252.04);

and an award is hereby made to FELIX A. LENHART in the principal amount of Forty-Two Thousand One Hundred Ninety-Six Dollars and Two Cents (\$42,196.02), plus interest thereon at the rate of 6% per annum from the respective dates of taking to August 8, 1958, the effective date of Section 404 of the Act, in the amount of Seventeen Thousand Fifty-Six Dollars and Two Cents (\$17,056.02), for a total award in the amount of Fifty-Nine Thousand Two Hundred Fifty-Two Dollars and Four Cents (\$59,252.04);