

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

In the Matter of the Claim of

GEORGE SPITZER,
830 Market Street,
San Francisco, California.

Under the Yugoslav Claims Agreement
of 1948 and the International Claims
Settlement Act of 1949.

Docket No. Y-1107

Decision No. 1429

Counsel for Claimant:

PAUL NEUBERGER, Esq.,
16 West 46th Street,
New York 17, New York.

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PROPOSED DECISION OF THE COMMISSION

This is a claim for \$264,400 by George Spitzer, a citizen of the United States since his naturalization on March 25, 1946, and is for the taking by the Government of Yugoslavia of two houses at Nos. 7 and 9 Kralje Aleksandra Ul., Novi Sad; a house at 37 Jovan Ristic Ul., Belgrade, the Fabrika Parculana i. Majolike D.D. (Porcelain and Majolica Manufacturing Corporation), Novi Sad, in which he owned the entire stock, and personal property.

Claimant alleges he inherited the property from his sister, Ilona (Helen) Kohn, nee Spitzer, who, together with her husband, Julius Kohn, was killed in Novi Sad on January 24, 1942. He has filed court decisions showing that he inherited a one-half interest in real property registered under Docket No. 533, Belgrade 5, and Docket Nos. 28 and 1626, Novi Sad, formerly owned by his deceased sister. The Commission further finds it established by certified extracts from the Land Register of the County Court of Novi Sad and of the County Court of Belgrade, Precinct II (Docket Nos. 28 and 1626, Cadastral District of Novi Sad and Docket No. 533, Cadastral District of Belgrade 5), filed by the Government of Yugoslavia, and

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admissions of that Government, that claimant owned a one-half interest in 4 parcels of land with a total area of 851 square fathoms, with structures on 2 of the parcels, when they were taken by the Government of Yugoslavia on April 28, 1948, pursuant to the Second Nationalization Act of April 28, 1948 (Official Gazette No. 35 of April 29, 1948) and that claimant owned a one-half interest in 1 parcel of land with an area of 256.30 square meters, with structures on the parcel, when it was taken on August 17, 1947, pursuant to the Abandoned Property Law of May 24, 1945, as amended on August 2, 1946 (Official Gazette No. 36 of May 29, 1945, No. 64 of August 9, 1946 and No. 105 of December 27, 1946).

Claimant alleges he inherited the other one-half interest formerly recorded in the name of Julius Kohn on the ground that his deceased sister survived her husband. Claimant has submitted no evidence to corroborate the allegation, and the land extracts filed for Docket Nos. 28 and 1626, Novi Sad, show by entries dated February 7, 1944, that fractional interests amounting to the other one-half of the real property were owned by Julia Vajmberg, nee Kohn; Ilona Keller, nee Kohn; Bela Kessler, Margit Steiner, nee Kessler; Rosalia Fribert, nee Kessler; and Paula Dajc, nee Kessler. We conclude, therefore, that claimant acquired only a one-half interest in the property.

Claimant has filed no corroborating evidence of value. Three-party committees designated by local authorities have appraised the properties as follows:

Docket No. 28, Novi Sad	417,736 dinars
Docket No. 1626, Novi Sad	319,360 "
Docket No. 533, Belgrade 5	1,213,100 "
Total	1,950,196 dinars

Investigators for this Commission have appraised the properties as follows:

Docket Nos. 28 and 1626, Novi Sad	2,328,780 dinars
Docket No. 533, Belgrade 5	1,554,457 "
Total	3,883,237 dinars

Both appraisals were 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 above real property was 3,883,237 dinars as of the year 1938.

The land extracts record outstanding mortgages on the properties by entries dated as follows:

Docket Nos. 28 and 1626, Novi Sad

- (a) April 24, 1934: 133,354 dinars on "Julija [Julius?]
Kohn's part" in favor of the State Land Fund.
- (b) February 7, 1944: 63,599.25 pengos on all the
property in favor of the State Land Fund.
- (c) March 1, 1944: 307,420.52 pengos on all the
property in favor of the State Land Fund.
- (d) May 7, 1946: 500,000 dinars on all the property in
favor of State Residential Buildings Managing Board.

Docket Nos. 28 and 1629, Novi Sad, and
Docket No. 533, Belgrade 5

- (a) January 30, 1950 and February 2, 1950: 173,557⁶ dinars
on claimant's part in favor of the People's Committee,
Precinct I, Novi Sad.
- (b) January 30, 1950 and February 2, 1950: 137,630 dinars
on claimant's part in favor of the People's Committee,
Precinct III, Belgrade.

