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

In the Matter of the Claim of MARIETTA J. PORAS, 234 Chestnut Street, Clinton, Massachusetts. Under the Yugoslav Claims Agreement of 1948 and the International Claims Settlement Act of 1949	Docket No. Y-1259 Decision No. 1543

Approved
11-29-54

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nov 29, 1954

PROPOSED DECISION OF THE COMMISSION

This is a claim by Marietta J. Poras, a citizen of the United States since March 1, 1945, the date of her naturalization by the Superior Court, Worcester, Massachusetts. The claim is based upon the nationalization by the Government of Yugoslavia of "Drach" Lumber Industry Company, Zagreb, Yugoslavia. We are unable to determine with certainty the amount claimed. We are also unable to determine definitely claimant's theory with respect to her interest in the nationalized concern.

The facts, as we understand them, are as follows: Claimant's grandparents, Moritz Drach and Irma Drach, died on February 19, 1927 and July 6, 1928, respectively. Litigation followed with respect to their estates which was settled by an agreement of January 21, 1930 with adverse parties. The Agreement was between Louis Rosen, father and legal representative of the claimant, who was then a minor, on the one side and the Centraleuropean Lumber Company, Drach Lumber Industry Company (the nationalized Yugoslav company), the firm Mavro Drach, the firm Moritz Drach and the industrialist Arthur Drach, on

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the other side. The latter parties will be referred to hereinafter, for convenience, as "Drach." The agreement contained the following pertinent provisions:

1. Claimant waived any and all claims against the estates of her grandparents;

2. Drach agreed to pay claimant 3,330,000 Swiss francs in installments over a period of approximately nine years;

3. Drach agreed to place in escrow as security for the deferred payments various kinds of property, including 102,163 shares of Drach Lumber Industry Company; and

4. The property pledged as security could be sold for claimant's account upon default on the part of "Drach."

Eidgenossische Bank of Switzerland by a letter dated January 20, 1930, to Mr. Louis Rosen "In person, as father and legal representative of the minor, Marietta Rosen, as founder of the 'Stella' Trade and Trust Company in Switzerland or in Liechtenstein, resp. to this Company, contemplated to be established by yourself, whereby any change of the name of the Company is left your discretion" advised that it had received, among other things, 102,163 shares of Drach Lumber Industry Company and was acting as escrow agent with respect thereto.

It appears that between 1930 and 1938 approximately 2,300,000 francs were paid claimant pursuant to the agreement, leaving a balance of approximately 1,000,000 Swiss francs due and owing as of June 10, 1939. On that date claimant, who was no longer a minor, and her father executed a contract in letter form, which is described as a "novation-agreement." The agreement was directed to Drach and is signed by claimant and her husband, Louis Rosen for "Stella" Trade and Trust Company, Bano for Centraleuropean Lumber Company, and Bano for Drach Lumber Industry Company.

The agreement renounced all claims against the firms Moritz Drach, and Mavro Drach, and the industrialist Arthur Drach, and released the pledged shares of Drach Lumber Industry Company on consideration of the payment by Central-european Lumber Company of 310,000 Swiss francs over a period of approximately three years.

Claimant has on separate occasions advanced two theories as to why she should be compensated for the nationalization of Drach Lumber Industry Company, namely, (1) as a creditor and (2) as a beneficial stockholder. In a letter to the Department of State, dated December 10, 1947, seeking the protection of the United States Government, claimant advised as follows:

> "I herewith ask you to assist me in claiming a debt incurred by the Drach A.G. of Zagreb, Yugoslavia. According to an adjustment made on June 10, 1939 in Zurich, Switzerland, the Drach Holz Industrie A.G. Zagreb, Youg. agreed to pay me Swiss Franks (sic) 250,000 from July 1939 till Oct. 1941. The Drach A.G. so far paid only Sfrks. 70,000, so that they still owe me Sfrs. 180,000."

