

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

IN THE MATTER OF THE CLAIM OF

ANGELA FROEHLICH LIPSON
1215 West Moore Street
Flint 4, Michigan

Claim No. CZ-3,386

Decision No. CZ-1383-A

Under the International Claims Settlement
Act of 1949, as amended

Counsel for Claimant:

ALAN S. ADELSON, Esquire
900 First National Building
Detroit 26, Michigan

FINAL DECISION

This is a claim in the amount of \$200,000 against the Government of Czechoslovakia under Section 404 of Title IV of the International Claims Settlement Act of 1949, as amended, by ANGELA FROEHLICH LIPSON, a national of the United States since October 18, 1955, the date of her naturalization. The claim is based upon the nationalization or other taking by Czechoslovakia of an apartment house, also used as an office building, located at 27 Dlouha Street, in the center of the business district in the city of Prague.

The record before the Commission discloses that apartment buildings, of the type upon which this claim is based, fell within the purview of Law No. 80/52 Sb., enacted by the Government of Czechoslovakia, effective January 1, 1953, which compelled owners of leased buildings with a gross rental income of 15,000 Czech crowns or more (presently 3,000 Czech crowns or more) to deposit the rent in special accounts with government agencies.

The record in this claim further reveals, that from January 1, 1959, the management of the building was taken over by the City Housing Administration for the First District of Prague and that

surplus income from the property, if any, was to be used for repairs and maintenance of all buildings in the same District.

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 that:

"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 Commission found that the property, upon which the claim was based, was taken by the Government of Czechoslovakia on January 1, 1953, which was prior to the date on which claimant became a national of the United States. The Commission further found that the action taken by the City Housing Administration on January 1, 1959, was nothing more than a mere formalization of the taking of claimant's property which occurred on January 1, 1953.

Accordingly, since the property upon which the claim was based was not owned by a national of the United States on the date of taking thereof, the claim was denied in a Proposed Decision issued by the Commission on September 7, 1960 and affirmed in its Final Decision dated March 20, 1961.

Thereafter, claimant's attorney petitioned to set aside the Final Decision on the ground that on the date of taking, claimant's husband, a native born citizen of the United States, owned an interest in the property in question by reason of his marriage to the claimant in France in 1951. The petition also requested that the Commission reconsider its Final Decision and its finding that the date of taking of the property was January 1, 1953.

Good cause being shown, claimant's petition was granted, the Commission's Final Decision dated March 20, 1961 set aside and a hearing scheduled at which claimant's attorney urged (1) that under French civil law, claimant's husband had acquired an interest in the property by virtue of the marriage in 1951, and (2) that the property in question had not been taken on January 1, 1953, since the claimant had enjoyed possession of the property and its fruits and income until October 23, 1956, the date the house was placed under National administration.

Under general principles of the conflict of laws, the provisions of the French civil code are not applicable to the facts in this claim. Since the real property upon which the claim is based is situated in Czechoslovakia, the law of the lex loci rei sitae determines the ownership of the property.

Only a few of the precedents that support this view will be cited:

"Land is held and alienated according to the law of the place where it is situated, and cannot be held or appropriated otherwise than according to the lex loci rei sitae."

U. S. v. Crosby, 11 U.S. 115, 7 Cranch 115, 3 L. Ed. 287 (1812).

"Title to real estate is governed by the laws of the place where it is situated."

Johnson v. McIntosh, 21 U.S. 543; 5 L. Ed. 681 (1823).

Montgomery v. Samory, 99 U. S. 482; 25 L. Ed. 375 (1878).

"In matters pertaining to real property the law of the situs governs."

O'Donnell v. U.S., 91 F. 2d 14, certiorari granted 58 S. Ct. 146, reversed 58 S. Ct. 708, 303 U.S. 501, 82 L. Ed. 980 (1937).

"It is recognized throughout the world that all incidents of the ownership of real property are governed by the law of the place where the property is situated."

United States v. Turkey, Nielsen's Report (1937) pp. 674-675, in American Board of Commissioners for Foreign Missions v. Turkey.

"The effect of a contract or title to land depends on the law of the land's situs." Charles A. G. Forbes as Trustee v. Mexico, Decision No. 29-B, American Mexican Claims Commission under the Act of Congress of December 18, 1942, pp. 198-201 (1948).

"Ownership of real property is determined by the law of the situs of the property." Manfred Sternberg v. Yugoslavia, Foreign Claims Settlement Commission's Decision No. 1527, Claim No. Y-1072 (1953).

The Commission's records indicate that the law of the situs of the property, namely of Czechoslovakia, does not accord to a husband an interest in his wife's real property which she acquired prior to her marriage unless the spouses concluded a special agreement to that effect. 1/

No evidence has been submitted to show that claimant and her husband signed an agreement for the establishment of community property. The Commission, therefore, concludes that claimant's husband had no interest in the realty involved in this claim and that no claim accrued to him upon the taking of the property by Czechoslovakia.

