

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

In the Matter of the Claim of

IRENE HUBER,
35-48 - 75th Street, Apt. 4A,
Jackson Heights 72, New York.

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

Docket No. Y-1293

Decision No. 1523

Counsel for Claimant:

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

approved
HC
12-27-54

FINAL DECISION

A Proposed Decision was issued in this claim on November 22, 1954, making an award to claimant in the amount of \$73,196.82 plus interest in the amount of \$3,912.95. Subsequent to the issuance of the Proposed Decision the Government of Yugoslavia filed a brief, as amicus curiae. In addition, the claimant, in lieu of a hearing, filed evidence in support of her position that the amount of the award was too low.

To show that the mortgages recorded on the Zagreb properties she inherited were not in existence, the claimant filed a certificate dated November 20, 1954, from the National Bank of the F.P.R.Y. This document recites:

"It is being certified herewith that the National Bank, Branch 406, in Zagreb, as successor to the former Gradska Stedionica Grada (City Savings Bank of the City of Zagreb) has no claim against Slavoljub and Serafina Deutsch of Zagreb."

But this document is merely evidence that the mortgages are currently extinguished. It is no evidence whatsoever that the

99
HC

mortgages were satisfied on August 17, 1947, the date of taking, and it is the value of claimant's interests on such date which is the measure of her compensation. Satisfaction of such a lien, subsequent to the date of taking, if such is the case here, would have no bearing on the value of claimant's interest on the date of taking and cannot be taken into consideration when computing that interest for the reasons set out in Decision No. 1495, In the Matter of the Claim of Franz K. Reichsman.

In addition claimant has filed the affidavit of Dr. Leo Susman, son-in-law of Slavoljub and Serafina Deutsch, who swears:

"Two mortgages were granted, one up to the amount of Dinars 3,000,000 and the other one up to Dinars 1,000,000. I cannot recall exactly the amount of the promissory notes which were given to the Bank. However, I know very well that in 1938 there was no debt, secured by said two mortgages, in existence any more. I know this, because I recall that I advised my late father-in-law to have the mortgages cancelled then, however, my late father-in-law had reasons not to show that the mortgages on his house were paid off.

"All these facts were known to me because I took care of the business affairs, books of accounts, tax matters and finances of my late parents-in-law. However, all the pertinent facts regarding mortgages and non-existence of balances at various times must also appear on the books of account of the City Savings Bank of Zagreb."

We do not consider this affidavit sufficient to establish the satisfaction of these mortgages in view of the large amount of money involved here. Moreover, if, as the affiant states, the books of account would show their satisfaction, there has been no explanation as to why claimant has not offered such evidence. In this connection, it is noted that claimant has had notice for over three years of the recording of these encumbrances, for they appeared on the land extract filed with the claim. Yet no attempt was made to secure evidence of their satisfaction until the Proposed Decision was issued. The deduction for these mortgages will, therefore, remain undisturbed.

Claimant has also filed affidavits by Ing. Stjepan Cernjak, Aser Kabiljo and Dr. Leo Susman regarding the construction costs of certain properties. Nothing in these affidavits persuades us that the value of the properties, as found in the Proposed Decision, was in error.

Thirty days having elapsed since the claimant and the Government of Yugoslavia were notified of the Commission's Proposed Decision in the above claim, and the brief filed by the Government of Yugoslavia and the evidence filed by the claimant having received due consideration, such Proposed Decision is hereby adopted as the Commission's Final Decision on this claim.

Dated at Washington, D. C.

DEC 30 1954

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

In the Matter of the Claim of

✓ IRENE HUBER
35-48 - 75th Street, Apt. 4A
Jackson Heights 72, New York

✓ Docket No. Y-1293

Decision No. 1523

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

Counsel for Claimant: ✓

✓ PAUL NEUBERGER, Esquire
16 West 46th Street
New York 17, New York

*STC
ywh
Nov 19, 1954*

*ok.
11-22-54*

PROPOSED DECISION OF THE COMMISSION

✓ This is a claim for \$395,000 by Irene Huber, a citizen of the United States since her naturalization on August 7, 1945, and is for the taking by the Government of Yugoslavia of real property registered under Docket Nos. 14216 and 9671, Zagreb, and 1344, Belgrade, in which she acquired ownership interests by purchase and/or inheritance from her deceased parents, Slavoljub and Serafine Deutsch, and real property registered under Docket No. 5065, Zagreb, in which she acquired a mortgage interest by inheritance from her deceased mother, Serafine Deutsch.

