

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

In the Matter of the Claim of

R. BEECHER WITT
Madisonville, Tennessee

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

Docket No. Y-1243

Decision No. 1340

Counsel for Claimant:

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

affirmed
12-27-54

FINAL DECISION

By Proposed Decision No. 1340 of October 12, 1954 this claim was denied, because claimant did not establish that on the date of nationalization of the corporation he was the owner of the shares of stock of the corporation upon which the claim is based.

Claimant objected to the Proposed Decision and requested a hearing. Such hearing was held on November 10, 1954, at which claimant's attorney presented a letter of the claimant dated October 30, 1954, in which the latter states that he is unable to attend the hearing, and that he does not have any personal knowledge regarding the loss of the property or of the stock in Yugoslavia. Claimant introduced in evidence the testimony of Mr. Anthony Fisher, allegedly the seller of the shares of stock, involved in the present claim. In addition, claimant submitted an affidavit executed on May 2, 1954 at Turin, Italy, in which Otto Fischer and Paul Fischer, brothers of Anthony Fisher, state that Anthony Fisher in 1941 was

322
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the owner of 14,000 shares of stock of the Parquet Factory and Saw Mill Corporation of Karlovac, Yugoslavia; that certificates for 5000 shares of stock, previously held by Leo Fischer, another brother, were confiscated by the Puppet Government of the Independent State of Croatia and that certificates for 9000 shares of stock were held by one Zvonimir Milstajn, of Zagreb in custody for Anthony Fisher; that during the war Zvonimir Milstajn died and after the war Mrs. Ruza Milstajn, the widow of Zvonimir Milstajn, donated the 9000 shares to the Government of Yugoslavia. Claimant's attorney also submitted a copy of the Minutes of November 17, 1941 made in the presence of an agent of the Government of the Independent State of Croatia, according to which certificates for 5,000 shares of stock of the Parquet Factory and Saw Mill Corporation of Karlovac, Yugoslavia, were confiscated as property of the aforesaid Leo Fischer. Claimant's attorney also submitted a copy of the application dated July 14, 1954 filed by Mrs. Ruza Milstajn nee Golik, addressed to the Ministry of Agriculture and Forestry in Zagreb, in which she offers to deposit certificates for 9,000 shares of stock with the Government of Yugoslavia, because she allegedly did not know to whom the certificates belong; whether to the estate of her late husband or to Anthony, Otto or Paul Fischer. Claimant's attorney also introduced in evidence a copy of a petition dated August 16, 1945 addressed to the People's County Court of Zagreb, filed by Paul Fischer, as attorney in fact for Anthony Fischer, in which the latter requests the restitution to him of the certificates for 9,000 shares of stock of the aforesaid company. Finally claimant's attorney introduced in evidence the original of the decree of the People's County Court of Zagreb of August 18, 1945 denying the aforesaid petition of Paul Fischer and advising him to submit his petition in regular court proceedings.

We have carefully considered the evidence submitted at the hearing, including the testimony of Anthony Fisher, and find that on April 14, 1942 he represented in writing to the claimant that he owns 13,200 shares of stock of the Parquet Factory and Saw Mill Corporation of Karlovac, Yugoslavia, which shares of stock are in the safe in the office of his former home at No. 3 Katanciceva Street in the City of Zagreb. According to the written agreement of April 14, 1942, claimant purchased the said shares of stock for the sum of \$3.00 per share, on which amount he paid \$1.00 and the balance was due to be paid on the condition that the value of the said shares has not depreciated or been decreased through an Act of God or the fortunes of war. Delivery of the certificates was promised as soon as possible after the termination of the war. The parties agreed that the aforesaid shares were purchased contingent upon said property not being destroyed either because of war or any natural cause.

On the date when this purchase agreement was made (April 14, 1942) Anthony Fisher had no control over the securities. 5,000 certificates out of 14,000 were at that time already confiscated by the Puppet Government of the so-called Independent State of Croatia, allegedly as property of Leo Fischer, a brother of Anthony Fisher. The remaining 9,000 certificates were in the hands of one Zvonimir Milstajn, allegedly in custody for Anthony Fisher. The representations made by Anthony Fisher to the claimant that the certificates are "in the safe in the office of his former home, at No. 3 Katanciceva Street in the City of Zagreb" sound strange when the documentary evidence and the testimony of Anthony Fisher shows that more than one year before the war, on January 2, 1940, at least 9,000 certificates were turned over for safeguarding purposes to Zvonimir Milstajn, and the remaining 5,000 certificates were kept by Leo Fischer.

