

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

In the Matter of the Claim of

RUDOLPH HOGE  
806 Seneca Avenue  
Brooklyn 27, New York

Docket No. Y-1147

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

Decision No. 1188

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*Approved*  
*He*  
*12-6-54*

FINAL DECISION

Thirty days have elapsed since the claimant herein and the Government of Yugoslavia were notified of the Proposed Decision of the Commission on the above claim. The claimant filed no objections thereto. The Government of Yugoslavia has filed a brief as amicus curiae.

This claim involves a so-called "Emona" transaction. The Commission in its Proposed Decision gave due consideration to the view of the Government of Yugoslavia that the claim should be denied on the grounds that the claim "declared" for German citizenship, and that, during the war, he sold to "Emona" all of the property for which he is claiming compensation.

The Government of Yugoslavia, in its aforementioned brief, again raises these two points. No evidence has been filed which

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would establish that claimant voluntarily "declared" himself to be a subject of a foreign enemy State or that he conspired with the authorities of such State in the advancement of Germanization by the occupier in Slovenia. It may be true that some of approximately 14,000 persons whose names appear in the so-called "Book of Optants" actually did conduct themselves in the manner complained of. However, in the absence of evidence to the contrary, claimant cannot be held to have been one of them, merely because his name is listed in such book. The Commission must apply the terms of the Agreement of July 19, 1948 between the Governments of the United States and Yugoslavia, which provides for the settlement of claims of nationals of the United States. Assuming, arguendo, that claimant did commit the foregoing "offenses," it would not result in his loss of United States citizenship (See citations in Proposed Decision). This Commission is therefore duty bound, under the above Agreement and the applicable law, to entertain this claim as one filed by an eligible claimant.

With respect to the second point raised by the Government of Yugoslavia, i.e., that claimant sold his property to "Emona," the Commission has found in its Proposed Decision that no such sale was legally effected and confirms such finding in this Final Decision. As pointed out in the Proposed Decision, the land records do not show a sale to "Emona." The Government of Yugoslavia evidently presumes that such sale was effected by virtue of the fact that claimant's name is listed in the "Book of Declarants."

The Commission, prior and subsequent to the issuance of the Proposed Decision, has interviewed a number of claimants and taken testimony of witnesses who lived in Gottschee (southern part of the Province of Ljubljana) during the period in question, regarding these alleged "voluntary" sales.



The foregoing interviews and testimony revealed that sometime in 1941, at the beginning of the Italian occupation, a group of German civilians came to Gottschee from Germany. They visited all householders and told them about the proposed plan for resettlement and by innuendo threatened that if these householders did not go along with the desire of the Nazis and Facists, "things" would happen to them such as happened to others in the fatherland and elsewhere who did not comply with the wishes of "der Fuehrer." Later on, the Italian black-shirts came to Gottschee and "invited" the inhabitants to come to the local town hall. The meeting at the town hall was sprinkled with black-shirted troops bearing firearms prominently displayed, and the speaker told them about the "Emona" plan. Many of the residents of German ethnic origin objected to giving up their property to "Emona" and wanted to continue to remain peaceably in their homesteads. A group of about 75 of them formed a committee and went to the local Commanding Officer to protest. These individuals, for some unexplained reasons, left their homes several days thereafter. Word then spread that those who refused to comply with the "request" to transfer their property to "Emona" and move to the northern part of Ljubljana would find themselves in a concentration camp in Sicily or in Austria, or suffer a worse fate. A few brave individuals who persisted in their refusal to agree to the plan mysteriously disappeared soon thereafter. One of the claimants-- a mother with five young children -- who actually signed a deed to her property, testified that the instrument was brought to her by a black-shirt. It was written in the Italian language with which she was unfamiliar. She did not understand its contents. She was ordered to sign it, which she did, fearing for her life and the lives of her children

if she disobeyed. The day before, she learned from one of her neighbors, that another resident who refused to "sign up" was taken away by the black-shirts. A number of people who staunchly refused to be resettled were found hung or drowned, some as a result of suicide and others by causes unknown. Similar conditions prevailed elsewhere in Southern Ljubljana.

In the opinion of the Commission, the legal and moral principle, "Nemo auditur propriam turpitudinem allegans," has no application in cases such as this. The Proposed Decision is, therefore, hereby adopted as the Commission's Final Decision on this claim.