The Commission has previously held that under the provisions of Law No. 80/52 Sb., effective January 1, 1953, the owner of improved real property having a gross rental income of 15,000 Czech crowns or more per year was precluded from the free and unrestricted use of his realty and its fruits and, therefore, the property has been considered as taken by the Government of Czechoslovakia on January 1, 1953. The record before the Commission, however, clearly establishes that this claimant was in possession and control of the property and enjoyed the fruits and income of the property upon which this claim is based until 1956, when the property was then placed under national administration. The question, therefore, presented is whether the presumption of a taking on January 1, 1953, the effective date of Law No. 80/52 Sb., shall be applicable or whether the date of taking established by the facts in the claim, in this instance 1956, shall control.

1/ Section 22 and 29 of the Family Law of December 7, 1949, No. 265 Coll., effective January 1, 1950.

The Commission reaffirms its previous determination that real property having a gross annual rental income of 15,000 Czech crowns or more was, by reason of Law No. 80/52 Sb., presumptively taken on January 1, 1953; however, where the evidence of record indicates that claimant was in possession of the property subsequent to the date of January 1, 1953 enjoying the fruits of the property after that date, and that he was deprived of the possession of the property by subsequent action of the Government of Czechoslovakia, the date of such subsequent action shall be considered the date of taking of said property.

The claimant herein was in possession and control of the premises prior to January 1, 1953 and remained in such possession and control until October 23, 1956, when the property was placed under national administration.

Postwar Czechoslovakia legislation with respect to national administration of property commenced with Decree No. 5/45 Sb. of May 19, 1945 which provided for the placement under national administration of property considered essential to the national economy, and of property owned by absent persons and persons considered unreliable (not loyal) to Czechoslovakia. Often, such property had been alienated under duress by the occupying forces during World War II. A careful study of Decree No. 5/45 Sb. discloses that placement of property under national administration was originally considered by the Government of Czechoslovakia as a "temporary measure", to be terminated after the Czechoslovakian Government has ascertained whether such property should be returned "to the original owners, or confiscated, nationalized, or otherwise disposed of."

Pursuant to Law 128/46 Sb. of May 16, 1946, provision was made for the return of alienated property to "reliable" owners upon applications for restitution. All such proceedings were suspended on December 21, 1949, in anticipation of a claims settlement agreement

with the United States. The Commission has consistently held that the date of taking in such cases is the date of denial of such restitution, or December 21, 1949 in the event a petition for restitution was neither filed nor acted upon.

However, the action taken by the Government of Czechoslovakia, with respect to the property which is the subject matter of this claim is to be distinguished from similar action taken immediately following World War II. The record contains no evidence to show that this property was alienated during the war. The national administration in this case does not appear to have been a temporary measure as was the case during the period of reconstruction following World War II.

Evidence having been submitted to substantiate the fact that the property in question was placed under national administration as of October 23, 1956, the Commission holds that this action was merely another means of effecting a taking of property and, finds, therefore, that said property was "taken" within the meaning of Section 404 of the Act on October 23, 1956 when national administration was imposed, without the payment of compensation.

The Commission concludes that the house, after deduction of the recorded mortgages, had a value of \$20,000 at the time of taking and that the claimant is entitled to compensation under Section 404 of the Act in the said amount, plus interest as specified below.

In arriving at the value, the Commission considered the evidence submitted by the claimant, namely, the description, location and type of the property, the use made of the property and photographs thereof. In addition to the foregoing, the Commission gave consideration to the gross annual rental of the property and to the fact that in the year 1942 the Zemska Banka pro Cechy (Regional Bank for Bohemia), a government-owned bank in Prague, extended a loan of 400,000 crowns to the owner of the house, secured by a first mortgage.

Accordingly, for the reasons stated, it is ORDERED that the Proposed Decision of September 7, 1960 be modified by this revised Final Decision; and it is further

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

A W A R D

Pursuant to the provisions of Title IV of the International
Claims Settlement Act of 1949, as amended, an award is hereby
made to ANGELA FROEHLICH LIPSON in the amount of Twenty Thousand
Dollars (\$20,000.00) plus interest thereon at the rate of 6% per
annum from October 23, 1956 to August 8, 1958, the effective
date of Title IV of the Act, in the amount of Two Thousand One
Hundred Fifty Dollars (\$2,150.00) for a total award in the amount
of Twenty-two Thousand One Hundred Fifty Dollars (\$22,150.00).

Dated at Washington, D. C.

MAR 28 1962

Edward J. Of
Theodore Joffe
Lavern R. Dilweg

COMMISSIONERS

THIS DECISION WAS ENTERED AS THE COMMISSION'S
FINAL DECISION ON MAR 28 1962

Francis Masterson

Clerk of the Commission