In a letter dated March 4, 1949 a Mr. Julius Szasz, representing himself as "acting as attorney in fact" for claimant, advised the Department of State in part as follows:

> "On June 10, 1939 the accounting and payments were revised and confirmed; and a new settlement took place with regard the sum of Swiss Francs 310,000.00. - Mrs. Marietta J. Poras received the sum of S. Fr. 116, 880.00, thus the claim amounts to S. Fr. 193,120.00 and interest thereon. The agreement was made in terms of Swiss Francs.
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> "The actual value of the property deems to be irrelevant, considering the nature of the interest of claimant."

The Department of State in a reply to that communication, dated March 17, 1949, advised Mr. Szasz as follows:

> "There is enclosed the Department's statement of July 30, 1948, and enclosures. Your attention is directed to Article 4(c) of the Yugoslav Claims Settlement Agreement of July 19, 1948. Creditor rights are not among the interests within the scope of the pecuniary settlement contained in Article 1(a) of the said Agreement. Recourse against the Yugoslav

> Government would appear to be a matter of direct approach to the Yugoslav authorities in reliance upon Article 4(c) of the Agreement. There is enclosed a list of Yugoslav attorneys."

By a letter dated January 26, 1951, claimant filed a formal statement of her claim with the International Claims Commission of the United States (whose functions have been taken over by this Commission). In that statement Mrs. Poras alleged that the nature and extent of her interest in the property taken is "as described in agreement made . . . on January 21, 1930 . . ."; that the original amount of 3,330,000 Swiss francs has been reduced by payments in 1938, leaving a balance of 1,200,000 Swiss francs, but that in an agreement dated June 10, 1939 the balance was fixed at 310,000 Swiss francs, but that the latter agreement "is invalid" and is being contested. In reply to a request for more specific information regarding the claim, claimant's counsel of record advised on July 21, 1952, that the proceedings to invalidate the agreement of June 10, 1939 had not been commenced, that claimant is not a creditor of Drach Lumber Industry Company but is "a pledgee and/or trust beneficiary of the shares of stock of the said corporation." Pursuant to further requests by the Commission to clarify the claim, claimant's counsel of record advised on June 9, 1954 that he intended to submit a narrative statement of the background and the issues. In a communication, dated June 15, 1954, signed by claimant and transmitted by her counsel of record, claimant made the following allegations:

> "As far as I know everything went along according to the 1930 agreement, with 1 or 2 minor changes, until March 1938 when Hitler took over Austria. In April of that year my father was put in jail by the Gestapo, it was called 'protective custody' all our money & property confiscated.
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> "I was told by the Gestapo functionary that my father would remain in jail until a certain amount of Reichsmark (I can give you the exact figure if you need it) could be raised by us to pay off a mortgage

on real estate, that the Gestapo had taken over. He also stated that if it was not forthcoming fairly soon my father may be sent to a concentration camp and that they also would take me into custody. The only thing that I could do was to ask my lawyer for advice & he said we could only get it from Drach Co. He was given permission to go to Zurich to negotiate. A Nazi lawyer that I had to hire was made to go along. As he told me he had a meeting with Arthur Drach and his lawyer and I believe that Mr. Bano & a Bank official was also present. The following agreement was made. They would take off Sfr. 220.000 from my share or claim & pay me from their account in Vienna about Rm80.000. That means that they paid me with completely worthless Reichsmark and took it off the books at OFFICIAL rate of exchange. It was of course a 100% gain for them, but I was still glad about it and did not blame them too much, because it was the Gestapo that had put me in that position and they just took advantage of it. Maybe undue. Middle of July my father and I came to Switzerland and also my husband to be. We had a continuous struggle to get enough money from them to live on. We were married in December.

"At that time my husband lived in Liechtenstein and was not allowed in Switzerland. We were waiting for our American Visa. In order to get it I went to the Eidgenoessische Bank and got a letter from them stating how much money was due to me and so forth. That letter is in our Immigration Act I think in Washington. With it we got the visa, but did not have any money for passage. They knew that. One day they called us to the bank and that is when the 39 agreement was made, They did not stand with a gun behind us, but they did not allow us to think it over or allow us to get a lawyer, because they said Mr. Bano had to leave in a few hours ect. ~~Well anyway~~ to make a long story short, they paid pretty regularly until about Jan. 1940. They they left out one larger payment & stopped payment altogether in early 1940 if I remember correctly. If you need the exact amount and times of payments I think I can check with the bank here & in N.Y."

