

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

IN THE MATTER OF THE CLAIM OF

GEORGE A. SCHMIEDIGEN
1317 F Street, N. W.
Washington, D. C.

Claim No. RUM-30,601

Decision No. RUM-811

Against the Government of Rumania
Under the International Claims Settlement
Act of 1949, as amended

GPO 942329

Counsel for Claimant:

Samuel Herman, Esquire
1317 F Street, N. W.
Washington, D. C.

and

Leo Howard Kerns, Esquire
1632 K Street, N. W.
Washington 6, D. C.

SUPPLEMENTAL FINAL DECISION AND ORDER

The Final Decision on this claim was issued by the Commission on July 20, 1959. Thereafter, claimant filed a petition to reopen and reconsider the matter and moved that AUGUST F. SCHMIEDIGEN, also known as FERDINAND AUGUST SCHMIEDIGEN, be added as a party claimant. AUGUST F. SCHMIEDIGEN also filed a petition requesting that he be added as a party claimant and that he be granted an award herein. In his petition and subsequent argument, claimant states in substance as follows:

That evidence of record is more than ample for the Commission to find that AUGUST F. SCHMIEDIGEN was the owner of properties on which this claim is based when he left Rumania in 1938; that AUGUST F. SCHMIEDIGEN'S agents had no power to sell real estate and that the real property in question was nationalized by the Government of Rumania.

Claimant further states that the denial of the claim was based on a "procedural technicality"; that the claim was timely filed on September 28, 1956; that the notice of October 1, 1956, of intention

to amend the claim was "approved as timely filed"; that the amendment was filed on October 3, 1958; that the Final Decision finds the amended claim to be a new claim filed after October 1, 1956, and that the amendment to the claim is not a new claim, although "the original claim has no further effect".

In support of his position that the "amendment" relates back to the original claim, claimant cites a number of authorities. He also relies upon the Proposed Decision stating that certain matters were "confirmed" therein, and "conceded" thereafter by the staff. He further states that the Proposed Decision did not "challenge the validity of the assignment of February 10, 1956", and that thus at the time of the hearing herein there remained but two issues.

The Commission finds, however, that the claimant's position in the matter of issues remaining at the time of his hearing is not tenable, as all hearings before the Commission are de novo, with the result that all elements having a bearing upon the validity of a claim are in issue at the time of the hearing therein. Moreover, in claims programs such as the one under which the instant claim is filed where, for the most part, the records of the claims filed thereunder consist of ex parte submissions by claimants, the Commission quite obviously cannot accept without question and at face value, all submissions. Quite to the contrary, the Commission has a duty to ascertain the facts as best it can and, in the course thereof, must perforce determine the significance of and weight to be given to the evidence, using as a tool all of the background information which it has accumulated in the course of its administration of the program.

With respect to claimant's citations of legal authorities to the effect that where an amendment which sets up no new cause but amplifies the allegations in the original cause, said original pleading having given fair notice of the general fact situation out of which the claim

arises, such an amendment will relate back, it is to be noted that in the instant case, claimant's notice of October 1, 1956, of an intention to amend his claim referred merely to certain other property interests but did not set out the general fact situation or give any clue as to the property involved. Thus, it was not until October 3, 1958, more than two years subsequent to the deadline date for filing claims against Rumania that the Commission was apprised as to the "res" of the amendment. The Commission holds that to allow amendment of claims as a matter of right at any time and under all circumstances would seriously impair its ability to investigate claims and would render an injustice to those claimants having interests in the limited Rumanian Claims Fund here involved. Additionally, the claim of Cisatlantic Corporation and Steven Ausnit against the Government of Yugoslavia, Docket No. 1113, Decision No. 951, cited by claimant does not stand as authority for a claimant's right to amend his claim and is distinguishable from the instant claim since the amendment in the Cisatlantic claim involved only the question of whether the beneficial owner of 50% of the stock of a corporation should be substituted for the corporation as party claimant.

With regard to claimant's conclusion that there "seems to be" an assumption in the Final Decision that "Industria Pietrei" was the "owner" of the real estate upon which it was located, the Commission can only reiterate that no instance has come to its attention where the Government of Rumania, at the time of nationalization of an industrial company, failed to nationalize the real property and the factory equipment thereof simultaneously, and this is so both where the said realty and equipment was owned by the company and where it was leased by the company.

Claimant also contends that either he or FERDINAND AUGUST SCHMIEDIGEN has a "right to make claim". By letter dated

September 27, 1956, there was filed with this Commission on behalf of FERDINAND AUGUST SCHMIEDIGEN, as he has stated, a notice of his intention to file claim against the Government of Rumania. This letter was considered by the Commission as an informal claim subject to its formalization prior to January 2, 1957. FERDINAND AUGUST SCHMIEDIGEN, after notice, never completed the formal filing of the claim, however, and his informal filing lapsed, as did a number of other claims informally filed with the Commission.

