

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

In the Matter of the Claim of

NEW JERSEY INDUSTRIES, INC.  
120 Wall Street  
New York 5, New York

Docket No. Y-1317

Decision No. 1434

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

OK  
10/29/54

PROPOSED DECISION OF THE COMMISSION

OC  
21, 1954  
This is a claim for \$398,694.10 by New Jersey Industries, Inc., a Delaware corporation organized November 21, 1936 under the name Phelan Beale Investment & Securities Corporation. It is established by a certificate from the Secretary of State of the State of Delaware that the corporation was organized on the date indicated; that as of February 24, 1947, the date of the certificate, the corporation was in good standing; and that its name had been duly changed to its present one on February 25, 1943. (1)

The claim is said to derive from the alleged confiscation on March 27, 1945 by the Government of Yugoslavia of all of the assets of Omni-Promet, a.d. of Belgrade, a Yugoslav corporation which, it is asserted, was indirectly owned by the claimant on the date of confiscation, through intermediate corporate ownership more particularly described as follows:

It is asserted that, at the time of the alleged confiscation, the claimant owned and still owns all of the outstanding stock of Emil Koester Aktiengesellschaft, a German corporation (hereinafter called Koester); that Koester owns and at that time owned all of the stock of Riensch and Held, g.m.b.h., an Austrian firm; and that Riensch and Held owned 100% of Omni-Promet at the time

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of the taking of the latter's assets.

In support of the claimant's allegation of taking, it has filed a certified copy of an Order (No. 3238) of March 28, 1945 by the Yugoslav Minister for Trade and Supplies made pursuant to the Decree of the Minister for Industry issued on March 27, 1945, No. 435, and pursuant to the provisions of Article 89 of the Decree of Presidium of the Anti-Fascistic National Liberation Committee relating to the transfer to the Yugoslav Government of enemy property, which order directed the liquidation of Omni-Promet by transfer of its assets to "the Government owned enterprise for trading in hides and textiles".

The Yugoslav Claims Agreement of 1948, which limits the jurisdiction of this Commission, restricts claims thereunder to those of persons who, at the time of the taking of the property for which claim is made, were United States nationals and who then owned, directly or indirectly, the assets involved. The United States nationality of corporate claimants is determined, not only by reference to the jurisdiction in which the corporation was organized but also by reference to its ownership. Thus, it is provided in Article 2 of the Agreement that a corporation may qualify as a claimant only if it was organized under the laws of the United States or of one of its States and if 20% or more of any class of its outstanding securities were, at the time of taking, owned by individual nationals of the United States. And, under applicable principles of international law, (see Decision No. 857 of this Commission in the Matter of the Claim of Jerko Bogovich, et al) it is generally held that such ownership and nationality must have continued uninterruptedly from the date of taking to the date of final determination of the claim.

An award may be made here, therefore, only if the claimant can establish, first, that it is still a Delaware corporation in



good standing; second, that it is a qualified claimant by virtue of the specified ownership of its stock by United States nationals at all times during the period indicated; and, third, that the various links in the chain of ownership above recited are, and at all times since the date of taking were as alleged. Difficult as it may sometimes be to obtain such evidence, the burden of proof on all of these issues must be upon the claimant, if only in fairness to the many other claimants who are to participate in the limited claims fund here available.

For the reasons hereinafter indicated, the Commission cannot find that this burden of proof has been satisfied in this case; and it has therefore concluded that this claim must be denied.

1. Proof of Nationality of the Claimant

In support of its qualification as a corporate claimant, the claimant submitted, shortly after the filing of its claim, an affidavit dated July 29, 1952 from one Carl A. Goldschmidt who states that since July 7, 1948, he has been a vice-president of the claimant; and that on the basis of his examination of the "books and records" of the claimant and his "personal knowledge", he can state that, from 1939 until February 25, 1943, all of the stock in the claimant was vested in one Phelan Beale, a New York attorney, and that between February 25, 1943 and the date of the affidavit, Erna Sondheimer Michael of New York City was "the sole and exclusive owner of the stock of New Jersey Industries, Inc." It is established that Erna Sondheimer Michael became a United States citizen by naturalization on December 6, 1944; and there is no basis for belief that she may have lost her citizenship since then.