It is understood from that statement, and other statements of claimant and her representatives, that the theory of the claim now is that the agreement of June 10, 1939 is invalid and that, therefore, she has a beneficial interest in the shares of stock of Drach Lumber Industry Company which were pledged as partial security for the performance of the agreement of January 21, 1930 with "Drach."

Regardless of the theory selected, we are of the view that the claim must be denied. With respect to claimant's original position that she was a creditor of Drach Lumber Industry Company (which position appears to have been abandoned), the Commission has without exception held that claims of creditors were not included in the agreement of July 19, 1948 between the Governments of the United States and Yugoslavia.

As to the claim that claimant has some sort of beneficial interest in the shares of stock of Drach Lumber Industry Company because the release of the pledge of those shares was effected though an "invalid" agreement, we find that the evidence filed tends to establish the validity of the agreement rather than its invalidity. As to the contention that claimant did not receive consideration for the agreement, it is stated in numerous communications from claimant and her representatives, that consideration was received. One of special significance and the most favorable to claimant, is that of Dr. August Rasi, "former sole liquidator of the already liquidated Mittel europaische Holz A.G., Lichlenstein (hereinafter referred to as Mehag), employee of the Eidgenoessische Bank, Zurich," and later director, in which he alleges that claimant received "no consideration whatsoever" for the novation-agreement of June 10, 1939, but at the same time points out that she did receive 4,000 Swiss francs for the months of July and August 1939. The allegations that the agreement was signed under duress are vague and unsupported by any persuasive evidence. The failure to take action in a Swiss court to have the agreement set aside during the past fifteen years is explained away by Mr. Szasz as follows: "to start litigation seemed impractical, mainly because tremendous expense would occur, and that it would take years before a final decision could be secured."

"Consideration,""invalidity" and similar legal terms, as applied to a contract, have definite legal meanings and must be determined in accordance with the law of the place where the contract was made or to be performed, and upon the facts. Claimant and her representatives have made assertions of invalidity but have filed no corroborating evidence in support thereof. No statements have been obtained from any of the other parties to the agreement suggesting that the agreement was invalid. In fact it appears that they always treated it as valid. No legal memoranda have been filed in support of the contention that the agreement was invalid. In fact neither claimant nor her counsel have ever presented a clear theory on which the claim might be allowed. As indicated above, claimant has had approximately fifteen years to obtain a determination by a Swiss court of the invalidity of the agreement, if it is in fact invalid. There is no suggestion in the record that claimant could not have brought an action in Switzerland and, if successful, that she could not have recovered from the several parties to the original agreement of January 21, 1930. In this connection it need only be observed that collateral in addition to the shares of stock of Drach Lumber Industry Company was pledged and that claimant could perhaps even now, look to that security or to the other parties to the agreement for payment.

Even if the claim were held to be otherwise valid the Commission would still be presented with the very difficult question as to whether it could properly make an award out of the fund provided by Yugoslavia because it appears that it has already paid for the nationalization of Drach Lumber Industry Company pursuant to the agreement between the Governments of Yugoslavia and Switzerland. According to evidence of record, Drach Lumber Industry Company had 200,000 shares of stock outstanding. Eidgenossische Bank presented for registration 199,636 shares

of stock (including the 102,163 shares pledged to claimant). Eidgenossische Bank, in a statement of November 18, 1954, alleges that:

> "We reported to the Swiss Commission for Nationalization Claims our claim in the amount of SF. 5,205.970.00. At the Hearing before the Commission for Nationalization Claims at Bern our Dr. A. Rasi represented the Company. Even at that time we were not informed about an assesment made by the Yugoslav Court of Sisak (Caprag) dated May 31, 1946, the sum of which makes Din. 32.926.284.04 which is in excess of Swiss francs 3,000.000.00. To our surprise, the Chairman of the Commission, Minister Troendle, told us that Mr. Emil Bord witnessed in the matter and told about the negotiations of 1946. We expressed our believe that the negotions of that time can not be held against us. Nevertheless, the Cairman declared that the Commission is willing to settle our claim only on the old basis, taking up the negotiations and to conclude an agreement.- Therefore, we finally agreed with the Commission in the amount of S. Francs 750,000.00 which is payable during 10 years. Until now we received the total of S. Francs 182,500.00."

