

FOREIGN CLAIMS SETTLEMENT COMMISSION

OF THE UNITED STATES

WASHINGTON 25, D. C.

IN THE MATTER OF THE CLAIM OF

IRMA STRAUSS

**69 Etruria Street
Seattle 9, Washington**

GERTRUDE T. KAHN

**2342 Minor Avenue No.
Seattle 2, Washington**

MARGARET REICHL

**2400 Roanoke Street
Seattle 2, Washington**

Under the International Claims Settlement
Act of 1949, as amended

Claim No.

CZ-3,303

CZ-3,383

Decision No.

CZ-3,724

CZ-2731

CP O 917845

FINAL DECISION

The claims, made by IRMA STRAUSS, GERTRUDE T. KAHN and MARGARET REICHL, are based upon their respective one-fourth interest in the improved real property, known as 275 Woerthersee Street in Karlovy Vary, Czechoslovakia and for rental income from said property.

The real property 275 Woerthersee Street, was forcibly sold in 1940 but after January 1, 1945 the sale was annulled as illegal. Thereafter proceedings were instituted by claimants and their brother, Charles K. Fink, the owner of the remaining one-fourth interest in the property, for the restitution of the property. On November 14, 1950 the Court of Karlovy Vary, Czechoslovakia, postponed such proceedings for an indefinite period of time.

The Commission's Proposed Decision, dated October 11, 1961, held that the postponement of the restitution proceedings for an indefinite period of time is equivalent to a suspension thereof, which in turn amounts to a "taking" of claimants' property. In view of the fact that the court order suspending the proceedings for an indefinite period of time was effective on November 14, 1950, a date when claimants were not nationals of the United States, the claims were denied pursuant to Section 405, Title IV, of the Act which provides, inter alia,

that no claim under Title IV of the Act shall be allowed unless the property upon which the claim is based was owned by a national of the United States on the date of taking thereof. Portion of the claims, based upon rental income, was denied for the additional reason that claimants failed to establish their claim for rental income.

Claimants filed objections to the Proposed Decision and urged that postponement is not 'suspension' and for that reason it is in error to find that the subject property was taken on November 14, 1950, the effective date of the suspension order. In December, 1949,

Claimants further state that it is impossible to obtain evidence to establish the date when the Court of Karlovy Vary resumed proceedings and made a final determination of the restitution claim. Claimants also claim the benefit of doubt and argue that they are entitled to a favorable decision because the doubt was intentionally created by the Government of Czechoslovakia. The remaining portion of the Proposed Decision was not objected to.

In recognition of the illegal measures used during the period of September 29, 1939 and May, 1945 in Czechoslovakia in the acquisition of property, the United States and other members of the United Nations issued a declaration on January 5, 1943, to which both the United States and the Republic of Czechoslovakia were parties, in which they reserved the right "to declare invalid any transfer of, or dealing with, property, rights and interests" in territories under enemy occupation.^{1/}

In compliance with this declaration, on May 19, 1945 Decree of the President of the Republic of Czechoslovakia No. 5/45 sb. was issued declaring alienations made under duress of the occupation or as a result of national, racial or political prosecutions as voidable (neplatna)^{2/}

1/ Declaration regarding Forced Transfers of Property in Enemy-controlled Territory, Department of State, Bulletin, Vol. VIII, No. 185 (January 9, 1943), pp. 21-22.

2/ Neplatna also means invalid. In the present context, however, the correct translation is voidable because contracts made under duress are not null and void but voidable only.

but by doing so the property lost under duress of persecution was returned to the previous owner by operation of the law. To the content of Czechoslovakia on November 16, 1936, the date when the Court of Karlovy Vary postponed the restitution proceedings for an indefinite period of time, is affirmed. The Government of Czechoslovakia provided in the same decree that property which is abandoned, owned, possessed or managed by unreliable persons or which is needed for the national economy, shall be placed under national administration.

For the reasons stated above, it is affirmed that the Proposed Decision be affirmed as the Commission's. The actual return of the property in question was provided for by Law 128/46 Sb. of May 16, 1946. Pursuant to this law some property was returned and some claims for restitution were denied. In December, 1949, based at Washington, D. C., however, the Government of Czechoslovakia, in anticipation of a claims settlement agreement with the United States, ordered the suspension of the restitution proceedings not already concluded. It appears that no favorable actions on pending restitution claims were taken by the Government of Czechoslovakia thereafter. No wonder that claimants are unable to obtain evidence to establish the date when the Court of Karlovy Vary resumed the proceedings and made a final determination of the restitution claim.

The Commission is of the opinion that ordering the suspension of the pending restitution claims, coupled with the fact that no favorable action was taken on such claims thereafter, shows that the Government of Czechoslovakia had determined not to return and reconstitute the property in question to the rightful owners but to take it for herself. Consequently, suspension of the restitution proceedings amounts to a taking of claimant's property within the meaning of Section 404 of the Act.

It is true that the definition of the verbs to postpone and to suspend are different. In the case at bar, however, the legal result of the Czechoslovak court order postponing the restitution proceedings for an indefinite period of time was in essence the same as a suspension of the proceedings.