According to Article 3 of the Law Covering the Exchange Rates for the Withdrawal of Occupation Currency and the Settlement of Obligations of April 5, 1945 (Official Gazette No. 23 of April 19, 1945), 100 Hungarian pengos were exchanged for 100 Yugoslav dinars. Therefore, the pengos mortgages became dinar mortgages. However, in view of the facts that this property was considered as Jewish-owned; that the then record owners had been killed prior to entry of the mortgages; and that on the dates these two mortgages were entered the land was located in territory under the occupation of Hungary, it would not be in the interests of justice and equity to deduct them without evidence that they were not put on the property as a

result of anti-Jewish legislation of the occupying power. These two mortgages will, therefore, be disregarded.

The Yugoslav Government states that the mortgages recorded in favor of the People's Committees in 1950 were entered by a decision of the District Court of Novi Sad for unpaid inheritance taxes owed by the claimant. While these mortgages were not recorded on the dates of taking, claimant on such dates did not own the property, but rights and interests in the property through inheritance. The value of such rights and interests would be the value of the property, less a deduction for inheritance taxes. We conclude, therefore, that the amount of inheritance taxes recorded as encumbrances on the property constituted a lien on his interests therein on the date of taking. No evidence has been filed indicating that the mortgage has been satisfied.

In the circumstances, we are of the opinion that a deduction for all mortgages, except those recorded during the occupation and that recorded on "Julijsa [Julius?] Kohn's part", must be made. In arriving at this decision we have not failed to consider that the claimant may be obligated to satisfy the debts for which the mortgages were 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 mortgagee, 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 responsibility 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 the 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 Yugoslav debt settlement law. Accordingly, we hold

that, in the absence of evidence that the mortgages of record have been satisfied, a deduction for the mortgages must be made in order to reflect the actual amount of claimant's loss. We find that the proper amount to deduct for the mortgages on claimant's interest in the property is 560,187 dinars and that amount will, therefore, be deducted from one-half the value of the property, to determine the value of his interest. The value of his interest is, therefore, 1,381,432 dinars.

Claimant has filed no corroborating evidence as to the ownership of the stock except an extract from the Commercial Register of the County Court in Novi Sad, showing by an entry of May 19, 1924, that "Josef Julije Zil Kon" was the "Executive Manager of the Fabrika Porculana i Majolike D.D., Novi Sad." In this connection it is noted that the decree of inheritance in the Estate of Helen Kohn, deceased, filed by claimant, dealt only with real property.

The Government of Yugoslavia reports that it was not possible to establish ownership of the Company, because all its documents and books were destroyed during a bombing. It further states that a "pack of stock shares" of the Company were located at the former Main Branch in Novi Sad of the former State Investment Bank and that they were later delivered to the present Electro-Porcelain Factory, where 11,775 shares are located at present. Finally, that Government states that the property of the Company was confiscated on the basis of the decision of the County Court in Novi Sad, N.K. 402/46 of December 12, 1946, which decision became final on December 31, 1946.

We note, however, that in an appraisal of the Company submitted by the Government of Yugoslavia, the following statement appears:

"The members of the factory's commission (Andric, Stankovic and Lahos) stated that at the time of the interruption of the work, the company had accounts payable in the amount of some 60,000 pengos. These accounts were paid by a relative of the former owner or majority stockholder (Julius Kohn), Mr. Ignjat Friedman of Budapest. He gave

orders to the factory's manager, Comrade Andric, to pay the debts, because he had the intention to reestablish the factory as soon as the possibility would arise."

While claimant's position is that his sister survived her husband, Julius Kohn, and that the stock was thus inherited through his deceased sister, he has not sustained the burden of proving that Julius Kohn owned the stock at his death or that it passed to claimant's sister on his death and thence to claimant. It is significant in this regard to note that the land extracts from Docket Nos. 28 and 1626 show, by entries of February 7, 1944, that Julius Kohn's interest in the real property passed to six persons, none of whom was claimant, suggesting that these persons were the heirs of Julius Kohn. Since claimant has not proved he owned any stock in the Company, the claim with respect to the stock is denied.

Finally, claimant alleges ownership of personal property formerly owned by his deceased sister consisting of furnishings, objects of art, jewelry, rugs, paintings and gold. He also alleges that such property was "first taken into custody of the Yugoslav authorities in 1942." No corroborating evidence of ownership or taking by the Government of Yugoslavia has been filed and it is to be observed that in 1942 Novi Sad was under the Hungarian occupation. The Government of Yugoslavia denies that it has taken such personalty. Furthermore, this Commission's investigator reports that no record or trace of the property could be found, and that the vague reference to the property in claimant's allegations made it impossible to institute a satisfactory search as no descriptions, names, addresses or other locations were furnished by claimant.