Thus, it appears that the Swiss Commission has made an award out of Yugoslav funds for all of the shares of stock held by it, including those at one time pledged to the claimant.

In summary, this claim is understood to rest on the ground that claimant did not release the pledged shares of the nationalized Yugoslav company because the agreement of June 10, 1939 was invalid. We hold that claimant has not proven its invalidity, and further that her evidence tends to support its validity.

This claim must therefore be, and hereby is denied.

Dated at Washington, D. C.

NOV 29 1954

FOREIGN CLAIMS SETTLEMENT COMMISSION
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In the Matter of the Claim of MARIETTA J. PORAS 234 Chestnut Street Clinton, Massachusetts Under the Yugoslav Claims Agreement of 1948 and the International Claims Settlement Act of 1949	Docket No. 1259 Decision No. 1543

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affirmed HE 12-30-54

FINAL DECISION

On November 29, 1954, the Commission issued its Proposed Decision herein which, for the reasons therein stated, denied this claim in its entirety.

Thereafter, pursuant to applicable Commission procedures, objections to such Proposed Decision were filed and a hearing requested thereon. At the hearing, the claimant appeared in person and was represented by counsel who made oral argument and filed a supporting brief. The oral testimony of the claimant and other persons was taken and additional documentary evidence of a comprehensive nature was also then introduced. Thereafter, pursuant to leave granted at the hearing, an additional brief was filed and additional documentary material received.

Upon consideration of the entire record now before it the Commission has concluded, for the reasons hereinafter stated, that its Proposed Decision should not be followed and that an award should be made herein to the extent hereinafter indicated.

J. A. Kwiatek
H.A.S.

As indicated in the Proposed Decision, the Commission finds it established that immediately prior to June 10, 1939, the date of the execution of the "novation agreement", fully discussed in the Proposed Decision, the claimant was vested with certain rights as pledgee in 102,163 shares of the stock of the Yugoslav corporation (referred to hereinafter as "Drach") which was admittedly confiscated by the Government of Yugoslavia on September 26, 1945, after the date of claimant's naturalization.

The pledged shares, it is established, were then, on June 10, 1939, being held for the claimant by Eidgenossische Bank, a Swiss bank, as partial security for a debt owed to her by Drach which debt, at that time, amounted to approximately 1,000,000 Swiss francs. Pursuant to the agreement, executed in 1930, which had originally created this indebtedness, the bank was acting as depository and escrow agent for the claimant.

The Commission is of the opinion that a security interest of the kind so vested in the claimant may properly be regarded as a right and interest in and with respect to property, within the meaning of the Yugoslav Claims Agreement of 1948. The Commission has adopted a similar principle in its determination of claims based upon ownership of mortgages on real property taken by the Government of Yugoslavia. Consequently, if the claimant's rights as pledgee had continued to exist until the date of confiscation of Drach, a claim arising from the taking of the assets represented by the indicated shares of stock would be compensable under the Agreement.

The denial embodied in the Commission's Proposed Decision, however, was based upon a finding, on the record then before the Commission, that the "novation agreement" of June 10, 1939 was not invalid, as contended by the claimant, and that it therefore effectively divested the claimant of all interest in those shares of stock.

In its reconsideration of this phase of the matter, the Commission has had the benefit of extensive oral testimony of the claimant taken at the hearing, of depositions by representatives of the bank aforementioned who were familiar with the circumstances surrounding the execution of the agreement and of both oral testimony and affidavits submitted by qualified experts on the Swiss law (the novation agreement having been executed in Switzerland) pertinent to a consideration of the validity and effect of the novation agreement.

