

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

has 5,500 bearer shares

has legal right to register

In the Matter of the Claim of

ANNY ACZEL,
125 East Fiftieth Street,
New York, New York.

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

Docket No. Y-1277 ✓

Decision No. 1440

Counsel for Claimant:

SPENCE, HOTCHKISS & HALPIN,
40 Wall Street,
New York 5, New York.

Attn: James Sargent, Esq.

PROPOSED DECISION OF THE COMMISSION

This is a claim for \$347,001 by Anny Aczel, a citizen of the United States since her naturalization on September 5, 1946, and is for the taking by the Government of Yugoslavia of the property of Backa Fabrika Secera of Novi Sad (hereafter referred to as "Backa"), a Yugoslav corporation. The claim is based on the direct ownership of 9,583 shares of Backa, a life interest in 2,500 shares of Backa owned by her two children, and the indirect proportionate ownership of 3.83% of Backa through the ownership of 5,741 shares of Szolnok Sugar Mills, Ltd. (hereafter referred to as "Szolnok"), a Hungarian corporation. These various interests of claimant will be dealt with seriatim.

OWNERSHIP

(a) Claimant's direct ownership of 9,583 shares of Backa:

The claimant alleges that her husband, Ede Aczel, a Hungarian national and resident, who died testate on June 6, 1931, owned during his lifetime 11,953 bearer shares of the 125,000 shares of outstanding stock of Backa. Before his death, she alleges that he delivered to

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her 5,500 Backa shares as an advance upon, or partial payment of, her legal right to receive from her husband one-half of the assets of the "earning community" of the marriage. Thus, at his death her husband owned 6,453 shares of Backa, and she has filed an inventory of the securities owned by the decedent at his death listing these 6,453 shares. Of this number, she alleges that she inherited 3,953 shares. In addition, the claimant alleges that she purchased on her own behalf 130 Backa shares. The acquisition of all the Backa shares owned by her was, therefore, as follows:

Advanced to claimant by her husband:	5,500	shares
Inherited from her husband:	3,953	"
Purchased on her own behalf:	<u>130</u>	"
Total	9,583	shares

The amount claimed with respect to these shares is \$310,201.

As to the location of the stock certificates, in January 1939, the claimant sent the certificates for 9,000 shares of stock from Budapest to her son, George Aczel, in London. All were deposited with the Westminster Bank, Ltd., of London, 7,500 in the name of the claimant and 1,500 in the name of George Aczel as his own property. As is confirmed by a letter of January 25, 1954, from the Westminster Bank, Ltd., it deposited the claimant's 7,500 share certificates with the Yugoslav Embassy in London on December 10, 1946 for exchange, pursuant to the laws of Yugoslavia. (See Decree of June 17, 1946, Regarding the Issuance and Registration of Shares of Stock, Official Gazette No. 50 of June 21, 1946). The fact of their deposit with Yugoslav authorities in London, under claimant's name, is also confirmed by a letter of October 24, 1953, from the National Bank of Yugoslavia which has been filed with the Commission.

With respect to other Backa shares owned by claimant, certificates for 500 shares were deposited in her custody deposit account in The Hungarian General Creditbank, Budapest, as is attested by a letter from the Bank to the claimant, dated December 21, 1946. By letter

to claimant of February 28, 1947, the Bank informed claimant that these certificates had been deposited with Yugoslav authorities in Budapest.

In addition, claimant has filed evidence that the certificates for 453 shares of stock of Backa owned by her were deposited in the National Bank, Budapest, and "were removed forcibly by the army of occupation" during the war and that legal proceedings were instituted in Budapest to establish her ownership of them. Further, in December 1946, her attorney in Budapest declared to Yugoslav authorities in the name of her daughter, Mrs. Erich Olsen, nee Agnes Aczel, that they were the property of the daughter. By a letter to claimant of July 17, 1947, from her daughter, the latter states that the 453 shares were inadvertently declared to be her (the daughter's) property in the declaration filed by the attorney, Dr. Miklos Hoffmann. In addition, Hoffmann filed a declaration with Yugoslav authorities on behalf of claimant that claimant owned 1,000 shares of Backa destroyed during the siege of Budapest and that legal proceedings had been initiated to establish her ownership. These shares (Registration Nos. 116,501 to 117,000 and 117,501 to 118,000) were deposited with the First Savings Bank Association of the Town of Pest, Budapest, according to an undated letter to claimant from the Bank.