Dated at Washington, D. C. DEC 8 1954



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Approved  
etc  
7/24/54

PROPOSED DECISION OF THE COMMISSION

This is a claim for \$11,000 by Rudolph Hoge, a citizen of the United States since his naturalization on August 11, 1927, and is for the taking by the Government of Yugoslavia of a house, farm, buildings and land located in Stari Log, Yugoslavia, together with livestock and other articles of personal property.

The Commission finds it established by a certified extract from the Land Register of the County Court of Kocevje (Docket Nos. 318, 330 and 534, Cadastral District of Stari Log), filed by the Government of Yugoslavia, that claimant was, on February 6, 1945, the record owner of a one-half interest in 57 parcels of land with a total area of 17.1586 hectares, and that this land was taken by the Government of Yugoslavia on February 6, 1945, pursuant to the Enemy Property Law of November 21, 1944 (Official Gazette No. 2 of February 6, 1945).

B. F.  
Boyle.



Claimant has filed the affidavit of a former resident of the vicinity, assertedly acquainted with claimant's property until the fall of 1941, who swears that the value of the entire property claimed was \$11,000. An investigator for this Commission appraised claimant's interest in the land at 36,222 dinars on the basis of 1938 values.

The structures, livestock and other personal property were not evaluated. This Commission's investigator has reported that the structures were "destroyed during the war" and that the livestock and other personal property were either destroyed or taken by occupation forces. It is understood therefrom that the property was destroyed by or taken as the result of military action and not by Yugoslav authorities. In any event, no evidence indicating otherwise has been filed. The Agreement of July 19, 1948, between the Governments of the United States and Yugoslavia, settled claims for "the nationalization and other taking by Yugoslavia of property" (Article 1). It is our view that destruction of property by forces or causes such as those mentioned above, is not a "nationalization" or "taking" of property by the Government of Yugoslavia. We, therefore, hold that claims for losses of that kind were not settled by the Agreement of July 19, 1948, and are not within the jurisdiction of this Commission.

The Government of Yugoslavia is of the view that the claim should be denied on the grounds that (1) claimant "declared" for German citizenship at the beginning of the occupation, his declaration having been recorded in the "book of declarants"; and (2) claimant, during the war, sold all of the property for which he is claiming compensation to the enterprise "Emona".



Under applicable law, a national of the United States loses his nationality by taking an oath or other formal declaration of allegiance to a foreign state (Section 401 (b) of the 1940 Nationality Act, 54 Stat. 1168; 8 U.S.C. 1481). For loss of nationality to result from taking such an oath of allegiance, the oath must be one which is prescribed by the law or regulation having the force of law and must be taken before a competent official of the Government concerned. (See Hackworth Digest of International Law, Vol. 3, p. 218; Gillars v. United States, 182 Fed. 2nd 962.)

The fact that claimant's name may be listed in a "book of declarants" does not appear to have significant relation to his nationality status. Nowhere in "Verzeichnis der Volks - und Reichsdeutschen Umsiedler, die auf Grund des Abkommens vom 31. August 1941 aus der Provinz Laibach umgesiedelt wurden", which is apparently the "book of declarants" referred to by the Government of Yugoslavia, can any statement or reference be found which would indicate that the persons listed therein took an oath or made an affirmation or other formal declaration of allegiance to a foreign state. The record fails to support the allegation of the Government of Yugoslavia that claimant's status as a national of the United States was affected by any asserted "declaration".

We come then to the contention of the Government of Yugoslavia that the claim should be denied because claimant sold his property, above described, to "Emona".

"Emona" was formed by the Italian authorities under the circumstances and for the purpose hereinafter set forth.

Following the invasion of Yugoslavia by German and Italian forces, the Province of Slovenia was divided between Italy and Germany



in accordance with an Agreement signed by those two Governments in Berlin on July 8, 1941. Under that Agreement, Germany annexed the larger northern portion and Italy annexed the smaller southern portion of that Province, then inhabited mainly by Slovenians, and the southern portion then became known as the Italian Province of Lubiana.