Upon the basis of such evidence, the Commission has concluded that, at least for the purposes of this proceeding, the agreement in question was so clearly the result of fraud and duress and was otherwise so defective, whether by reference to Swiss law or to United States law, that it should be regarded as a nullity.

The Commission is also satisfied from the testimony made available to it since the issuance of its Proposed Decision that the failure of the claimant to take appropriate legal action seeking a judicial declaration of the invalidity of the agreement should not, under the circumstances, be held to constitute a waiver of any rights she might have or might have had in that respect.

The Commission has therefore concluded that the rights which the claimant had, as pledgee, to the shares of stock in question continued to exist until the date of confiscation of Drach and thereafter. Upon the basis of all of the evidence now before it, moreover, the Commission finds that, at that time and continuously thereafter the debt for which such shares were pledged as security, amounted to approximately 940,000 Swiss francs, or, at the official rate of exchange at the time of confiscation, approximately $220,000.

Subject, therefore, to consideration of the following additional circumstance, the Commission is of the opinion that an award should be made herein in an amount equal to the value of 102,163 shares of Drach stock, but not more than the present amount of such indebtedness.

This additional circumstance relates to the contention of the Government of Yugoslavia that a total of 199,636 (out of a total outstanding of 200,000) shares of Drach stock, including the shares claimed by the claimant as pledgee, were apparently deposited with the Government of Yugoslavia as the ownership of the Eidgenossische Bank and that the claim of the bank based thereon has been settled pursuant to the Swiss-Yugoslav Claims Agreement.

The aforementioned testimony of the representatives of the bank, however, is to the effect that what the bank asserted against the Government of Yugoslavia was only a large debt claim which the bank itself had against Drach (such claims being compensable under the Swiss-Yugoslav agreement); that its claim was in no way based upon a claim of an equity interest; that what the bank settled with Yugoslavia was that debt claim; that, at all times until the date of confiscation, the bank considered itself to be acting as escrowee or trustee for the claimant with respect to the pledged shares; that the bank also held another block of Drach shares in its own name; that while it turned over all of its Drach shares, including the pledged shares, to the Swiss Commission through which its claim was settled, that was not done for the purpose of depositing such shares with the Government of Yugoslavia as the property of the bank with a view to the settlement of an ownership claim based thereon; and that the bank itself did not so deposit any of such shares.

The Government of Yugoslavia has submitted no details regarding the settlement of the bank's claim from which the foregoing statement of facts in that respect may be controverted. Under all of the circumstances, the Commission is of the opinion that the statement of the facts pertinent to this phase of the matter, as presented by the bank's representatives, may be considered as a correct statement for the purposes of this proceeding. In making this determination, the Commission has taken into consideration, among other factors, the fact that only a small portion of the agreed upon settlement with the bank has been paid to date; and that it would still be possible,

if the circumstances warranted it, for the Government of Yugoslavia to take appropriate steps to safeguard against a possible double payment of claim. In any event, the Commission cannot find that any misunderstanding in this regard on the part of the parties to the settlement made by the bank should be permitted to deprive the claimant of such rights as she might have before this Commission.

The sole remaining question is that relating to the valuation of the Drach shares. As the Commission has previously held, such valuations are generally made by reference to the assets of the corporation at the time of taking in terms of 1938 values.* Upon consideration of all of the evidence and data before it in that regard, the Commission finds that the fair and reasonable value of each share of Dracha stock was approximately 48 dinars per share or, converted to dollars at the rate of 44 dinars to one dollar, the rate adopted by the Commission in making such awards,* $1.10 per share.

AWARD

Upon the above evidence and grounds, this claim is allowed and an award is hereby made to Marietta J. Poras, claimant, in the amount of $112,379.30 with interest thereon at the rate of 6% per annum from September 26, 1945, the date of taking, to August 21, 1948, the date of payment by the Government of Yugoslavia, in the amount of $ 12,820.46.

Dated at Washington, D. C. DEC 30 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.