✓ The Commission finds it established by certified extracts from the Land Register of the County Courts of Zagreb and Belgrade (Docket Nos. 14216, 9671 and 5065, Cadastral District of Zagreb, and Docket No. 1344, Cadastral District of Belgrade 1), filed by claimant and the Government of Yugoslavia, and admissions of that

*RV
JMM*

Government, that claimant and Serafine Deutsch each owned a $\frac{1}{3}$ interest in 1 parcel of land with an area of 960 square meters, with a structure on the parcel (Docket No. 14216), that Slavoljub and Serafine Deutsch owned 1 parcel of land with an area of 1104 square meters, with a structure on it (Docket No. 9671), that Slavoljub and Serafine Deutsch each owned a one-third interest in 1 parcel of land with an area of 382.10 square meters, with a structure on it (Docket No. 1344), and that claimant and Serafine Deutsch owned a one-third interest each in a mortgage in the amount of 3,000,000 dinars at $4\frac{1}{2}\%$ interest per annum on 2 parcels of land with an area of 1841 square fathoms, with structures on the parcels (Docket No. 5065).

The above evidence further shows that the properties registered under Docket Nos 14216, 9671 and 5065, Zagreb, were taken on August 17, 1947, pursuant to the Abandoned Property Law of August 2, 1946 (Official Gazette Nos. 64 of August 9, 1946 and 105 of December 27, 1946), and the property registered under Docket No. 1344, Belgrade 1, was taken on April 28, 1948, pursuant to the Second Nationalization Law of April 28, 1948 (Official Gazette No. 35 of April 29, 1948).

The claimant has filed a photocopy of an inheritance decree of May 17, 1948 issued by the County Court of Zagreb, concerning the estates of Slavoljub and Serafine Deutsch, deceased, who were declared judicially dead as of May 9, 1945, intestate. By this decree claimant is awarded a one-half interest in their estates. Furthermore, the Government of Yugoslavia concedes the existence of this decree and that claimant thereby became the heir to one-half the decedents' real property, including the mortgage. The Commission, therefore, finds that claimant acquired a one-half interest by inheritance of the property owned by her deceased parents, as described above.

As to the value of the properties, claimant has filed a photocopy of an appraisal by one Ing. Marjan Dubsky for the property

registered under Docket No. 9671, Zagreb. He values it at 38,210,000 dinars "with due consideration to such prices, which prevailed prior to World War II". She has also filed a photocopy of an appraisal by one Ing. Jaromir Dubsky, who appraises the property registered under Docket No. 14216, Zagreb, at 2,500,000 dinars.

Three-party committees designated by local authorities have appraised the properties as follows:

Docket No. 14216, Zagreb:	703,900 dinars
Docket No. 9671, Zagreb:	7,285,600 "
Docket No. 1344, Belgrade 1:	3,334,345 "

The Commission's investigator has appraised the value of the properties as follows:

	<u>Appraisal</u>	<u>Claimant's Interest</u>	
Docket No. 14216, Zagreb	969,600 dinars	484,800 dinars	1/2
Docket No. 9671, Zagreb	8,301,620 "	4,150,810 "	1/2
Docket No. 1344, Belgrade 1	<u>3,484,400</u> "	<u>1,161,467</u> "	1/3
Total	12,755,620 dinars	5,797,077 dinars	

Both appraisals were made on the basis of 1938 values.

The Commission is of the opinion, on the basis of all evidence and data before it, that the fair and reasonable value of the above property was 12,755,620 dinars as of the year 1938 and that the value of claimant's share therein was 5,797,077 dinars.

The extract for Docket No. 9671, Zagreb, records the following mortgages:

- July 23, 1928: 3,000,000 dinars at 8% interest in favor of the City Savings Bank, Zagreb;
- July 21, 1928: 1,000,000 dinars at 8% interest in favor of the City Savings Bank, Zagreb;
- May 23, 1934: 1,500,000 dinars at 7% interest in favor of the City Savings Bank, Zagreb.

Also, the extract for Docket No. 1344, Belgrade 1, records these mortgages:

- ✓ January 12, 1940: 400,000 dinars at 6.5% in favor of the State Mortgage Bank, Belgrade;
- ✓ April 6, 1940: 300,000 dinars at 6.5% in favor of the State Mortgage Bank, Belgrade;
- ✓ May 23, 1934: 500,000 dinars at 6.5% in favor of the State Mortgage Bank, Belgrade.

✓ No evidence has been filed indicating that the mortgages have been satisfied.

✓ In the circumstances, we are of the opinion that a deduction for the mortgages must be made. In arriving at this decision we have not failed to consider that the claimant may be obligated to satisfy the debts for which the mortgages were given as security. However, the likelihood that the claimant herein, or that any claimant whose Yugoslav property was mortgaged, will be called upon to do so seems sufficiently remote as to be practically non-existent. A suit on the mortgage may be barred by time limitations; the mortgagee, if a Yugoslav financial institution, has either been nationalized or liquidated; the mortgagor and the mortgagee may not know the whereabouts of each other; the mortgagor and the mortgagee may reside in different countries with the result that suit or payment may be impracticable; any recovery by the mortgagee from the mortgagor may be limited to 10% of the debt because of the pre-war debt devaluation law of October 27, 1945 (Law on Settlement of Pre-War Obligations, as amended, Official Gazette No. 88, November 13, 1945; Official Gazette No. 66, August 16, 1946); or, finally, the mortgagee, if a citizen of the United States, may look to this Commission for compensation for the loss of his security.