Finally, claimant alleges that the certificates for the 130 shares of Backa, which she purchased on her own behalf, were probably kept in the Backa office in Novi Vrbas, Yugoslavia, but she is unable to account for their destruction or delivery to Yugoslav authorities.

Thus, it appears that claimant has filed corroborating ownership as to the acquisition of 9,453 shares of Backa and has accounted for the destruction or delivery to Yugoslav authorities of the share certificates. No corroborating evidence, however, has been offered as to the acquisition of 130 shares, allegedly purchased on her own behalf,

nor have the certificates been accounted for.

On the basis of all the evidence, we conclude that claimant has proved acquisition and continued ownership of 9,453 bearer shares of Backa.

(b) Claimant's life interest in 2,500 shares of Backa owned by her children:

Claimant alleges that she also has a life interest in 2,500 shares of Backa stock which were owned by her children, George Aczel and Agnes Aczel Olsen, and which were inherited from their father, Ede Aczel, deceased. The amount claimed for this interest is \$30,100.

In support of this contention she has filed two affidavits on foreign law by Ernest Wittmann, who attests that claimant has a right of income from property inherited and received by the two children from their father. He quotes from a bill incorporating the provisions of the common law of Hungary in effect at the death of Ede Aczel and throughout the 1930's as follows:

"Article 1781 provides that all heirs acquire the inheritance, limited by the ius viduale [widow's right as hereafter specified].

"Article 1812. 'The widow, if she is not the heir, is entitled to the usufruct [income] of the estate of her husband during her widowhood, i.e., the income during her life from the inheritance of the heir (as well as from her own one-half of such earning community estate of the husband).'

"Article 1813. 'The descendant of the de cuius [the decedent] is entitled to claim the restriction of the ius viduale, i.e., a right to claim that the income from the inheritance of the descendant shall not be paid after determination of such claim, in part or in whole, to the widow during her life, and that such inheritance shall be by such determination relieved of the future burden of such income payment to the widow.'

"Article 1814. 'If the ius viduale is restricted, the widow is entitled to the usufruct [income] from an adequate part of the estate [inheritance]. This part is determined in such a way that if possible the widow shall be able to continue to live in accordance with the social position of her husband, from the income of the estate. In determining the amount of the widow's income,

"due regard is to be paid to the circumstances of the widow, and of the amount she received as her part of the earning community or in other ways without compensation from her husband's estate."

In connection with the "restriction" mentioned above, the claimant swears that there has been no restriction at any time since her husband's death in 1931 of her right to the income from property inherited and received by the children from their deceased father. The claimant has furnished an affidavit of June 1, 1951 by her son, George Aczel, in which the affiant stated "For my part, I have always recognized that my mother was entitled to the dividends paid by the Backa Company upon my 1,500 shares of the said stock and until the interruption of the war, the dividends declared and paid annually by Backa Company from and after the death of my father upon my said 1,500 shares were in fact received by my mother as part of her own income to which she was fully entitled." An affidavit of June 7, 1951 by the claimant's daughter, Agnes Olsen, which was filed with the Commission contains a statement that "I further certify that under Hungarian law applicable to the estate of and inheritance from my father, my mother Anny Aczel now an American citizen residing at 125 East 50th Street, New York City was as my father's widow entitled to receive during her lifetime all income from my inherited portion of the community property of my father as received by me at his death, including specifically the income from my said 1,000 shares of Backa stock; and prior to the immigration of my mother and myself from Hungary and the interruption of international payments occasioned by the late war, my mother did in fact receive annually after my father's death all dividends declared and paid by Backa upon my said 1,000 shares of such stock and that she is now entitled under such Hungarian law to receive all such income thereon during her lifetime or until a court of competent jurisdiction shall have otherwise decreed."

While we accept the affiant's statement of foreign law as correct, we do not agree with claimant that she held a life interest in such property. Article 1812 quoted above states that a widow is entitled to

the income of the estate of her deceased husband "during her widowhood." Thus limited, her interest is less than a life estate, as it may be terminated at any time by remarriage.

We next inquire as to whether she has proved the ownership of Backa stock by her children, as she alleges that her son, George Aczel, owned 1,500 shares of Backa and her daughter, Agnes Aczel Olsen, owned 1,000 shares.

