

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

In the Matter of the Claim of

VIRGINIA HOWARD,
1575 Meridian Avenue,
Miami Beach, Florida.

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

Docket No. Y-1282

Decision No. 1269

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2/19/54

FINAL DECISION

Thirty days having elapsed since the claimant(s) herein and the Government of Yugoslavia were notified of the Commission's Proposed Decision on the above claim, and the claimant(s) having filed no objections thereto, and a brief filed by the Government of Yugoslavia having received due consideration, such Proposed Decision is hereby adopted as the Commission's Final Decision on the claim.

Done at Washington, D. C. NOV 24 1954

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PROPOSED DECISION OF THE COMMISSION

This is a claim for \$9,365.70 by Virginia Howard, a citizen of the United States since her naturalization on November 14, 1944, and is for the nationalization by the Government of Yugoslavia of "Higiea" Tvornica Cepova d.d. Zagreb, hereinafter designated as "Higiea," a Yugoslav corporation, in which corporation claimant owned 1,080 shares of capital stock and which corporation was indebted to claimant for loans in the amount of 137,381 dinars, made prior to the war.

The Government of Yugoslavia admits that the above-mentioned corporation was nationalized on December 5, 1946, pursuant to the Law Regarding Nationalization of Private Enterprises (Official Gazette No. 98 of December 6, 1946).

If this claim were based solely on a debt owed by "Higiea," it would not appear that it would be compensable from the fund created by Article 1 of the Agreement of July 19, 1948 with Yugoslavia for the reason that the debt remains valid and subsisting and has not been "taken" by Yugoslavia. Article 4(c) of the Agreement provides:

"The Government of Yugoslavia recognizes the obligation of the successor enterprises created by it with respect to debts valid under Yugoslav law which were incurred prior to the nationalization or other taking, for the benefit of the enterprises nationalized or otherwise taken . . ."

The debt in question would appear to fulfill the conditions set out in that

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Article and, accordingly, since Yugoslavia recognizes the debt, no claim would arise for its "taking."

However, the claimant has based her claim not only on the taking of a debt owed by "Higiea" but on the nationalization or taking of "Higiea" by the Government of Yugoslavia. The proviso immediately following the quotation above recites:

" . . . provided, however, that there shall be deemed fully settled and discharged all debt obligations of enterprises, nationalized or otherwise taken, owing to nationals of the United States whose claims against the Government of Yugoslavia with respect to the nationalization or other taking of such enterprises are claims which are fully settled and discharged by the agreement; . . . "

Since we shall allow the claim for the taking of "Higiea" by the Government of Yugoslavia, that claim was fully settled and discharged by the Agreement. That being so, the debt obligation is also settled and discharged and no claim with respect thereto may be allowed.

This proviso was explained by the Senate Committee on Foreign Relations in its report on the bill which became the International Claims Settlement Act of 1949 as follows:

"In article 4(c) the Yugoslav Government recognized the obligation of successor enterprises for the valid debts of predecessor enterprises nationalized or otherwise taken. An exception is contained as to a limited category of such debts. Where a person participates in the \$17,000,000 distribution as the owner of an enterprise, he releases the Yugoslav Government from a debt obligation to the same person with respect to the same enterprise. The negotiators understood such cases of creditor-owner to be few in number and subject to the criticism that owners having

control of an enterprise might have been in a position to enter questionable debts on its records. It was agreed that should an owner exercise the option of claiming dollar compensation for his ownership interest, he would release the Yugoslav Government of the debt obligation, such obligations being in all then known instances dinar obligations." * (Senate Report No. 810, p. 11, 81st Cong., 1st Session.)

It may also be remarked in this connection that the Senate Report contains the following statement with respect to debt claims generally:

" . . . the claims settled do not include creditor interests. They are confined to ownership interests in property, either legal or beneficial, direct or indirect. This is consistent with traditional United States policy in connection with espousals." (idem.)