By letter dated August 3, 1954, the Commission suggested that there be submitted to it, among other items of proof, affidavits from both Mrs. Michael and Phelan Beale, reciting the circumstances under which Mrs. Michael acquired her stock as alleged. It was



also then suggested that the claimant submit a certified copy of the stock register and stock transfer sheets from the corporation's records reflecting Mrs. Michael's acquisition and continued ownership of this stock.

As to the latter item of proof, the claimant replied, by letter of Mr. Goldschmidt, that "New Jersey Industries, Inc. being a privately owned company, it has never maintained a formal stock register and formal stock transfer records". However, no other record proof of this kind was offered; although it may be noted that in his earlier affidavit, Mr. Goldschmidt had referred to "books and records" as the basis, at least partially, of his statement that Mrs. Michael was the owner of the indicated shares.

No affidavit of Mr. Beale was submitted. An affidavit of Mrs. Michael was submitted, however, from which the following appears.

The corporation was organized in 1936 for the sole purpose, apparently, of holding, in the name of United States interests, certain shares of stock in Koester. Mrs. Michael states that "prior to the incorporation of the claimant" she was the "beneficial owner" of all of the outstanding shares of Koester. There is no indication, however, of the name or nationality of the "legal" owner of these shares.

She further states that after the Nazis came into power in Germany and "for the purpose of concealing the Jewish ownership" of Koester, she "caused" the shares of Koester to be transferred "without real consideration" to Phelan Beale who held the shares "as my fiduciary"; that in November 1936, the claimant was organized under its then name of Phelan Beale Investment & Securities Corporation; that Mr. Beale then transferred the Koester shares to the claimant corporation in exchange for the latter's common stock



which "he held in a fiduciary capacity for my benefit"; that, in addition, the claimant corporation (under its then name of Phelan Beale Investment & Securities Corporation) issued 5,000 shares of preferred stock to the brokerage house of Fenner & Beane "who endorsed the shares in blank" and that these shares were "also held by Phelan Beale as my fiduciary"; and that "in the first half of 1943 the fiduciary capacity of Mr. Phelan Beale (exercised by him personally or through companies formed for such purpose and subsequently dissolved) was discontinued and all preferred and common stock issued by the claimant was turned over to me by Mr. Phelan Beale."

A letter, dated September 15, 1954, sent to the Commission by Mr. Goldschmidt states that the 5,000 shares of preferred stock were held from 1936 until February 1943, not by Phelan Beale, as stated in Mr. Goldschmidt's affidavit first above mentioned, but by Fiscal Holding Corporation which, he says, "acted as her (Mrs. Michael's) nominee". There is no indication as to the ownership or nationality of Fiscal Holding Corporation, as to which no previous mention had been made. Mr. Goldschmidt also states that in addition to the original issue of 10,000 shares of common stock which were assertedly held by Mr. Beale until February 1943, an additional 20,000 shares of common stock were issued to and are now held by Mrs. Michael. No reference had been made to this additional 20,000 shares of common stock in the earlier affidavit of Mr. Goldschmidt of July 29, 1952; and there is no indication as to when these latter shares were issued.

Photostats of some, but not all of the stock certificates so allegedly owned by Mrs. Michael have been filed with the Commission; they, however, do not indicate any date of issuance.

The corporation was apparently authorized to issue 5,000 shares of preferred stock of \$100 par value and 300,000 shares of



no par value common stock. The only proof of the relationship of Mrs. Michael's alleged holdings of the claimant's shares to its total stock outstanding is the statement in Mr. Goldschmidt's original affidavit of July 29, 1952 which, as indicated, is wholly uncorroborated by documentary proof, that between 1943 and 1952 Mrs. Michael was the "sole and exclusive owner of the entire stock of New Jersey Industries, Inc."

As indicated, no statement by Mr. Beale or any other disinterested person who might be familiar with the facts, has been submitted. Considering the important part evidently played by Mr. Beale in these involved transactions—both as fiduciary and attorney—the Commission must consider this a significant omission of important proof.

— The valuable privilege enjoyed by United States nationals to have their claims against foreign governments espoused by the United States Government is one that must be carefully circumscribed and guarded. It is for that reason that, with increasing frequency, international claims agreements negotiated by the United States have required that the nationality test for corporate claimants be satisfied, not simply by reference to the jurisdiction in which the corporation was organized but, more importantly, by reference to the existence of a substantial and bona fide ownership interest in the corporation by individual United States citizens at the time the claim arose. This test is one which must be satisfied by proof as clear, consistent and complete as the circumstances permit.