In any event, Anthony Fisher could not have sold and did not make a valid sale of the 5,000 shares of stock which had been confiscated at the time of sale. The fact that Anthony Fisher was entitled, under the post-war laws of Yugoslavia to request the restitution of the 5,000 certificates confiscated by the Puppet Government of Yugoslavia, does not make the sale in the year 1942 valid, because at that time Fisher did not have title to said 5,000 certificates. Regarding the 9,000 shares of stock held in custody by Zvonimir Milstajn, and after his death, by his wife Ruza Milstajn, we find that these shares of stock were in dispute and that they were deposited by Mrs. Milstajn with the Yugoslav Government authorities because she did not know whether the certificates were owned by any of the Fischer brothers. The Court advised the Fischers to bring action against Mrs. Milstajn in order to prove the ownership. There is some evidence on record that not Anthony Fisher but Paul and Otto Fischer brought action against Mrs. Ruza Milstajn to prove the ownership, but there is no evidence that Anthony Fisher asked for restitution of the 5,000 certificates which were confiscated in 1941.

Claimant actually bought from the witness, if anything, a highly speculative future interest. We are not persuaded that this purchase on April 14, 1942 was a valid transaction, because Section 2(2) of Executive Order No. 8389 of April 10, 1940, 5 Federal Register 1400 (1940) as amended on June 14, 1941, prohibited the acquisition by, or transfer to, any person within the United States of any interest in any security or evidence thereof if the attendant circumstances disclose or indicate that the security or evidence thereof is not physically situated in the United States. Such acquisition would be permissible only if the parties to the transaction would have obtained a license from the Department of the Treasury authorizing

such transaction. No petition was filed and no such license was obtained in the present case.

Such restrictions were removed on December 8, 1945 (10 Federal Register, 14814 (1945) and the transaction could have become effective since that date. However, on that date Anthony Fisher did not own more than 9,000 contested shares of stock which were deposited with the Government of Yugoslavia.

We assume that Anthony Fisher was the owner of these 9,000 shares of stock and that he may have been able, in due course, to prove this ownership before the Yugoslav courts. However, the Tvornica Parketa i Pilana D.D. of Karlovac (Parquet Factory and Saw Mill Corporation of Karlovac) was confiscated by final court action on March 4, 1946 under No. K 134/46 as subsequent information received from the Commission's Field Staff disclosed. It may have been futile to pursue the lawsuit to prove ownership which, according to our information, had been instituted in 1945 before the District Court of Zagreb, but which later was abandoned by mutual consent of the parties involved.

Under the circumstances we are of the opinion that at the time of confiscation of the enterprise on March 4, 1946, claimant was the owner of a certain contingent and contested interest in the 9,000 shares of stock he previously had acquired from Anthony Fisher. This interest, in our estimate, could not have had a higher value than \$1.00 per share, the amount which according to the "Contract for the Sale of Stock" dated April 14, 1942 was paid in cash to Anthony Fisher for one share. For such an interest in 9,000 shares of stock of the aforesaid company, claimant appears to be entitled to an award of \$9,000.00.

AWARD

In full and final disposition of the claim an award is hereby made to Robert Beecher Witt, claimant, in the amount of \$9,000 with 6% interest per annum from March 4, 1946, the date of taking, to August 21, 1948, the date of payment by the Government of Yugoslavia, in the amount of \$1,331.50.*

Dated at Washington, D. C. DEC 29 1954

* For the Commission's reasons for the allowance of interest, see attached copy of its decision in the claim of Joseph Senser.

1st draft.

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Counsel for Claimant:

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

FINAL DECISION

By Proposed Decision No. 1340 of October 12, 1954 this claim was denied, because claimant did not prove that on the date of nationalization ~~of the corporation~~ he was the owner of the shares of stock of ^{the} ~~said~~ corporation upon which the claim is based.