We hold, therefore, that claimant's debt claim has been fully settled and discharged, since, as we shall hold, her claim for the nationalization or taking of "Higiea" has been settled and discharged under the Agreement. Therefore, the claim with respect to the debt must be denied.

With respect to the 1,080 shares of "Higiea" stock, it appears from the evidence filed by claimant that her father, David Moeller, was the owner of 1,200 shares of "Higiea" stock; that on April 26, 1941, in Zagreb, Yugoslavia, he deposited them with one Dinko Vucetic, a son-in-law of his business associate; that Mr. Vucetic, in writing, confirmed that this stock would be returned to Mr. Moeller "or to the person he will designate . . . as soon as the actual situation permit."

It further appears from the evidence filed that Mr. Moeller left Yugoslavia, after he deposited the "Higiea" shares of stock, as stated above, and for a time took refuge in Trieste; that before the German armed forces occupied Trieste, he fled to

* This report reflects the views of the State Department officials who negotiated the Agreement with Yugoslavia and testified before the Senate Committee with respect to the claims embraced by the Agreement.

Todi, Italy to escape persecution, and while residing in Todi, and on or about December 24, 1944, he executed an instrument (on official Italian stamped paper (Carta Bollata) to which there was affixed a revenue stamp) by the terms of which he "donated" 1,080 shares of "Higlea" stock to his daughter, the claimant herein. At that time, prevailing conditions prevented the return of the shares of stock by Mr. Vucetic to Mr. Moeller or his nominee. In the prefatory paragraph of the instrument of donation, the donor stated that he was living and hiding in Todi because he was persecuted by reason of "politic" and he did "not want to enact a public document which could have the effect to signalize his present residence."

The "donation" (gift) by Mr. Moeller to claimant was without reservation or conditions. The "donor" stated "I express herewith my will to donate -- as in effect I donate -- to my daughter, Virginia Moeller, married to Herz Howard . . . one thousand eighty shares of H.I.G.I.E.A. . . ." Following his signature to the instrument, he repeated that he "donates" the above shares, and in a letter addressed to claimant, dated November 20, 1944, wrote that he had taken the decision to donate to claimant his 1,080 shares of "Higlea." A donation inter vivos is an act by which the donor divests himself at present and irrevocably of the thing given in favor of the donee who accepts. Manual delivery is not considered essential in all cases. The general rule is that a gift of property evidenced by a written instrument executed by the donor is consummated by a delivery of the instrument without a manual delivery of the property, especially where it is not in the power of the donor to make manual delivery. The intention to give, manifested by the words or actions of the donor, is often the crucial test in determining whether there was a constructive delivery of a gift inter vivos.

The Government of Yugoslavia admits that the claim for the stock is well-founded if claimant proves that a fictitious gift was not involved in order to insure payment under the terms of the Agreement of July 19, 1948 between the Governments of the United States and Yugoslavia. The Commission finds that the gift was valid. Since it was made on December 20, 1944, it is reasonable to assume that the donor, then residing in Italy, could not have anticipated that "Higiea" would be nationalized two years later or that the Agreement of July 19, 1948 would be concluded, about four years later.

The Commission is of the opinion, on the basis of all evidence and data before it, that claimant was the lawful owner of 1,080 shares of "Higiea" stock when that corporation was nationalized on December 5, 1946 and that the fair and reasonable value of this stock was 250 dinars per share, for a total of 270,000 dinars. That amount, converted into dollars at the rate of 44 dinars to \$1, the rate adopted by the Commission for the payment of awards based on 1938 valuations, equals \$6,136.36.*

AWARD

On the above evidence and grounds, the claim is allowed and an award is hereby made to Virginia Howard, claimant, in the amount of \$6,136.36, with interest thereon at 6½ per annum from December 5, 1946, the date of taking, to August 21, 1948, the date of payment by the Government of Yugoslavia, in the amount of \$630.45.*

Dated at Washington, D. C.

SEP 15 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.