As previously stated in part (a) above, of the 9,000 shares sent to George Aczel in London in January 1939, 1,500 share certificates were deposited in his name in the Westminster Bank, Ltd., of London. The claimant has filed a letter dated January 20, 1951, from the Bank to George Aczel confirming the deposit of his 1,500 shares of Backa and their delivery to the Yugoslav Embassy on December 10, 1946, pursuant to Article 7 of the Yugoslav Decree of June 17, 1946, supra.

As to the 1,000 shares owned by Agnes Aczel Olsen, claimant's daughter and a citizen of Denmark, the certificates for them were deposited with the First Hungarian Savings Bank of Pest, Budapest. Claimant has filed a declaration of October 1, 1947, executed on behalf of her daughter, by her attorney, Dr. Miklos Hoffmann, filed with Hungarian authorities pursuant to a decree of that Government. The Declaration states that Agnes Aczel Olsen owns 1,000 shares of Backa; that the certificates were destroyed in the siege of Budapest, and that proceedings are pending to cancel the certificates. Claimant has also filed a certificate of October 4, 1947, issued by the Department of Securities of the First Hungarian Savings Bank Association of Pest, Budapest, that on January 14, 1947, it filed a declaration with Yugoslav authorities pursuant to Yugoslav decree concerning 1,000 shares of Backa owned by Agnes Aczel (Registration Nos. 117,001 to 117,500 and 116,001 to 116,500). The certificate adds that cancellation of the shares in judicial proceedings is pending.

We conclude on the basis of the evidence that claimant has proved the acquisition and continued ownership of 2,500 bearer shares of

Backa by her children, George Aczel and Agnes Aczel Olsen. We further conclude that claimant has proved that she held a life interest in such shares determinable upon her remarriage.

- (c) Claimant's indirect proportionate ownership of 3.83% of Backa through the ownership of 5,741 shares Szolnok:

Claimant bases her eligibility with respect to the Szolnok shares on Article 2 (C) of the Yugoslav Claims Agreement of 1948, providing that claims settled in Article 1 include those indirectly owned by a United States national through interests, direct, or indirect, in one or more juridical persons not organized under the laws of the United States or a constituent state or other political entity thereof. Her claim is, then, based on ownership of shares of stock in Szolnok, a Hungarian corporation, which in turn owned shares of stock in Backa.

The claimant alleges that during his lifetime her deceased husband, Ede Aczel, acquired 18,266 shares of 150,000 shares of outstanding capital stock of Szolnok. Of these 18,266 shares, 6,741 were "deposited" before his death in a "syndicate" or voting trust. Certificates for the remaining 11,525 shares were delivered to claimant by her deceased husband during his life as an advance against her one-half of the "earning community" assets of the marriage and she owned and held these shares at his death. She has filed a photocopy dated August 17, 1931, of a list of the 11,525 Szolnok share certificates by numbers and the document shows there is the further amount of 6,741 which are designated as "deposited." A photocopy of the inventory of securities of the decedent's estate filed by claimant also lists these shares as "on deposit with syndicate."

The claimant further alleges that in February 1939 she made a division of the 18,266 shares between her children and herself as follows:

5,741 to claimant
5,741 to daughter, Agnes Aczel Olsen
5,741 to daughter, Elizabeth Vasavhelyi
1,043 to son, George Aczel

18,266 total

The amount claimed for this indirect interest is \$6,700. ✓

As to the certificates of these 18,266 shares she alleges that they were kept in Budapest and were either destroyed during the Russian siege of the city in December 1944-January 1945, or were thereafter carried off by the Russian army of occupation. She alleges she has no knowledge of the certificates since that time and has no knowledge whatsoever of their present location, if they do exist, or whether they were destroyed.

As evidence that Szolnok owned shares of stock in Backa, the claimant has filed a Szolnok balance sheet of January 1, 1947, showing a debit of 2,316,467.60 forints for "war losses" and a statement dated October 21, 1947, by Dr. Tibor Nagy of the Szolnok Board of Directors that included within this debit were 12,500 shares of Backa valued at 12,500 forints.

Claimant has filed no corroborating evidence whatsoever as to her ownership of 5,741 Szolnok shares, and her allegations have been based on her revised memory of transactions taking place many years before. Nor has she been able to account for the whereabouts of the share certificates, and we are aware of the fact that these were bearer shares. We conclude that she has not proved the ownership of the 5,741 Szolnok shares and this part of the claim is denied. It is observed in passing that even if we were to find she owned such shares on the date of taking, her indirect proportional interest in Backa would be .383% and not 3.83%, as claimed.

