

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

In the Matter of the Claim of

FRANK G. WITTENBERG, Executor of the
ESTATE of RICHARD SCHWEIGER, Deceased
25 West 43rd Street
New York 36, New York

MARIANNE SCHREIBMANN
110 East 84th Street
New York 22, New York

ROBERT SCHWEIGER
433 Jackson Street
Denver, Colorado

Under the International Claims Settlement Act
of 1949, As Amended

Counsel for Claimants:

KATZ, WITTENBERG & KATZ
25 West 43rd Street
New York 36, New York

Claim No. CZ-3,287
Decision No. CZ-3033

ORDER AND FINAL DECISION

The Commission issued its Proposed Decision on January 31, 1962 denying this claim for the reason that claimants failed to establish whether, and to what extent, they acquired title to the property upon which the claim was based, and that such property was nationalized or otherwise taken by the Government of Czechoslovakia.

No objections or request for a hearing having been filed, the Proposed Decision was entered as the Final Decision on the claim by the Commission on March 8, 1962.

Subsequently, in the Matter of the Claim of Dr. Ernest Schweiger, et al., No. CZ-3,040, the Commission issued its Proposed Decision No. CZ-3202, dated March 28, 1962, denying that claim which was based on the nationalization or other taking of claimants' interests in the same property upon which the instant claim is predicated. The claimants in Claim No. CZ-3,040 filed objections, submitted new evidence,

and requested a hearing which was scheduled and held on May 24, 1962.

Upon consideration of the entire record in that claim, the Commission issued a Final Decision No. CZ-3202 which ordered that the Proposed Decision of March 28, 1962 be reversed, and that claimants therein be granted certain awards.

In view of the fact that the subject matter of the instant claim is, in all relevant particulars, identical with that in the Claim of Dr. Ernest Schweiger et al., it is hereby

ORDERED that the Commission's Final Decision in the instant claim, dated March 8, 1962, which affirmed its Proposed Decision dated January 31, 1962 be set aside; and it is further

ORDERED that the Proposed Decision herein, dated January 31, 1962, be reversed and that, in lieu thereof, a Final Decision issue as follows:

This is a claim in the amount of \$50,000 against the Government of Czechoslovakia under Section 404 of Title IV of the International Claims Settlement Act of 1949, as amended, by FRANK G. WITTENBERG, Executor of the ESTATE of RICHARD SCHWEIGER, Deceased, and by the decedent's children, MARIANNE SCHREIBMANN and ROBERT SCHWEIGER, nationals of the United States since their naturalization on June 10, 1946 and November 9, 1944, respectively.

The claim is based upon the nationalization or other taking of certain assets in Czechoslovakia of "Alois Schweiger's Foundation for His Fellow Countrymen and Relatives" (herein referred to as the "Foundation").

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.

Section 405 of the Act provides as follows:

A claim under Section 404 of this title shall not be allowed unless the property upon which the claim is based was owned by a national of the United States on the date of nationalization or other taking thereof and unless the claim has been held by a national of the United States continuously thereafter until the date of filing with the Commission.

The record shows that Alois Schweiger died unmarried on January 2, 1928 in Vienna, Austria. He had five brothers and sisters of whom Max Schweiger, now deceased, was one.

Max Schweiger had two children, one of whom was Richard Schweiger, who died on February 15, 1944, leaving surviving two children: MARIANNE SCHREIBMANN and ROBERT SCHWEIGER, co-claimants herein. Under the local (Austrian) law of the domicile of Alois Schweiger, Max Schweiger's intestate share would have been one-fifth in the property of Alois Schweiger had the latter died intestate. RICHARD SCHWEIGER's interest would have been one-tenth, and the interest of his two children, co-claimants herein, would have been one-twentieth (1/20) each.

The record reveals that Alois Schweiger did not die intestate but left a last will and testament in which he provided for the creation of the abovementioned "Foundation". The "Foundation" came into being in 1932, its Board of Trustees being charged with the administration thereof and with the duty of paying, from time to time, the income to the beneficiaries. The property of the "Foundation" consisted of real estate in Uhersky Brod, Czechoslovakia, of cash and securities.

The purpose of the "Foundation" was set forth in the last will of Alois Schweiger. According to provisions contained therein, fifty percent of the income of the "Foundation" was to be distributed to needy relatives, forty percent to inhabitants of Uhersky Brod, and ten percent to other persons in need, regardless of domicile or relationship. The final Charter of the "Foundation", as approved by the appropriate Czechoslovak authorities, provided that 30.5% of the yearly income be set

aside for the relatives and 69.5% for indigents of Uhersky Brod; and that from this latter amount, 25% should go to the Municipality of Brod, 5% to the Jewish Congregation of Uhersky Brod, to be divided as it determined, and the remainder to the "Foundation's" Board of Trustees, to be given to indigent inhabitants of Uhersky Brod.

