

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

In the Matter of the Claim of

HELEN BUBENHEIMER
227 East 88th Street
New York 28, New York

Docket No. Y-1122

Decision No. 821

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

Counsel for Claimant:

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9/2/54
Aug 6, 1954
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Ridgewood, Brooklyn 27, N.Y.

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George W. Herz, Esquire
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Ridgewood
Queens County, New York

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.

AUG 23 1954

INTERNATIONAL CLAIMS COMMISSION OF THE UNITED STATES
DEPARTMENT OF STATE
Washington, D. C.

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approved
He
5/10/54
JOHN KIKEL,
6501 Fresh Pond Road,
Ridgewood, Brooklyn 27,
New York.

PROPOSED DECISION OF THE COMMISSION

This is a claim for \$4,000 by Helen Bubenheimer, a citizen of the United States since September 13, 1913, the date of her birth in New York, New York, and is for the taking by the Government of Yugoslavia of real property described as farm land with an area of 2 jutars and 1300 square fathoms located in Torza, pri Kula, Yugoslavia.

Claimant alleges that she acquired the claimed property from her father and mother, Wilhelm and Helena Jung, on June 10, 1939, for the nominal consideration of 45,000 dinars. She filed as documentary proof of ownership a certified extract from the Land Registry of Savino Selo, Yugoslavia (Docket 2161). Such extract shows that claimant was the owner of a parcel of farm land with an area of 2 jutars and 1300 sq. fathoms when it was confiscated by the Government of Yugoslavia. The extract also shows that the property was encumbered with a life estate in favor of Wilim Jung, claimant's father, and with a mortgage, in the amount of 140.63 gold pengoes with 6% interest from July 1, 1939, in favor of the State Treasury.

JRP
WMM

The Government of Yugoslavia, pursuant to the Commission's request, filed a certified extract from the Land Registry of Savino Selo. The extract showed that claimant was the owner of real property registered under Docket No. 2161 of Savino Selo and described as one parcel of farm land with an area of 2 jutars and 1300 sq. fathoms or approximately 4 acres. The extract contains the following entries with regard to encumbrances:

"Entered: August 8, 1938, No. 2070
On basis of the Gift Contract of June 10, 1939, right of life-time enjoyment on the real estate property under A/2 is entered in favor of Jung Wilim (husband of Brenkel Helene).

"Entered: December 17, 1941, No. 1584
On basis of report of the Tax Office in Kula, No. 146/1941, mortgage right to 140 Gold Pengos and 63 Fil., at 6% interest from July 1, 1939 is entered on real estate property under A/2 in favor of State Land Property."

The extract also shows, and the Government of Yugoslavia admits, that the property was taken by that Government on February 6, 1945, under the Law on Enemy Property of November 21, 1944 (Official Gazette No. 2 of February 6, 1945).

Claimant has filed an affidavit of August 5, 1952 by John Ries, wherein he stated that the property which is the basis of this claim had a value of \$4,000. A three-party appraisal committee appointed by Yugoslav authorities and a member of this Commission's staff in Yugoslavia have valued the above-described property in Yugoslav dinars, in accordance with 1938 values, as follows:

<u>Description</u>	<u>Area in Jutars</u>	<u>Yugoslav Committee</u>	<u>Commission's Investigator</u>
Plowland	2.1300	38,250	42,200

No other evidence of value has been filed.

Claimant alleges that Wilim Jung, the life tenant, died in the spring of 1949. According to a photostatic copy of claimant's birth certificate, filed with the Commission, Wilim Jung was 39 years of

age at the time of claimant's birth in September 1913. Therefore, he was 71 years old in 1945 when the property claimed was taken by the Yugoslav Government.

The Commission does not have actuarial and income data with respect to Yugoslavia and so far as it has been able to determine, reliable data for Yugoslavis is not available. It has, therefore, adopted as a basis for the valuation of life and remainder interests the Makehamized mortality table, appearing as Table 38 of United States Life Tables and Actuarial Tables 1939-41, and a $3\frac{1}{2}\%$ interest rate, compounded annually, as prescribed by United States Treasury Department regulations of June 3 and 4, 1952 for the collection of gifts and estate taxes, respectively. (See 17 F.R. 4980, 26 C.F.R. 86.19 (f); 17 F.R. 5016, 26 C.F.R. 81.10 (i).) According to that method of valuation a remainder interest in property which is subject to a life estate of a person aged 71 years is valued at 73.795% of the entire estate. Therefore, since the opinion of the Commission is that the fair and reasonable value of the property recorded under Docket No. 2161, as of the year 1938, is 42,200 dinars, the remainder interest is 73.795% of that amount, or 31,141.49 dinars. That figure converted into dollars at the rate of 44 to 1, the rate adopted by the Commission in making awards based upon 1939 valuations, equals \$707.75.

The amount of the mortgage in favor of the State is so small in terms of dollar value that it is the view of the Commission, in accordance with the principle of *de minimus non curat lex*, that no account shall be taken of it in determining the amount of the award.

AWARD

On the above evidence and grounds, this claim is allowed and an award is hereby made to Helen Bubenheimer, claimant, in the amount

of \$707.75, with interest thereon at 6% per annum from February 6, 1945, the date of taking, to August 21, 1948, the date of payment by the Government of Yugoslavia, in the amount of \$150.31.*

Dated at Washington, D. C.

This 11th day of May, 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.