NATIONALIZATION OR OTHER TAKING

As to the taking of the property of Backa, there has been filed with the Commission a decision of September 5, 1946, of the Supreme Court of Vojvodina, sitting as a criminal court. The decision is rendered on an appeal from a decision of the County Court of Sombor of June 29, 1946 (No. K. 68/46) confiscating Backa on the grounds of collaboration pursuant to the Law Regarding Criminal Offenses Against

the People and the State, of August 25, 1945 (Official Gazette No. 66 of September 1, 1945). The decision on appeal pronounces confiscation of "all stock shares" of Backa "regardless of their whereabouts and by whom they are held." By Article 16 of the Law. "From the sentence of the Courts in the first instance an appeal may be taken to a higher court, the sentence of which is final."

We hold, therefore, that the date of taking of claimant's property interests in Backa was September 5, 1946, on which date she was a citizen of the United States.

VALUATION

As corroborating evidence of value, the claimant has filed certain affidavits, the contents of which will be briefly described.

In an affidavit of March 16, 1948, George Aczel, claimant's son and a citizen of Brazil, swears that during the 1930's Backa's annual dividends paid ranged from 50 to 70 dinars per share, that the par value was 400 dinars per share and that the net annual published profits of Backa were in excess of \$200,000, which was equal to nearly \$2 per share at a dinar rate of exchange of 57 dinars per dollar. In his affidavit of January 11, 1951, George Aczel changes his statements, on the basis of the 1930 balance sheet, and swears that dividends declared and paid during at least part of this period were at the rate of 75 dinars per share per annum, and that the book value based on the 1930 balance sheet was 90,643,648.87 dinars (total assets of 119,224,084 less debts to creditors of 28,580,435) which gives an "asset value" per share of 725.15 dinars, which he changes into dollars at the rate of 51 dinars per dollar, rather than the 57 dinars per dollar, as stated in an earlier affidavit. He next analyzes the 1943 balance sheet and fixes the book value at 20,645,487.17 pengos (total assets of 38,270,111 less debts of 17,624,624) with each share having a pengo net asset value of 165.16 pengos. He states that he has been "told" that the exchange rate of the pengo to the dollar was 5.10 pengos to

the dollar and on this basis he finds the "dollars asset value per share" in 1943 at approximately \$32.37, which he affirms to be the share value at the time of nationalization.

It may be observed that we do not agree that the book value of the company is what the affiant finds it to be on the basis of either the 1930 or 1943 balance sheets which have been filed by claimant. In the 1930 balance sheet he has deducted only 28,580,435.43 dinars owed to creditors from the assets. However, in our opinion, the item of 14,175,688.63 dinars (Reserve for Depreciation) is a valuation reserve which should be deducted from the fixed assets to arrive at their depreciated value. Accordingly, we conclude that the book value based upon the 1930 balance sheet would be 76,467,960.24 dinars. Similarly, we consider in the 1943 balance sheet that the item of 5,037,777.37 pengos (Value Differential Reserve Fund) is a valuation reserve which should be deducted from the fixed assets to arrive at their depreciated value, and that the net worth based on this balance sheet would be 15,607,710.80 pengos. Finally, we are unaware of the basis on which the affiant was "told" that the pengos-dollar rate of exchange was 5.10 pengos to the dollar in 1943. That was, of course, a year in which the United States was at war with Hungary and the 1948 Statistical Yearbook of the United Nations shows no rate of exchange between the pengos and dollar from the years 1942 through 1945.

Claimant has also filed the affidavit of Baron George Ullman, a former member of the Board of Directors of Backa, who is of the opinion that the net value of Backa during the last years of its existence as an independent enterprise prior to nationalization was approximately twenty million Swiss francs or four to five

million United States dollars. In addition, claimant has filed the affidavit of Miksa Oppenheim, a former member of Backa's Board of Directors and Executive Committee. Based on analysis of the 1937 and 1943 balance sheets of Backa and an affidavit of Hubert Algernon Walters regarding fire insurance carried by Backa, the value of the company in 1946 is found by him to be \$5,000,000 or \$40 per share.

This Commission, in addition, has available all balance sheets of Backa from 1934 to 1939, inclusive, and its investigator has inspected the plant, analyzed available records, and submitted a report on the value of the company.

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 Backa which was taken by the Government of Yugoslavia was 75,000,000 dinars which would be equivalent to 600 dinars per share. Since claimant owned 9,453 shares in Backa, the value of her interest is 5,671,800 dinars or \$128,904.55 converted at 44 dinars to \$1.