During its occupation of Czechoslovakia in World War II, Germany confiscated the assets of the "Foundation". The major part of the securities appropriated were sold by the German authorities in the open market. After the war, only the following two assets remained: an apartment house, No. 1293 in Uhersky Brod, consisting of four stories with a prewar value of Kcs. 500,000;^{1/} and Kc. 75,366.50 in old Czech currency deposited with the Municipal Savings Bank of Uhersky Brod.^{2/}

In 1945 the real property was placed under national administration by the Czechoslovakian Government, the property thereafter being administered by local authorities in Uhersky Brod. Pursuant to the provisions of Decree No. 108/1945, effective October 30, 1945, all property of the German Government was confiscated in favor of the State of Czechoslovakia.

Accordingly, the Commission finds that the aforementioned two items of property were taken by the Government of Czechoslovakia on October 30, 1945. At the time of this taking, it is clear that the "Foundation", as such, did not exist except as a legal fiction or as an empty shell. It is equally clear that the charitable purposes, for which the "Foundation" was established, had been terminated and were, therefore, impossible of

^{1/} Statement of Frank Wittenberg of February 27, 1961 in the instant claim.

^{2/} See letter of Dr. Alfred Beck of Cardiff, England, dated October 3, 1961, another descendant of Alois Schweiger's parents, filed in Claim No. CZ-3,040.

accomplishment. The Commission is, therefore, confronted with the question as to the proper person or persons entitled to claim compensation for the confiscated property, nominally held by the "Foundation".

The "Foundation's" Charter, dated May 22, 1933, does not help in this respect. There is no provision in that charter concerning the termination of the "Foundation" or the disposition of the assets should the "Foundation" be unable to perform or complete its responsibilities.

An analysis of the civil law in effect in Bohemia-Moravia at the time of confiscation (the Austrian General Civil Code of 1811, as amended) reveals that the Civil Code did not contain express provisions with respect to property of foundations which, after their creation, ceased to exist or failed in scope. Professor Albert Ehrenzweig, in his Treatise on Austrian Civil Law,^{3/} states that no general rules can be established concerning the property of an extinguished legal entity. However, he emphasizes that such property does not escheat to the State. To the contrary, according to Section 710 of the Code, the authorities handling such cases will attempt to preserve the property for the same purpose as before, or, if this should be impossible, for a similar purpose.

Section 710 must be read in connection with Section 709 of the Code. An English translation of these two sections reads, as follows:

"Section 709: If the testator left a legacy to someone under a contingency, such contingency shall be deemed to be in the nature of a condition subsequent, and the non-fulfillment of the contingency shall defeat the legacy (Section 696)."

"Section 710: If the contingency cannot be completely fulfilled, an opportunity shall be given to have it fulfilled as nearly as possible. If this cannot be done and the will of the testator does not disclose an intent to the contrary, the legatee still may keep the legacy. But if the legatee made impossible the fulfillment of the contingency by his own act, such legacy shall lapse."

^{3/} I, Ehrenzweig, "System des Oesterreichischen Allgemeinen Privatrechts", I, 199, 200 (Vienna, 1925)

On the basis of all the evidence and data before it and applying the provisions of the Austrian Civil Code, the Commission finds as follows: that Alois Schweiger, in creating the "Foundation", had, as his primary concern, the support of his relatives and of indigent persons in his native city, Uhersky Brod; that in furtherance of this purpose, he placed the "Foundation" under the permanent control of senior relatives, descendants of his parents; that such relatives, pursuant to the provisions of the charter of the "Foundation", were always to retain a majority voice in its administration as well as the positions of Chairman and Vice Chairman of its Board; that at the time of the confiscation of the apartment house No. 1293 and the bank deposit in the Municipal Savings Bank of Uhersky Brod by the Government of Czechoslovakia, the "Foundation" existed only as a legal fiction, being nothing more than an empty shell, since the purposes for which it had been established had become impossible of attainment; that, consequently, the trust for which it had been created failed; that, since this trust had, in fact, failed, the title to the property in question, in the name of the original trustees, reverted to the heirs of the settlor; and that such heirs were the owners of the property at the time of taking by the Government of Czechoslovakia.

This view is fortified by the interpretation of the law on trusts in the United States. The Commission is aware that the "Foundation" in Czechoslovakia was not a trust within the meaning of American law, and that the provisions of the law on trusts in this country are not applicable to the above "Foundation". However, it is significant that the general rule in American law also determines that in the case of a failure of a trust, the property reverts to the settlor.^{4/}

^{4/} Schwarz v. United States, 191 F.2d 618 (4th Cir. 1951); also Rosenthal v. Miller, 148 Md. 226, 129 A. 28 wherein the court stated: "Where there are certain trusts, created either by will or deed, which fail in whole or in part, or which are of such an indefinite nature, either as to the purposes or beneficiaries, that courts of equity will not carry them into effect, or which are illegal in their nature and character, a resulting trust will arise to the party creating the trust, or to his heirs and legal representatives, as the case may be."