The Commission, in its determination of claims against Yugoslavia, is directed by the International Claims Settlement Act to

apply (1) the terms of the Agreement with that country and (2) the applicable principles of international law, justice and equity, in that order. The Agreement contains no specific provision regarding mortgages. We have found no applicable decisions of arbitral tribunals, international or domestic, having responsibility for the determination of claims which were satisfied by the payment of a lump-sum. (Because of the comparatively recent acceptance of lump-sums in settlement of large blocks of international claims, it is doubted that there are reported decisions directly in point.)

✓ It is our view that justice and equity to all claimants require a deduction for mortgages under the circumstances involved in the claims before us, whether the property was taken before or after the above-mentioned Yugoslav debt settlement law became effective. The lump-sum of \$17,000,000 has been provided for the satisfaction of all claims. As the claims filed aggregate many times that amount, the fund may be insufficient to pay all claims allowed in full. In these circumstances we believe we are obligated to limit our awards to actual proven losses and not to make awards for contingent losses which may never materialize. We also believe that when many claimants have to share in a fund which may prove inadequate, one claimant should not receive a windfall or be enriched at the expense of other claimants. That would be the case if a claimant who was awarded the full value of his property made no payment on the mortgage, or satisfied the mortgage debt by payment of only 10% of the mortgage pursuant to the Yugoslavia debt settlement law. Accordingly, we hold that, in the absence of evidence that a mortgage of record has been satisfied, a deduction for the mortgage must be made in order to reflect the actual amount

of claimant's loss. We find that the proper amount to deduct for the mortgages, including interest, in this claim is 3,865,500 dinars (1/2 of the total mortgages plus interest for three years on that property recorded under Docket No. 9671 and 1/3 of the total mortgages plus interest for three years on the property recorded under Docket No. 1344) and that amount will, therefore, be deducted from the value of claimant's interests in the mortgaged property.

Since the appraised value of claimant's ownership interests in the real property was 5,797,077 dinars, a deduction of 3,865,500 dinars leaves 1,931,577 dinars. Of this amount, all but 323,200 dinars (claimant's 1/3 interest in Docket No. 14216, Zagreb, acquired by purchase) represents the value of real property acquired by inheritance. In addition, claimant owned outright a one-third interest in the 3,000,000 dinar mortgage at 4 1/2% interest per year registered under Docket No. 5065, Zagreb, and one-half of her deceased mother's one-third interest therein. Accordingly, the value of claimant's interest in the mortgage was 1,702,500 dinars, including interest, of which 567,500 dinars represent the interest inherited from her deceased mother. The total value of claimant's interests is therefore 3,634,077 dinars, of which 2,175,877 dinars is the value of inherited property.

Under the laws of Yugoslavia, persons who succeed to real property by inheritance, such as claimant herein, are obligated to pay inheritance taxes on the value of the property (See Law Concerning Direct Taxation, effective January 1, 1946, Article 24, Official Gazette No. 854, November 20, 1945). The Peoples Court

is prohibited from transferring title to the heirs unless and until such inheritance taxes are paid (Revised Law Concerning Direct Taxation of August 14, 1946, Article 64, Official Gazette No. 67, August 20, 1946).* Thus, the value under local law of an heir's interest in real property must be regarded as being the value of the property less the inheritance taxes charged against it and which must be paid before the transfer of title can be accomplished. As awards may be made only for the value of the property taken or, as is the case here, for the value of an interest in property, a deduction must be made for inheritance taxes.

Under the applicable tax law (Inheritance and Gift Tax Law of March 18, 1947, Official Gazette No. 25, March 26, 1947) the tax on property valued at 2,175,877 dinars is 19%, if inherited by a child, or 413,417 dinars. That amount deducted from the value of all the property leaves 3,220,660 dinars as the value of claimant's interests in the property which, converted into United States dollars at the rate of 44 dinars to 1 dollar, the rate adopted by the Commission in making awards based upon evaluations as of the year 1938, equals \$73,196.82.**

Claimant's counsel has requested the Commission, in writing, to determine his fee. An agreement of record authorizes a fee of 10% of the award.

AWARD

On the above evidence and grounds, this claim is allowed to the extent indicated, and an award is hereby made to Irene Huber, claimant, in the amount of \$73,196.82 with interest on \$60,576.18 and \$12,620.64

* In this connection it is to be noted that under Yugoslav law mortgages duly recorded in the Land Registers are considered immovable or real property.

of that amount from August 17, 1947 and April 28, 1948, respectively, the dates of taking, at 6% per annum to August 21, 1948, the date of payment by the Government of Yugoslavia, in the amounts of \$3,674.37 and \$238.58, respectively, a total of \$3,912.95.**

The Commission determines that 10% of the total paid pursuant to such award shall be paid to Paul Neuberger, counsel for claimant.

Dated at Washington, D. C.

NOV 22 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 the attached copy of its decision in the claim of Joseph Senser.