We next must compute the value of claimant's interest in the 2,500 shares of stock in Backa owned by her children, George Aczel and Agnes Olsen. In computing this interest, claimant has treated it as a life estate. However, as we have concluded previously the value of this interest is less than a life estate since it is determinable by remarriage. Claimant, in addition, has computed the value of the interest by calculating present value, alternately in 1931 and 1946, based on an average dividend yield of 8%. This rate was obtained from the figure of 75 dinars per share per annum as stated in the affidavit of George Aczel of January 11, 1951, who swore that such was the dividend declared and paid "during at least part of this period," i.e., the 1930's.

We do not consider that claimant has established a valid basis for computing present value on the basis of an 8% dividend return on the date of taking, since her only evidence on this point is an affidavit referring to a dividend rate for a part of the 1930's.

The Commission does not have actuarial and income data with respect to Hungary or Yugoslavia, and, so far as it has been able to determine,

reliable data for Yugoslavia is not available. We shall, therefore, adopt as a basis for computing her interest 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 gift 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).) On the date of taking claimant was sixty years of age and according to that method of valuation the life estate of a person aged sixty years is valued at 39.679% of the entire estate. Since claimant owned less than a life estate, we shall consider her interest to be 30% of the value of the 2,500 shares, each with a value of 600 dinars, or 30% of 1,500,000 dinars. The value of her interest is, therefore, 450,000 dinars, or \$10,227.27.

We therefore find that the total value of claimant's interests in Backa which were taken by the Government of Yugoslavia was \$139,131.82.

AWARD

On the above evidence and grounds, this claim is allowed and an award is hereby made to Anny Aczel, claimant, in the amount of \$139,131.82 with interest thereon at 6% per annum from September 5, 1946, the date of taking, to August 21, 1948, the date of payment by the Government of Yugoslavia, in the amount of \$16,352.72.*

Dated at Washington, D.C.

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

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

In the Matter of the Claim of

ANNY ACZEL
12 East 86th Street
New York 28, New York

Docket No. Y-1277

Decision No. 1440

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

Counsel for Claimant:

ERNEST ANGELL
1 East 44th Street
New York 17, New York

FINAL DECISION

A Proposed Decision was entered in this claim on November 2, 1954, in which an award was made in favor of Anny Aczel, claimant, in the amount of \$139,131.82 plus interest in the amount of \$16,352.72. Subsequent to the issuance of the Proposed Decision, the claimant filed objections and requested a hearing. In addition, the Government of Yugoslavia filed a brief, as amicus curiae, in which it objected to the amount of the award as being too high.

At the hearing the claimant introduced evidence in support of her objection to the value of Backa, as found in the Proposed Decision. However, we find neither this evidence nor the brief and evidence of the Government of Yugoslavia sufficiently convincing on this point, and the valuation of 75,000,000 dinars for the property of Backa taken by the Government of Yugoslavia is affirmed.

The claimant also introduced evidence with respect to the 130 shares of Backa allegedly purchased by her, the claim for which was

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denied in the Proposed Decision. We conclude that she has proved ownership of these shares and, accordingly, find that she owned directly a total of 9,583 shares of Backa.

The claimant likewise introduced evidence with respect to the extent of her usufructuary interest in 2,500 shares of Backa owned by her children. This evidence was in the form of testimony by an expert on Hungarian law. On the basis of this evidence, we conclude that, while her interest was less than a life estate, it was 35% of the value of these 2,500 shares, rather than the 30% found in the Proposed Decision.

Finally, claimant submitted evidence with respect to her ownership of 5,741 shares of Szolnok, which in turn owned 12,500 shares of Backa. We conclude that she has proved this indirect interest in Backa to the extent of .383%, but not to the extent of 3.83%, as alleged in the Statement of Claim.

Therefore, the total value of claimant's interests in Backa are computed as follows:

9,583 shares of Backa owned directly:	5,749,800 dinars
indirect proportionate interest through Szolnok:	287,250 "
usufructuary interest in 2,500 Backa shares:	<u>525,000</u> "
Total	6,562,050 dinars

The total dollar value of her interest is, accordingly, \$149,137.50.

Therefore, in full and final disposition of this claim, an award is hereby made to Anny Aczel, claimant, in the amount of \$149,137.50, with interest thereon in the amount of \$18,288.73.

Dated at Washington, D. C. DEC 30 1954