In view of the foregoing, the Commission concludes that those next of kin of Alois Schweiger who were nationals of the United States at all pertinent dates are entitled to compensation under Section 404 of the Act for the loss sustained as a result of the confiscation by Czechoslovakia on October 30, 1945, of the remaining property of the "Foundation" created by Alois Schweiger's last will.

Accordingly, claimant ROBERT SCHWEIGER is entitled to compensation for his one-twentieth (1/20) interest in the "Foundation's" property as follows:

Property	Value in Kc.	Appl. Exch. Rate	Value in \$	1/20th Int.	6% Int. from Date of Taking to 8/8/58	Total Amount
House						
No. 1293	500,000.00	0.0342	\$ 17,100.00	\$ 855.00	\$ 655.21	\$ 1,510.21
Balance of Deposits	75,366.50	0.02	1,507.33	75.37	57.76	133.13
Total Share			\$ 18,607.33	\$ 930.37	\$ 712.97	\$ 1,643.34

The claim of Richard Schweiger, deceased, descended upon his death on February 15, 1944 to his children, MARIANNE SCHREIBMANN and ROBERT SCHWEIGER. Since these two children appear before the Commission herein as representatives of their deceased father, Richard Schweiger, the claim asserted by FRANK WITTENBERG, Executor of the ESTATE of RICHARD SCHWEIGER, cannot be entertained in these proceedings and it is hereby denied.

The claim of MARIANNE SCHREIBMANN who was not a national of the United States on the date of the confiscation of the "Foundation's" property (October 30, 1945) is not compensable under Section 405 of the Act, and it is hereby also denied.

A W A R D

An award is hereby made to ROBERT SCHWEIGER in the amount of Nine Hundred Thirty Dollars and Thirty-seven Cents (\$930.37) plus

interest at the rate of 6% per annum from October 30, 1945, the date of confiscation, to August 8, 1958, the effective date of Title IV of the Act, in the sum of Seven Hundred Twelve Dollars and Ninety-seven Cents (\$712.97) for a total amount of One Thousand Six Hundred Forty-three Dollars and Thirty-four Cents (\$1,643.34).

It is further

ORDERED that the award granted hereinabove be certified to the Secretary of the Treasury.

Dated at Washington, D. C.

SEP 14 1962

Edward D. Re
Theodore Jaffe

Lavern R. Dilweg

EDWARD D. RE, CHAIRMAN
THEODORE JAFFE, COMMISSIONER
LAVERN R. DILWEG, COMMISSIONER

Claimants stated that prior to World War II under the Last Will and Testament of Alois Schweiger, a resident of Vienna, Austria, a Foundation was created under the name "Alois Schweiger's Foundation for His Fellow Countrymen and Relatives"; that such Foundation was established in Czechoslovakia with the approval of the appropriate authorities of that country; and that prior to World War II such Foundation owned real property in Uhersky Brod, Czechoslovakia, and other assets, consisting of securities and bank accounts. There is evidence of record to indicate that during World War II assets of the said Foundation were seized by the occupation authorities then in control of Bohemia-Moravia, and that after World War II the real property was under the administration of the Government of Czechoslovakia.

However, no persuasive evidence has been submitted which would show whether and to what extent this Foundation was the owner of the real property involved in this claim at the time of taking. Nor is the claim specific as to what comprised the assets of the Foundation, or the location, description, and value of the real property involved herein.

Moreover, claimants have failed to establish that they acquired title to the assets of the Foundation prior to its asserted taking, since no evidence has been submitted to show that under the Last Will and Testament of Alois Schweiger or under operation of Czechoslovak law, the assets of the Foundation had to be distributed to the claimants, if the Foundation could no longer serve the purpose for which it was established.

Section 531.6 (d) of the Commission's regulations (45 CFR) provides that

The claimant shall be the moving party and shall have the burden of proof on all issues involved in the determination of his claim.

Claimants have not established that they owned property in Czechoslovakia which was nationalized or otherwise taken by the Government of Czechoslovakia on or after January 1, 1945.

In view of the foregoing, the claim is denied.

The Commission finds it unnecessary to make determinations with respect to other elements of the claim.

Dated at Washington, D. C.

BY DIRECTION OF THE COMMISSION:

JAN 31 1962

Francis T. Masterson

Francis T. Masterson
Clerk of the Commission

ZRR

ACJ

THIS DECISION WAS ENTERED AS THE COMMISSION'S
FINAL DECISION ON MAR 8 1962

Francis T. Masterson

Clerk of the Commission