Accordingly, the holding in the Proposed Decision that the property known as 275 Woertherssee Street was taken by the Govern-

ment of Czechoslovakia on November 14, 1950, the date when the Court of Karlovy Vary postponed the restitution proceedings for an indefinite period of time, is affirmed.

For the reasons stated above, it is

ORDERED that the Proposed Decision be affirmed as the Commission's Final Decision and the claim be denied.

Dated at Washington, D. C.

JAN 24 1962

Edward J. O'Connell
Theodore Joffe
Lavern R. Dilweg

COMMISSIONERS

- 3 -

**FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES**

Section 403 of Washington 25, D. C.

"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

In the Matter of the Claim of national or other taking thereof

and unless the claim has been held by a national of

IRMA STRAUSS of the United States continuously thereafter until the

69 Etruria Street the Commission."

Seattle 9, Washington

Claim No. CZ-3,303

It appears that the subject property was forcibly sold by the

GERTRUDE T. KAHN

German **2342 Minor Avenue No.** or their puppets during World War II, and

Seattle 2, Washington

Claim No. CZ-3,363

that after the war such sale was legally cancelled as unlawful and the

MARGARET REICHL

proper **2400 Roanoke Street** for and control of **Claim No. CZ-3,724**

Seattle 2, Washington

agency. It further appears that proceedings were thereafter instituted

Under the International Claims Settlement Act : Decision No. CZ- 2701

in of 1949, as amended Vary, Czechoslovakia; by Czech attorneys in

behalf of claimants and their brother, Charles K. Fink, the owner of

the remaining one-fourth in **PROPOSED DECISION** for the restitution of

said property to them, and that on November 14, 1950, such proceedings

These are claims against the Government of Czechoslovakia by were postponed (suspended). No evidence has been submitted to es-

IRMA STRAUSS, GERTRUDE T. KAHN, and MARGARET REICHL,

establish that the restitution proceedings were ever resumed.

nationals of the United States of America since their naturalization on

The Commission has ruled that in cases where restitution proceedings

July 16, 1951, November 17, 1950 and September 17, 1951, respectively.

were suspended, the property, subject of such proceedings, shall be con-

The claims are based upon the claimants' respective one-fourth interest

sidered taken by the Government of Czechoslovakia as of the date of the

in the improved real property, known as 275 Woerthersee Street, in

suspension order. In the instant claims, the Commission finds that the

Karlovy Vary, Czechoslovakia, and for rental income from said property.

suspension order was effective on November 14, 1950. Since claimants

Section 404 of the Act provides, inter alia, for the determination

herein were non-nationals of the United States on that date, their claims

by the Commission in accordance with applicable substantive law, of the

must be and hereby are denied. (Section 403 of the Act, supra)

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

H. Keschendorf, Claim No. CZ-3,696.

rights or interests therein, owned at the time by nationals of the United

States.

Section 405 of the Act provides that:

Claimants have not submitted evidence to establish their claims

"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."

OCT 1 1950
It appears that the subject property was forcibly sold by the German occupying authorities or their puppets during World War II, and that after the war such sale was legally cancelled as unlawful and the property taken into possession and control of a Czech governmental agency. It further appears that proceedings were thereafter instituted in the Court at Karlowy Vary, Czechoslovakia, by Czech attorneys in behalf of claimants and their brother, Charles K. Fink, the owner of the remaining one-fourth interest in the property, for the restitution of said property to them, and that on November 14, 1950, such proceedings were postponed (suspended). ^{1/} No evidence has been submitted to establish that the restitution proceedings were ever resumed.

The Commission has ruled that in cases where restitution proceedings were suspended, the property, subject of such proceedings, shall be considered taken by the Government of Czechoslovakia as of the date of the suspension order. In the instant claims, the Commission finds that the suspension order was effective on November 14, 1950. Since claimants herein were non-nationals of the United States on that date, their claims must be and hereby are denied. (Section 405 of the Act, supra)

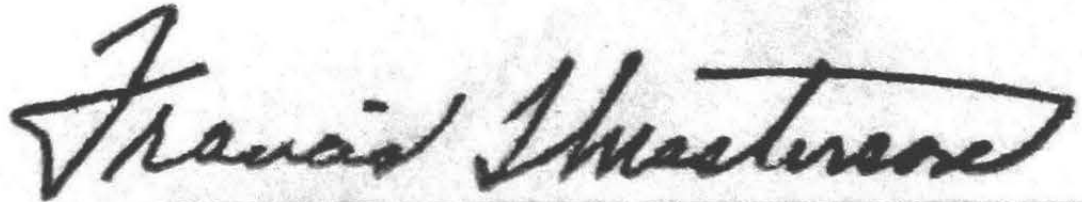
1/ See letter dated Prague, December 2, 1950, addressed to Karl Fink by H. Zeckendorf, Claim No. CZ-3,096.

Claimants have not submitted evidence to establish their claims for rental income. Accordingly, this portion of their claims is likewise denied.

Dated at Washington, D. C.

OCT 11 1961

BY DIRECTION OF THE COMMISSION:



Francis T. Masterson
Clerk of the Commission