In the light of the foregoing, the Commission has concluded that, upon the record before it, it has not been established that the true ownership of the claimant corporation was vested, at the time of the alleged confiscation or at any time thereafter, in Erna Sondheimer Michael.

— There are, in any event, other deficiencies of proof relating particularly to the various links of ownership above recited, which would require a denial of this claim.



2. Proof of Ownership by New Jersey Industries, Inc. of Koester

In its aforementioned letter of August 3, 1954, the Commission suggested the filing of the following proofs on this phase of the claim: the certificates of stock held by the claimant evidencing its ownership in its subsidiary company, an affidavit from one of the claimant's officers relating to its ownership of such stock, indicating when, where and how acquired and the consideration paid, certified copies of balance sheets or other records of the claimant evidencing such ownership as of the date of taking and thereafter, and certified copies of its subsidiary's records reflecting such ownership during the same period.

Pursuant thereto, the claimant has submitted only the following:

(a) An affidavit, dated September 15, 1954, by Mr. Goldschmidt who states simply, without documentation or other indication of the basis for his knowledge, that all of the outstanding shares of Koester are "now owned" by the claimant and "in March 1945 were owned by New Jersey Industries, Inc."

(b) Another affidavit of the same date by Mr. Goldschmidt in which he states, again without any documentation or other indication of the basis of his knowledge, that the capital stock of Koester is represented by 80 bearer certificates each in the face value of 100,000 Reichsmarks and all in the possession of the claimant; and there is attached to this affidavit what is described as a "specimen certificate of stock". He states that all of these certificates are "kept at First National Bank of Ithaca, Ithaca, New York, for safekeeping". It is noted, however, that the certificate, of which a copy was submitted as a "specimen", bears the issuance date of June 1951, more than 6 years after the alleged taking.

(c) Mr. Goldschmidt also submitted a photostat of a statement issued by the Guaranty Trust Company of New York, from its Paris



office, entitled "Verification of Securities Held in Safekeeping" which is addressed to Phelan Beale Investment and Securities Corporation and which recites the deposit with the bank for the account of Phelan Beale Investment & Securities Corporation of a quantity of Koester stock certificates. These certificates are described as representing an aggregate face value of 10 million Reichsmarks and a stated "capital par value" of 60 million Reichsmarks. This statement, it is noted, is dated October 8, 1937, almost 8 years before the alleged date of taking.

(d) There was also submitted an unauthenticated photostatic copy of a statement entitled "Transcript No. 1583 of the Documentary Register For 1947" and signed by one Hans Harder Biermann-Ratjen who identifies himself as a notary of Hamburg, Germany. This document purports to be a transcript of the minutes of a special meeting of the stockholders of Koester held in Hamburg on November 3, 1947; and it is recited therein that New Jersey Industries, Inc., as the owner of all of the outstanding stock of Koester, was the sole stockholder represented at that meeting. The meeting purports to have been held in the office of the notary, and New Jersey Industries, Inc. is said to have been represented by Heinrich Gunther, an attorney at law of Hamburg.

As already indicated, none of the other evidentiary material which the Commission suggested has been filed.

Upon the evidence before it, the Commission cannot find it established that the claimant was the sole owner of all of the outstanding stock of Koester on the alleged date of taking of the Omni-Promet assets.

3. Proof of Ownership by Koester of Reinsch & Held

In its letter aforementioned, the Commission also requested the submission of similar material on this phase of the claim. No such material, however, has been submitted. The claimant had, prior to that letter, submitted only the following in that regard:



(a) An unverified statement by one Walter Zippel, dated June 24, 1952, who describes himself as the manager of Reinsch & Held. He states that Koester acquired all of the shares of Reinsch & Held in 1939 but that in 1940, these shares "were transferred under political pressure to the German firm of Reinsch & Held Kommanditgesellschaft in Hamburg". He adds that certain contracts were then entered into by which "the absolute controlling influence of the management was reserved for all practical purposes to" Koester. However, no such documents were submitted nor was any other information provided in respect to them. Mr. Zippel indicates, generally, that during the war Koester and Reinsch & Held were considered by the German authorities as enemy property; and that "in 1948 the custodianship which had been established over Reinsch & Held g.m.b.h. of Vienna was lifted after proof of American ownership had been submitted". No such proof has been submitted here, however.