Since claimant has failed to establish ownership of this property and its taking by the Government of Yugoslavia, this item of the claim is likewise denied.

The Commission is of the opinion, on the basis of all evidence

and data before it, that the fair and reasonable value of all property of claimant which was taken by the Government of Yugoslavia was 1,381,432 dinars as of the year 1938.* That amount converted into dollars at the rate of 44 dinars to \$1, the rate adopted by the Commission in making awards based upon 1938 valuations, equals \$31,396.18.*

AWARD

On the above evidence and grounds, this claim is allowed to the extent indicated, and an award is hereby made to George Spitzer, claimant, in the amount of \$31,396.18 with interest on \$16,089.36 and \$15,306.82 of that amount from April 28, 1948, and August 17, 1947, the respective dates of taking, at 6% per annum to August 21, 1948, the date of payment by the Government of Yugoslavia, in the amounts of \$304.15 and \$928.47.*

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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Counsel for Claimant:

PAUL NEUBERGER, Esquire
16 West 46th Street
New York 36, New York

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affirmed
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FINAL DECISION

In a Proposed Decision issued on October 29, 1954, an award was made to George Spitzer, claimant, in the amount of \$31,396.18, plus interest in the amount of \$1,232.62. Subsequent to the issuance of the Proposed Decision, the claimant requested a hearing for the taking of evidence, and the Government of Yugoslavia filed a brief, as amicus curiae, objecting to the amount of the award for the realty as being excessive. We have fully considered this objection but believe that the amount for the realty, as found in the Proposed Decision, was correct, and the Proposed Decision in that respect is affirmed.

At the hearing, and within the time limit permitted thereafter, the following documents were submitted on behalf of claimant:

1. Two affidavits by Alexander Klopka, who swears that he was acquainted with claimant's brother-in-law and sister,

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Joseph Julius Kohn and Ilona Kohn, for over 18 years; that he knows that Joseph Julius Kohn was the sole stockholder of "Fabrika Porculana I Majolike, A.D."; that he acquired the factory subsequent to his marriage; and that until the affiant left Novi Sad in October 1944, he knew "that the stockholdings of Joseph Julius Kohn in the factory did not change."

2. An affidavit by Sima Eckstein, who swears that he was acquainted with Julius and Jelena (Ilona) Kohn for many years, and "that affiant was acquainted with a business in Novisad known as Novisad Porcelain Manufacture, a corporation; that it was generally known in the community that this corporation was organized with four principal stockholders; that thereafter said corporation met with financial difficulties and in a series of transactions, the said Julius Joseph Kohn and possibly his wife are understood to have become the sole owners of the stock; that affiant does not have direct knowledge of the stock ownership but does affirm that it was generally believed in Novisad that the said Julius Joseph Kohn and possibly his wife became the sole persons interested in said corporation; that in fact the business of said corporation was operated and managed by the said Julius Joseph Kohn and his bookkeeper, Mr. Stark."
3. An affidavit by Slavko L. Simich, who swears that, as Executive Director of the banking institution, "Jugoslavenski Kreditni Zavod," he had dealings with

Joseph Julius Kohn and knew that between 1924 and 1935 he acquired all the stock of the "Fabrika Porculana I Majolike, A.D."

4. An affidavit by Cornelius F. Gustav, who swears as follows:

"1.) I was born in Budapest, Hungary in the year 1906. After graduating from the Presbyterian High Gymnasium of Budapest in June 1923, I studied Hungarian Law on the Royal Hungarian University of Budapest from the year 1923 to 1928 at which time I was graduated with the degree of Doctor of Law. From 1928 to 1932 I worked as a law clerk in Budapest, and in 1932, having taken the prescribed examinations for lawyers and judges, I was admitted to the Bar of Budapest as attorney-at-law, I was engaged in the active practice of law in Hungary until 1939 when I came to the United States.

"2.) Thereafter I again studied law in New York, obtained my degree of Bachelor of Laws at the New York Law School, in the City and State of New York, and was admitted to the New York Bar by the Appellate Division of the Supreme Court for the State of New York, First Department. I am a practicing attorney in the State of New York, residing at 136 Waverly Place, New York with offices at 37, Wall Street, New York, N.Y.

"3.) I am familiar with the laws of inheritance of Hungary, having kept myself fully informed regarding such laws of Hungary. I am thoroughly conversant with the English and Hungarian languages.