Claimant objected to the Proposed Decision and requested a hearing. Such hearing was held on November 10, 1954, at which claimant's attorney presented a letter of the claimant dated October 30, 1954, in which the latter states that he is unable to attend the hearing and that he does not know first hand anything about the loss of the property or of the stock in Yugoslavia. Claimant introduced in evidence the testimony of Mr. Anthony Fisher, ^{allegedly} ~~said to be~~ the seller of the shares of stock, involved in the present claim. In addition, claimant submitted an affidavit executed on May 2, 1954 at Turin, Italy, in which Otto Fischer and Paul Fischer, brothers of Anthony Fisher, state that Anthony Fisher in 1941 was the owner of 14,000 shares of stock of the Parquet Factory and Saw Mill Corporation of Karlovac, Yugoslavia; that certificates for 5000 shares of stock, previously held by Leo Fischer, another brother, were confiscated by the Puppet Government of the Independent State of Croatia and that certificates for 9000 shares of stock were held by one Zvonimir Milstajn, of Zagreb in custody for Anthony Fisher; that during the war Zvonimir Milstajn died and after the war Mrs. Ruza Milstajn, the widow of Zvonimir Milstajn, donated the 9000 certificates to the

Government of Yugoslavia. Claimant's attorney also submitted a copy of the Minutes of November 17, 1941 made in the presence of an agent of the Government of the Independent State of Croatia, according to which certificates for 5,000 shares of stock of the Parquet Factory and Saw Mill Corporation of Karlovac, Yugoslavia, were confiscated as property of the aforesaid Leo Fischer. Claimant's attorney also submitted a copy of the application dated July 14, 1954 filed by Mrs. Ruza Milstajn nee Golik, addressed to the Ministry of Agriculture and Forestry in Zagreb, in which she offers to deposit certificates for 9,000 shares of stock with the Government of Yugoslavia, because she allegedly did not know to whom the certificates belong; whether to the estate of her late husband or to Anthony, Otto ^{or} and Paul Fischer. Claimant's attorney also introduced in evidence a copy of a petition dated August 16, 1945 addressed to the People's County Court of Zagreb, filed by Paul Fischer, as attorney in fact for Anthony Fischer, in which the latter requests the restitution to him of the certificates for 9,000 shares of stock of the aforesaid company. Finally claimant's attorney introduced in evidence the original of the decree of the People's County Court of Zagreb of August 18, 1945 denying the aforesaid petition of Paul Fischer and advising him to submit his petition in regular court proceedings.

We have carefully considered the evidence submitted at the hearing, including the testimony of Anthony Fisher, and find that on April 14, 1942 he represented in writing to the claimant that he owns 13,200 shares of stock of the Parquet Factory and Saw Mill Corporation of Karlovac, Yugoslavia, which shares of stock are in the safe in the office of his former home at No. 3 Katanciceva Street in the City of Zagreb. According to the written agreement of April 14, 1942, claimant purchased the said shares of stock for the sum of \$3.00 per share, on which amount he paid \$1.00 and the balance was due to be paid on the condition that the value of the said shares has not depreciated or been decreased through an act of God or the fortunes of war. Delivery of the certificates was promised as soon as possible after the termination of the war. The

parties agreed that the aforesaid shares were purchased contingent upon said property not being destroyed either because of war or any natural cause.

On the date when this purchase agreement was made (April 14, 1942) Anthony Fisher had no control over the securities. 5,000 certificates out of 14,000 were at that time already confiscated by the Puppet Government of the so-called Independent State of Croatia, allegedly as property of Leo Fischer, a brother of Anthony Fisher. The remaining 9,000 certificates were in the hands of one Zvonimir Milstajn, ~~at least since January 2, 1940~~, allegedly in custody for Anthony Fisher. The representations made by Anthony Fisher to the claimant that the certificates are "in the safe in the office of his former home, at No. 3 Katanciceva Street in the City of Zagreb" sound strange when the documentary evidence and the testimony of Anthony Fisher shows that more than one year before the war, ^{in January 2,} in 1940, at least 9,000 certificates were turned over for safeguarding purposes to Zvonimir Milstajn, and the remaining 5,000 certificates were kept by Leo Fischer. These 5,000 certificates were actually confiscated on the premises of the factory in Karlovac. The 9,000 certificates were obviously held on the premises of Mr. Milstajn's business office at No. 5 Jelacicev Trg at Zagreb.