All of the foregoing is academic, however, in view of the fact that the Commission hereby affirms its prior findings that the record fails to establish that FERDINAND AUGUST SCHMIEDIGEN owned the property which is the subject of the claim when it was nationalized or that any property owned by him was nationalized subsequent to the date on which he acquired U. S. nationality.

After careful review of the entire record herein in the light of the above contentions, the Commission determines that no basis exists for altering the conclusions it previously reached. Accordingly, the Final Decision of July 20, 1959, is not to be disturbed, and it is

ORDERED that AUGUST F. SCHMIEDIGEN'S petition to be added as a party claimant herein be and it hereby is denied; and it is further

ORDERED that the Final Decision herein be and it hereby is affirmed.

Dated at Washington, D. C.

Whitney Hillland
Pearl Pace

Paul L. King

COMMISSIONERS

WB
PC
PK

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FINAL DECISION

The Commission issued its Proposed Decision on this claim on May 4, 1959, a copy of which was duly served upon the claimant.

Full consideration having been given to the objections of claimant and to the evidence and arguments presented at the hearing held on July 8, 1959, and general notice of Proposed Decision having been given by posting for thirty days, the Commission is constrained to hold that the instant claim must be denied.

The record shows that claim in the amount of \$55,000 was filed on September 28, 1956, by GEORGE A. SCHMIEDIGEN who became a national of the United States by naturalization on June 6, 1949, and that it was based on a 50 per cent interest in each of two properties stated to have been the subject of duly registered contingency fee retainer agreements.

No evidence of ownership by claimant of the aforementioned properties or taking thereof by the Government of Rumania was submitted, and the portion of the claim based on these properties was

withdrawn on July 8, 1959.

It further appears that on October 1, 1956, claimant filed a notice indicating that he intended to "amend" his claim to include certain other property interests. On October 3, 1958, an "amendment" of the claim covering properties valued by the claimant at \$1,224,200 was received by the Commission. These properties are alleged to have been owned by claimant's father, FERDINAND AUGUST SCHMIEDIGEN, who became a naturalized citizen of the United States on November 29, 1949, and who, claimant states, is a permanent resident of Mexico. It is further alleged that the properties in question were taken by the Government of Rumania in 1951, and that FERDINAND AUGUST SCHMIEDIGEN assigned to GEORGE A. SCHMIEDIGEN, by document dated February 10, 1956, all his claims arising out of the alleged taking of his property by the Government of Rumania.

With respect to the factory building and equipment located at 86 Mihail Ghica Boulevard, Bucharest, the Commission finds that the record does not establish that FERDINAND AUGUST SCHMIEDIGEN held any ownership interest therein, or that the said building and equipment were nationalized subsequent to the dates when FERDINAND AUGUST SCHMIEDIGEN acquired citizenship of the United States. Moreover, it appears, as stated by claimant, that the company, INDUSTRIA PIETREI, SA, operated at the said address, was most probably nationalized in 1948, which is prior to FERDINAND AUGUST SCHMIEDIGEN'S acquisition of United States citizenship. When the Commission views this last fact in the light of the circumstance that no instance has come to its attention where the Government of Rumania, at the time of nationalization of an industrial company, failed to nationalize the real property and the factory equipment thereof simultaneously, it must conclude that claimant has not met his burden of establishing that this portion of the instant claim was owned by a national of the United States at the time it arose.

With respect to the property at 9 Str Berzei, Bucharest, the two apartments at 7 Dr Marcovici Str, Bucharest, and a house at 86 Mihail Ghica Boulevard, Bucharest, the Commission finds that the record does not establish that FERDINAND AUGUST SCHMIEDIGEN had any ownership interest therein, or if he did, that these properties were taken from him by the Government of Rumania subsequent to the date on which he acquired citizenship of the United States, and prior to August 9, 1955.

Additionally, a ground for denial of the instant claim lies in the fact that the material submitted by claimant on October 3, 1958, and labeled by him as an "amendment" to the claim, actually constitutes a new claim submitted two years and two days after the deadline date for filing claims under Section 303 of the International Claims Settlement Act of 1949, as amended.

The Commission is impelled to reach the aforementioned conclusion as to the nature of the document filed on October 3, 1958 by the fact that the portions of this claim which were included in claimant's original filing were subsequently withdrawn by him, thus leaving as the sole items of claim those which were first injected into the claim on October 3, 1958. The latter items are those which are stated to have been assigned to claimant by the document dated February 10, 1956. While the Commission has consistently followed a liberal policy in accepting as an informal claim any communication or letter from a claimant or his duly authorized representative which sets forth sufficient facts to apprise the Commission of an intent to file claim, and while it has also followed a liberal policy in granting claimants time to document their claims, nevertheless such policy is not to be used as a lever to enable claimants to file claims subsequent to the deadline date for filing claims which the Commission has no authority to extend because of statutory limitations thereon.

Accordingly the Commission finds that this claim must be and
it hereby is denied.

Dated at Washington, D. C.

Whitney Hilliland

Pearl Pace

Robert L. Kunzig

WB
OSB.

JUL 20 1959

COMMISSIONERS