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

In the Matter of the Claim of BELLA GABAY 120 South Eighth Street Brooklyn, New York Under the Yugoslav Claims Agreement of 1948 and the International Claims Settlement Act of 1949	Docket No. Y-1065 Decision No. 1491

Counsel for Claimant:

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PROPOSED DECISION OF THE COMMISSION

This is a claim for $57,000, plus interest, by Bella Gabay, a citizen of the United States since her naturalization in the United States on June 11, 1936 and is for the taking by the Government of Yugoslavia of two buildings located in Belgrade and a brick house in Nis, Yugoslavia, which properties claimant alleges she acquired by inheritance, as more fully set forth below.

An extract from the Land Register of the Second District in Belgrade (Docket No. 808, Cadastral District of Belgrade 4) dated December 22, 1952 shows that Etelka Mandil, wife of Mark, nee Bem, and Aranka Mandil, wife of Leon, nee Bem, of Belgrade, were the record owners of 1 parcel of land, with a total area of 203.10 square meters, with a structure on it, and an extract from the Land Register of the County Court of Nis, dated August 22, 1949 (Docket No. 2385, Cadastral District of Nis), shows that Isak Mandil, son of Hajim of Nis, was the record owner of 1 parcel of land with a total area of 521 square meters, with a structure on

the parcel, when they were taken by the Government of Yugoslavia.

Claimant has submitted extracts from the death records of the People's Committee of the Precinct of Neimar in the District of Belgrade which establishes the deaths of Marko Mandil and Leon Mandil, husband of Etelka and Aranka respectively, on November 30, 1941, Aranka and Etelka Mandil on December 31, 1941, and Mika and Soka, children of Marko and Etelka Mandil, on May 31, 1942.

Claimant alleges she inherited a one-half interest in the property in Belgrade (recorded under Docket No. 808) from Etelka Mandil and Aranka Mandil, deceased wives of her deceased brothers Marko Mandil and Leon Mandil; that her nephew Mosha Mandil inherited the other one-half interest in the property; and that Mosha Mandil in 1953 renounced his share of the inheritance in her favor. In support of such ownership, she submitted a certified copy of a Decree issued by the Third District Court for the City of Belgrade, dated October 16, 1953, No. O-426/53, which decree declares Bella Gabay, claimant herein, sole heir by intestacy of the deceased Etelka Mandil and Aranka Mandil. The Decree also recites that Mosa Mandil in 1953 rejected the inheritance of this estate and Bella Gabay accepted the inheritance of the entire estate on the basis of intestacy.

Claimant also alleges she inherited a one-half interest in the property in Nis (recorded under Docket No. 2385, Cadastral District of Nis) upon the death of her brother Isak Mandil, and that Mosa Mandil son of David Mandil, a deceased brother of Isak, inherited the remaining one-half interest in this property. In support of such inheritance, claimant has submitted a Decree issued by the District Court of Nis, dated April 10, 1948, No. 0581/47, which Decree names claimant and Mosa Mandil as heirs of the deceased Isak Mandil.

Section 394 of the Civil Code of Serbia of 1844, which controls the inheritance law in Serbia, provides: "After the death of a Serbian citizen his property, rights and obligations, with the exception of the strictly personal ones, pass by inheritance to the persons designated by law, if the deceased did not dispose of them otherwise by agreement or by a testament."

The law does not state when the property passes to the heirs. Judicial practice in Serbia was inclined to hold that the right of inheritance passes at the time of death, while the title to the property passes at the time when the inheritance is accepted by the heir in administration proceedings before the court. It should be noted that no distinction is made in the Code nor in the court decisions between personal and real property.