On August 31, 1941, another Agreement was entered into between Germany and Italy. Under this latter Agreement, an opportunity was afforded to the citizens of the German Reich and members of the German ethnic minority, then residing in the newly created Italian Province of Lubiana, to resettle in the German newly annexed northern portion of the Province of Slovenia. Under this latter Agreement, "Emona", S.A. (Societa Anonima) Istituto Agricolo Immobiliare di Lubiana, was organized to facilitate all transactions in connection with such resettlement and "Emona" was authorized to take over the properties of the Germans and those of German ethnic origin, residing in the newly created Italian Province of Lubiana. Thereafter, some such land owners, not including claimant, in pursuance of this Agreement, conveyed their real property to "Emona" and resettled in the northern portion of the Province of Slovenia, from which area the local residents had theretofore been expelled by the Germans. So far as is known, these land owners "resettlers" did not receive any money from "Emona" for the conveyance of their property but were credited with the value thereof by "Emona"; and they did not pay any money for the new property in the northern portion of the Province of Slovenia where they were resettled. The consideration for this new resettled property was to be paid by "Emona" to the German Military Government.

When it became apparent that the German and Italian occupiers would be driven out of Slovenia, many of the resettlers fled from their newly resettled land. Those that remained were required to



vacate after Slovenia was reoccupied by Yugoslavian forces. On February 3, 1945, the Government of Yugoslavia enacted a Decree (Official Gazette No. 4 of February 13, 1945), which declared, in effect, that all laws, decrees, instructions, regulations and the like which were enacted by the enemy authorities (Germany and Italy) during their occupation of Slovenia were null and void. This Decree, as interpreted by a decision of the District Confiscation Committee in Kocevje dated September 3, 1945 (Official Document No. 2927), in effect voided all "Emona" transactions, as will be seen from the following quotations from that decision:

"By the Secret Agreement entered into between the German and Italian Governments regarding the migration (removal) of German citizens and persons of German nationality from the Ljubljana district, of August the 31st, 1941, all the property of the optant for the German State with the intercession of both the Governments was to be converted to cash and transferred to Germany.

"The incorporated enterprise "EMONA", S.A. Instituto Agricolo Immobiliare di Lubiana, with its main office in Ljubljana was set up (organized) with the purpose of making possible, that is for facilitating the liquidation of the German property in Slovenia.

"The cited Agreement of the German and Italian Governments and all the executive regulations, then the official administrative document sanctioning the organization of the enterprise "EMONA", and also the decision of September the 3rd, 1942 - Official Gazette, No. 72 - giving "EMONA" authority to buy and sell real estate properties of the German migrants, fall within the rules and regulations which the decision of the Presidium of AVNOY had in mind, in annulling and abrogating all the ordinances issued during the occupation by the occupators and their collaborators.

"All these ordinances, i.e., acts (regulations) by this decision are cast away and pronounced null and void.

"Therefore, the above mentioned Agreement for Emigration and the executive rules and administrative regulations by which permission was given for the setting-up of "EMONA" could not lawfully take into its ownership the property of the German optants.



"In just the same way all legal acts (transactions) of the German Emigration (Removal) Commission, which was set-up in the same manner by the German occupator, are null and void.

"Since the enterprise "EMONA" had not in a lawful manner acquired ownership to the properties of the German optants, it could not, therefore, have sold the property in the future to third parties.

"Null and void legal acts cannot take property to which that decision applies, of German character, that is, enemy property, which on basis of Art. 1, par. 1 of the I and II decision of AVNOY, of November the 21st, 1944 was transferred to the ownership of the State."

Therefore, under Yugoslav law any purported conveyance of real property to "Emona" and the registering of title in its name in the Land Registry books in Yugoslavia was null and void, and, consequently, of no force and effect. Moreover, no proof has been filed, in the instant case, other than the statement by the Government of Yugoslavia, that the claimant sold his property to "Emona". On the contrary, as above stated, it appears from certified copies of extracts from the appropriate land registry that claimant was the record owner of the property heretofore described when it was taken by the Government of Yugoslavia, pursuant to the Enemy Property Law of November 21, 1944. It thus appears that claimant did not transfer his title to "Emona" or otherwise divest himself of ownership.

The Commission is of the opinion, on the basis of all evidence and data before it, that claimant's interest in the above-mentioned land was taken by the Government of Yugoslavia; that claimant did not lose his United States nationality; and that the fair and reasonable value of the property so taken was 36,222 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 \$823.23.\*



AWARD

On the above evidence and grounds, this claim is allowed and an award is hereby made to Rudolf Hoge, claimant, in the amount of \$823.23 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 \$174.84.\*

Dated at Washington, D. C.

AUG 25 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.