In any event, Anthony Fisher could not have sold and did not make a valid sale of the 5,000 shares of stock which had been confiscated at the time of sale. The fact that Anthony Fisher was entitled, under the post-war laws of Yugoslavia to request the restitution of the 5,000 certificates confiscated by the Puppet Government of Yugoslavia, does not make the sale in the year 1942 valid, because at that time Fisher did not have title to said 5,000 certificates. Regarding the 9,000 shares of stock held in custody by Zvonimir Milstajn, and after his death, by his wife Ruza Milstajn, we find that these shares of stock were in dispute and that they were deposited by Mrs. Milstajn with the Yugoslav Government authorities ^{because} ~~for the reason~~ that she did not know whether the certificates

were owned by any of the Fischer brothers. The Court advised the Fischers to bring action against Mr. Milstajn in order to prove the ownership. There is no evidence on record that Anthony Fisher brought any action against Mrs. Ruza Milstajn to prove the ownership, nor that he asked for restitution of the 5,000 certificates which were confiscated in 1941.

Claimant actually bought from the witness, if anything, a highly speculative future interest. We are not persuaded that this purchase was actually a bona fide transaction, because when the witness Anthony Fisher was examined he answered the questions regarding the payment of the stock in the following way (Transcript of hearing of November 10, 1954, pages 25 and 26):

Q. May I ask you this question: when you sold the 13,200 shares of stock to the claimant, how much of the sales price did you get in cash and how much did you get in some other consideration?

A. I wouldn't dare say. It could have been about two-thirds cash and one third about. I don't recollect. That was in '42.

Q. If it was paid in cash, was it paid in cash or in bills? Do you remember that?

A. Oh, it was in cash.

Q. Not a check?

A. In a check.

Q. You don't remember the bank?

A. No, I moved so often, I changed banks so often after settling --

Q. Do you know where you deposited this?

A. It was probably at my bank, or I deposited it maybe at the company, with the company.

Q. Do you remember what was your bank in 1942 where you may have deposited this check, or which banks may have been those which may have received that?

A. I put it in the firm.

Q. What do you mean?

A. The corporation where I was associated.

Q. That was your corporation?

- A. I was associated with it. I had to finance it. It could have been the Crossville bank. I don't recollect the name. I stayed there three years in Crossville, and moved to Murphy.

These vague, evasive answers, containing the monotonous statement: "I don't recollect, I don't remember", are indeed not persuasive and leave us unable to believe that the payment of the amount of \$13,200 or any other amount actually was made for the transaction discussed at the hearing.

However, it is not necessary to examine the transaction further, because it was illegal under the Laws of the United States. Executive Order No. 8389 of April 10, 1940, 5 Federal Reg. 1400 (1940) as amended on June 14, 1941, regulating transactions in foreign exchange and foreign-owned property, provides as follows:

"All of the following transactions are prohibited, except as specifically authorized by the Secretary of the Treasury by means of regulations, rulings, instructions, licenses, or otherwise:

(1)

(2) The acquisition by, or transfer to, any person within the United States of any interest in any security or evidence thereof if the attendant circumstances disclose or indicate that the security or evidence thereof is not physically situated in the United States."

On April 30, 1952 claimant's attorney was requested to file with the Commission the special license of the Treasury Department for the transaction. In his answer of September 2, 1952 he admitted that no such license was obtained, but argued that such license was not necessary.

We are of the opinion that the transaction, purporting to sell securities which were physically located in Yugoslavia, an occupied country by Axis Powers in the year 1942, was not valid under United States laws, being^a/prohibited transaction without a proper license issued by the Department of the Treasury.

For the foregoing reasons the Proposed Decision No. 1340 is hereby affirmed as the Final Decision of the Commission on the claim.

Dated at Washington, D. C.

FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
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In the Matter of the Claim of

R. BEECHER WITT
Madisonville,
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Docket No. Y-1243

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

Counsel for Claimant:

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

PROPOSED DECISION OF THE COMMISSION

This is a claim for \$70,000 by Robert Beecher Witt, a citizen of the United States since his birth in Monroe County, Tennessee, on June 14, 1890, and is for [the taking by the Government of Yugoslavia of the Tvrnica Parketa i Pilana D.D. of Karlovac, Yugoslavia, a timber processing and sawmill corporation organized under the laws of Yugoslavia,] in which claimant allegedly owned 13,200 shares of stock of 14,000 shares outstanding.