The Supreme Court of Serbia, in the decision of its General Panel of January 20, 1871, No. 4000, stated: "According to Section 394 of the Civil Code, the heir obtains the right to the property after the death of the decedent, but not the property in itself; this property is not yet owned by the heir at the time of the decedent's death." (See The Civil Code of the Kingdom of Serbia, ed. 1922, Belgrade, page 231)

The same Supreme Court of Serbia, in the decision of its General Panel of July 4, 1896, No. 1781 stated: "Although after the death of a Serbian citizen all his rights and obligations, with the exception of strictly personal ones, pass as an inheritance to his nearest relatives, this does not imply that an heir must accept the inheritance unconditionally, but he is free to accept or not to accept it. Therefore, the declaration of acceptance of the inheritance is material, as well the manner in which the inheritance is accepted: whether with or without the benefit of

inventory. While it is permissible that an acceptance of inheritance be implied, it still must consist of some conclusive act or behavior, which shows the clear intent of the heir to accept the inherited property. This act must be affirmative, as for instance the taking of possession or the disposition of the property; but an implied, partly disclosed will cannot be deduced from an inactive attitude, or from the possessiveness of the heir. In the absence of such acts or of the express acceptance, it shall be considered that the heir has renounced his inheritance which then goes to the nearest relatives in accordance with the statute of distribution." (Idem, page 189).

Thus it appears that both heirs, claimant and Mosha Mandil, acquired a one-half interest in the property upon the death of the decedents but did not acquire title to the property itself. The rejection of the inheritance by Mosha Mandil did not create a right to the entire property in the claimant "ab initio"; this rejection was in the nature of an assignment of the claim to Mosha Mandil's nearest relatives and it had no retroactive effect.

On the basis of the foregoing, the Commission is satisfied that Bella Gabay, claimant herein, had a one-half interest in the real property formerly owned by her sisters-in-law Etelka Mandil and Aranka Mandil (Docket No. 808) and a one-half interest in the real property formerly owned by her brother Isak Mandil (Docket No. 2385) when it was taken by the Government of Yugoslavia on August 17, 1947, pursuant to the Abandoned Property Law of August 2, 1946 (Official Gazette No. 64, August 9, 1946 and No. 105, December 27, 1946). The other one-half interest in the property recorded under these two dockets was owned by Mosha Mandil at the time of such taking. As it appears that he was not a national of the United States at the time of taking, any claim by him would not have been settled by the Agreement of July 19, 1948 between the Governments of the United States

and Yugoslavia.

Claimant has filed no corroborating evidence of value. An investigator for this Commission appraised the land and the structure recorded under Docket No. 808 at 982,989 dinars; the land recorded under Docket No. 2385 at 52,100 dinars, and the structure on that land at 265,860 dinars. The appraisal was made on the basis of 1938 values.

The Commission is of the opinion, on the basis of all evidence and data before it, that the fair and reasonable value of the real property taken by the Government of Yugoslavia recorded under Docket No. 808 was 982,989 dinars and that of the real property recorded under Docket No. 2385 was 317,960 dinars as of the year 1938,* and that claimant's interest therein was 491,495 dinars and 158,980 dinars, respectively.

According to the above-mentioned extracts, the property recorded under Docket No. 808 was encumbered by a mortgage dated August 2, 1938, in favor of the State Bank of the Chamber of Commerce fund in Belgrade, in the face amount of 150,000 dinars, plus interest at 8% for three years. No evidence has been filed indicating that the mortgage debt has been satisfied. In the circumstances, we are of the opinion that a deduction for the mortgage must be made. In arriving at this decision we have not failed to consider that the claimant may be obligated to satisfy the debt for which the mortgage was given as security. However, the likelihood that the claimant herein, or that any claimant whose Yugoslav property was mortgaged, will be called upon to do so seems sufficiently remote as to be practically non-existent. A suit on the mortgage may be barred by time limitations; the mortgage, if a Yugoslav financial institution, has either been nationalized or liquidated; the mortgagor and the mortgagee may

not know the whereabouts of each other; the mortgagor and mortgagee may reside in different countries with the result that suit or payment may be impracticable; any recovery by the mortgagee from the mortgagor may be limited to 10% of the debt because of the pre-war debt devaluation law of October 27, 1945 (Law on Settlement of Pre-War Obligations, as amended, Official Gazette No. 88, November 13, 1945; Official Gazette No. 66, August 16, 1946) or, finally, the mortgagee, if a citizen of the United States, may look to this Commission for compensation for the loss of his security.