"4.) The following facts were submitted to me: Joseph Julius Kohn who was born on December 12, 1870 in Mako, Hungary married in August 1906 Ilona (Jelena) Kohn born Spitzer. Ilona Spitzer was born in December 1881, in Eisenstadt, Austria. Subsequently, they moved to Novi Sad, Province of Vojvodina, Yugoslavia wherein the year 1924 Joseph Julius Kohn acquired the majority of the capital stock of the 'Fabrika Porculana i Majolike d.d.' (China and Majolika Manufacturing Co. Inc.), acquiring also the balance of such stock in 1934 at which time he became the sole owner of all the stock of said corporation. Subsequently both Joseph Julius Kohn and his wife died in a common disaster, both having been killed in the massacre on January 24, 1942 in Novi Sad where they resided.

"5.) In connection with the above facts submitted to me, I have been asked to submit a legal opinion as to the applicable laws of inheritance concerning the industrial property represented by the sole ownership of all outstanding stocks of said corporation by the late Joseph Julius Kohn.

"6.) Prior to the First World War, the City of Novi Sad was part of Hungary and was known under the Hungarian name of Ujvidek. The peace treaties following the First World War made it part of Yugoslavia, but the Civil and Common Law of Hungary remained in effect, subject to such subsequent changes as the legislation of Yugoslavia introduced subsequently. At the time of the death of Joseph Julius Kohn and his wife on January 24, 1942 the Hungarian Common Law regarding community property, inheritance and intestacy were in effect in Novi Sad and the property of decedents who were residents of Novi Sad at that time were distributed in accordance with Hungarian Law.

"7.) Under Hungarian Law, all property acquired by either spouse after the marriage becomes community property between husband and wife for the duration of the marriage and subject to division between the spouses upon termination of the marriage, either by divorce, or the death of either or both parties to the marriage. There are certain exceptions to this rule which, however, are not applicable in the present case and need not be enumerated for this reason. Upon the termination of the marriage such community property called 'koz-szerzemeny' or, translated verbatim 'common acquisition' is to be equally divided between the spouses who take such part as their own property, and therefore such share would not be subject to inheritance taxes where one spouse dies and the survivor takes over the entire property: only that half of the community property which represents the part of the deceased would become part of the estate and be subject to estate proceedings and taxes, while the other half would belong to the surviving spouse as result of the division of the property, of his or her own right.

"8.) Under the facts submitted and the applicable law referred to, when Joseph Julius Kohn and his spouse died in January 1942 as residents of Novi Sad, Yugoslavia, leaving property acquired by either of them subsequent to the date of their marriage of August 1906, such property falls into the class of 'koz-szerzemeny' or community property onehalf of which forms part of the estate of the husband, and the other half forms part of the estate of the wife."

5. An affidavit executed by Ranko M. Brashich, who, as an expert on foreign law, corroborates the previous affidavit.

We conclude, on the basis of the evidence, that Julius Kohn was the owner of all the shares of the "Fabrika Porculana I Majolike, A.D."; that he acquired such property after his marriage to Ilona Kohn, claimant's sister; that, accordingly, one-half of the shares were the estate of Ilona Kohn, and as such were inherited by claimant, and were his property on the date the factory was taken, December 31, 1946.

The Yugoslav Government reports that the capital stock of the company was 3,000,000 dinars, divided into 12,000 bearer shares of 250 dinars each. That Government also reports:

"A pack of stock shares of the former Porcelain and Majolica Factory was with the former State Investment Bank - Main Branch in Novi Sad, which were later delivered to the present Electro-Porcelain Factory, where 11,775 stock shares are at the present."

As to the value of the factory, the Government of Yugoslavia has filed an appraisal made pursuant to court order, which finds its value, based on the market value as of 1938, as follows:

<u>ASSETS:</u>		
Building and lot	1,151,314.80	dinars
Furnaces, machines, installations, models and tools ...	769,073.00	dinars
Total Assets	<u>1,920,387.80</u>	dinars
<u>LIABILITIES:</u>		
(None)	---	
Net Value	<u>1,920,387.80</u>	dinars

The appraisal shows that the factory had suffered war damage.

We conclude, on the basis of the evidence, that the value of the property of "Fabrika Porculana I Majolike, A.D.," based on 1938 values, was 1,920,388 dinars.* Claimant's one-half interest

therein was 960,194 dinars, or \$21,822.59,* converted at the rate of 44 dinars to \$1, and interest thereon at 6% per annum from December 31, 1946, the date of taking, to August 21, 1948, the date of payment by the Government of Yugoslavia, amounts to \$2,145.18.*

Accordingly, in full and final disposition of this claim, an award is hereby made to George Spitzer, claimant, in the amount of \$53,218.77, plus interest in the amount of \$3,377.80.

Dated at Washington, D. C. DEC 29 1954

* 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.