Claimant filed, in support of the claim, a "Contract for the Sale of Stock", dated April 4, 1942, between one Anthony Fisher and the claimant, whereby Fisher sold to the claimant 13,200 shares of the stock of the aforesaid Yugoslav corporation for the sum of \$3.00 per share, or a total of \$39,600, of which the sum of \$13,200 was paid in cash, and the balance was to be paid "on the condition that the value of the said shares have not depreciated or been decreased through an act of God or the fortunes of war . . . It is clearly understood between the parties that the aforementioned shares are purchased contingent upon said property not being destroyed either because of war or any natural cause and the price of said shares has

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been reduced to \$3.00 per share because of the unsettled and uncertain conditions now existing in the country of Yugoslavia." In the Statement of Claim, it is stated by claimant that the stock was acquired for the following consideration: "Cash and professional services."

The ownership of the stock certificates is based on the above-mentioned sales contract dated April 4, 1942. No evidence was submitted that Anthony Fisher actually owned the shares of stock he purportedly sold. These shares of stock were reported to be physically located in Yugoslavia, and Anthony Fisher had no control over that stock, since Yugoslavia was occupied by the Axis powers in April 1941. There is no evidence that he ever regained such control and that he actually ever was in a position to deliver the shares of stock to the claimant. Since the record is wholly lacking in corroborating evidence of ownership by Anthony Fisher, no basis for a claim has been proven by claimant.

The Government of Yugoslavia furnished the following report as to the ownership of the shares of stock:

"Out of a total of 14,000 issued shares of the Parquet Factory and Saw-Mills, Inc., Karlovac, the seller Ante Fiser had been, according to the Minutes of General Meetings of shareholders held from 1933 to 1941, the owner of 100 shares only. During the war, 9000 shares belonged to Zvonimir Milstajn, who was a member of the Board of Directors of the said Factory from October 19, 1940, and after his death in 1944 they passed to his wife and heiress Ruza Milstajn, while 5,000 shares were in the ownership of the Independent State of Croatia.

"After the war, the shares belonging to the I. S. of Croatia passed to the FPRY, and no one requested that they be returned in accordance with the provisions of the Law on procedure with the property which its owners had to abandon during the occupation, and with the property confiscated by the occupator and his collaborators. However, by their complaint, submitted in 1945 to the District Court for the City of Zagreb, Pavle Fiser and Oto Fiser requested that the shares which belonged to Ruza Milstajn be returned. At the hearing held in relation to this complaint on December 14, 1945, and by proposal of both parties, it has been decided that the proceedings be at a stand-still, the consequence of which is the withdrawal of the complaint, as if the proceedings have never been resumed.

"These shares were then, on basis of the decision of our competent Court, confiscated from Ruza Milstajn, because of her economical collaboration with the occupator. According to the statement of Ruza Milstajn, her late husband Zvonimir Milstajn acquired these shares still before the war purchasing the same from Fiser brothers.

"According to the above stated, Ante Fiser, the seller of shares involved, was not their owner at the time of the sale of the same, and, consequently, he could not either transfer them to the buyer Mr. R. Beecher Witt."

The report of the Commission's Field Branch confirms all the above facts.

The Tvornica Parketa i Pilana D.D. of Karlovac was nationalized on December 5, 1946 by the Government of Yugoslavia, pursuant to the Nationalization of Private Enterprises Act of December 5, 1946 (Official Gazette No. 98 of December 6, 1946). That Act provides, in Article 1, subdivision (25), that a company in the sawmill and timber processing industry is nationalized if it is of general, national or republican importance. The Tvornica Parketa i Pilana D.D. appeared as item 263 on page 60 of the List of Enterprises of Republican Importance of the People's Republic of Croatia (Official Gazette of Croatia No. 124 of October 4, 1946).

Claimant has failed to prove that on the date of nationalization he was the owner of the shares of stock upon which the claim is based.

For the foregoing reasons, the claim is denied.

Dated at Washington, D. C.

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