The Commission, in its determination of claims against Yugoslavia, is directed by the International Claims Settlement Act to apply (1) the terms of the Agreement with that country and (2) the applicable principles of international law, justice and equity, in that order. The Agreement contains no specific provision regarding mortgages. We have found no applicable decisions of arbitral tribunals, international or domestic, having responsiblity for the determination of claims which were satisfied by the payment of a lump-sum. (Because of the comparatively recent acceptance of lump-sums in settlement of large blocks of international claims, it is doubted that there are reported decisions directly in point.)

It is our view that justice and equity to all claimants require a deduction for mortgages under the circumstances involved in the claims before us, whether the property was taken before or after the above-mentioned Yugoslav debt settlement law became effective. The lump-sum of $17,000,000 has been provided for the satisfaction of all claims. As the claims filed aggregate many times that amount, the fund may be insufficient to pay all claims allowed in full. In these circumstances we believe we are obligated to limit our awards to actual proven losses and not to make awards for contingent losses which may never materialize. We also believe that when

many claimants have to share in a fund which may prove inadequate, one claimant should not receive a windfall or be enriched at the expense of other claimants. That would be a case if a claimant who was awarded the full value of his property made no payment on the mortgage, or satisfied the mortgage debt by payment of only 10% of the mortgage pursuant to the Yugoslavia debt settlement law. Accordingly, we hold that, in the absence of evidence that a mortgage of record has been satisfied, a deduction for the mortgage must be made in order to reflect the actual amount of claimant's loss. Since claimant succeeded to a one-half interest in this property, we find that the proper amount to deduct for the mortgage, including interest is 93,000 dinars and that amount will, therefore, be deducted from the value of the property recorded under Docket No. 808.

Under the laws of Yugoslavia, persons who succeed to real property by inheritance, such as claimants herein, are obligated to to pay inheritance taxes on the value of the property (See Law Concerning Direct Taxation, effective January 1, 1946, Article 24, Official Gazette No. 854, November 20, 1945). The Peoples Court is prohibited from transferring title to the heirs unless and until such inheritance taxes are paid (Revised Law Concerning Direct Taxation of August 14, 1946, Article 64, Official Gazette No. 67, August 20, 1946). Thus, the value under local law of an heir's interest in real property must be regarded as being the value of the property less the inheritance taxes charged against it and which must be paid before the transfer of title can be accomplished. As awards may be made only for the value of the property taken or, as is the case here, for the value of an interest in property, a deduction must be made for inheritance taxes.

Under the applicable tax law (Inheritance and Gift Tax Law of March 18, 1947, Official Gazette No. 25, March 26, 1947) the tax on property inherited from a sister-in-law valued at 398,495 dinars is

38% or 151,428 dinars and the tax on property inherited from a brother valued at 158,980 dinars is 18% or 28,616 dinars. The Commission finds that the net value of the property of claimant which was taken by the Government of Yugoslavia was 377,431 dinars (557,475 dinars less inheritance tax on 180,044 dinars) which converted into United States dollars at the rate of 44 dinars to $1, the rate adopted by the Commission in making awards based upon valuations as of the year 1938, equals $8,577.98.*

AWARD

On the above evidence and grounds, this claim is allowed and an award is hereby made to Bella Gabay, claimant, in the amount of $8,577.98 with interest thereon at 6% per annum from August 17, 1947, the date of taking, to August 21, 1948, the date of payment by the Government of Yugoslavia in the amount of $520.31.*

Dated at Washington, D. C.

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* For the Commission's reasons for use of 1938 valuations, use of exchange rate of 44 to 1, and the allowance of interest, see attached copy of its decision in the claim of Joseph Senser.

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FINAL DECISION

Thirty days having elapsed since the claimant(s) herein and the Government of Yugoslavia were notified of the Commission's Proposed Decision on the above claim, and the claimant(s) having filed no objections thereto, and a brief filed by the Government of Yugoslavia having received due consideration, such Proposed Decision is hereby adopted as the Commission's Final Decision on the claim.

Done at Washington, D. C.

DEC 29 1954