(b) A statement by Kurt Justus and Ernst Von Borries, dated September 11, 1946 which recites that the affiants were the nominal owners of Reinsch & Held from 1940 until 1943. They state that "we managed the shares with respect to the Emil Koester A.G. solely as trustees and returned them to our trustor in the notarial instrument of June 8/10, 1943 (No. 73 and No. 95 Notarial Register for the year 1943 of the Notary Adolf Koch, Berlin)". However, no pertinent documents in this regard have been submitted.

Upon this evidence, the Commission again cannot find it established that Koester was the sole owner of Reinsch & Held at the alleged time of the taking of Omni-Promet in 1945.

4. Proof of Ownership By Reinsch & Held of Omni-Promet

There is evidence that, upon its organization in 1940, Omni-Promet was owned, almost entirely, by Reinsch & Held. It appears from a certificate issued on November 1, 1949 by the Ministry of Commerce and Supply of the Republic of Serbia that Omni-Promet was



organized on August 20, 1940 and that at its last shareholders' meeting in June 1940, held in Belgrade, Reinsch & Held appeared as the owner of 1350 shares out of a total of 1500 outstanding. There is, however, no proof that such ownership continued until the alleged date of taking.

Moreover, in that connection, it appears from the same certificate that by June 1944 the affairs of Omni-Promet had, in some unspecified way, merged or become interrelated with the operation of another entity; for it is stated in that certificate that "from the list of shares deposited and shareholders who were present at the meeting of Textad in June 1944, it is apparent that the participation of Omni-Promet a.d. in the aforesaid corporation amounts to 890,000 occupation dinars." (It is also indicated in that certificate that the company's original capital stock amounted to 1,500,000 prewar dinars, divided into 1500 shares of 1000 dinars par value.) In its letter of August 3, 1954, the Commission suggested that the claimant furnish an explanation of the relationship between Omni-Promet and Textad, since the latter is not elsewhere referred to in any of the documents heretofore submitted. However, no information in that regard has been submitted.

The Government of Yugoslavia has furnished no information, nor have the Commission's investigators been able to obtain any other information relating to the taking of Omni-Promet or to the nature or value of any of its assets at that time; nor has the claimant furnished any evidence of the proceeds of the liquidation of Omni-Promet's assets, as apparently directed by the order of liquidation first above mentioned.

As earlier indicated, the burden of proof upon all questions involved in claims before the Commission must rest upon the claimant.



For the reasons already stated, the Commission has concluded that, upon the total record before it, the claimant here has not sustained this burden of proof; and this claim must therefore be denied.

Dated at Washington, D. C.

**OCT 29 1954**



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OF THE UNITED STATES  
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NEW JERSEY INDUSTRIES, INC.  
120 Wall Street  
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Docket No. Y-1317

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

Counsel for Claimant:

Warren W. Grimes  
Shoreham Building  
Washington 5, D. C.

*affirmed*  
*12-14-54*

FINAL DECISION

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

Thereafter, pursuant to applicable procedures, a hearing was held upon the claimant's objections to such Proposed Decision. At that time, evidence bearing upon some aspects of this claim was introduced and argument of counsel for the claimant was heard in these respects and in connection with other aspects of the claim. Counsel for the claimant was also then granted, at his request, further opportunity to introduce additional evidence. No such additional evidence was thereafter introduced.

Subsequent to the hearing and on December 7, 1954, the claimant filed with the Commission a duly acknowledged statement, executed by its Vice-President, in which it was stated that "we hereby withdraw our claim and respectfully request that no further consideration be given thereto". In that statement, the claimant stated its reasons for withdrawing its claim at this point as follows:

*A. Z. S.*  
*J. M. M.*



"We believe that this appraisal (the appraisal submitted to the Commission by the Government of Yugoslavia) is far under the reasonable value of the assets taken in Yugoslavia. However, we fear that we would have to face considerable difficulties in order to effect a revision of the decision by the District Court of the City of Belgrade, on which the aforesaid appraisal is based."

Upon consideration of the entire record now before it, the Commission has concluded that its Proposed Decision should be adhered to and that this claim should be and it hereby is denied.

Dated at Washington, D. C.

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