

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

In the Matter of the Claim of

PETER PAUL AGOSTON
12 West 72nd Street
New York, New York

Docket No. 1478

Decision No. 1363

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

Counsel for Claimant:

Ernest Angell, Esquire
1 East 44 Street
New York 71, New York

approved
12-14-54

FINAL DECISION

On October 15, 1954 the Commission issued its Proposed Decision granting this claim in part, to the extent and for the reasons indicated therein, and making an award on that account in the principal amount of \$12,600. The claim was denied to the extent that it was based upon claimant's alleged ownership, at the time of the taking of the Yugoslav enterprise involved (referred to in the Proposed Decision as "Apatini") of 12,900 shares of an Hungarian corporation (referred to in the Proposed Decision as "Kispesti") which, it has been established, was the sole owner of Apatini at the time of the taking of the latter's assets.

The Proposed Decision included an extended discussion of the facts relating to all of the shares of stock in question, which are asserted to have been acquired by the claimant by gift from his parents, some in 1939 or 1940 and later (as to the additional 12,900 shares) in 1944.

Thereafter, pursuant to the applicable Commission procedures, objections to such Proposed Decision were duly filed and a hearing

HMS.

held thereon. Such objections were directed solely to the Commission's finding that the claimant had not established his claim of ownership to the 12,900 shares above-mentioned, as of the time of the taking of Apatini.

The claimant did not personally appear at the hearing but was represented by his counsel of record. The evidence then introduced was, for the most part, testimony relating to the Hungarian law applicable to the alleged gift to the claimant in 1944 of the block of stock in question. Testimony was also introduced, in affidavit form, bearing upon some of the facts relating to the execution of the alleged gift documents pertaining to this block of stock and upon other factual aspects of the claim.

The Commission has concluded, upon consideration of the entire record now before it, that the additional testimony so introduced is not sufficient to justify any modification of its findings and conclusion as expressed on this phase of the claim in its Proposed Decision.

In the issuance of this Final Decision, the Commission has also considered the report and brief submitted by the Government of Yugoslavia in opposition to any award in this matter, received subsequent to the issuance of the Proposed Decision.

The Government of Yugoslavia reports that it has been unable to find any evidence of the ownership, at any time, of Apatini by Kispesti, or of the ownership by the claimant of any shares of Kispesti at the time of the taking of Apatini. Upon the basis of the evidence heretofore submitted to the Commission, and as stated in the Proposed Decision, the Commission is satisfied that the ownership of Apatini by Kispesti and, to the extent indicated in the Proposed Decision, the claimant's ownership of some shares of stock in Kispesti at the time of the taking of Apatini have been established.

In its brief the Government of Yugoslavia also asserts generally that the Apatini hemp plant which, prior to 1941, had been owned by one Djordje Juranovic, was sold to Apatini pursuant to what is described by the Government of Yugoslavia as "an illegal transaction carried out during the occupation regime, aimed to transmit the economical sources of our country into the ownership of the Hungarian companies." It is asserted specifically that after the war, "the contract of May 30, 1941 (pursuant to which the plant had been acquired by Apatini) was proclaimed nil and void and all property of the Hemp Factory of Apatini as the ownership of Djordje Juranovic was confiscated . . ." It is also stated that certain real estate contracts pursuant to which Apatini acquired other properties in 1941 were also "considered nil and void" and that these properties also were confiscated. It is concluded, in the Yugoslav Government's brief, that all of these contracts "are considered nil and void ab initio, conforming to the present Yugoslav legal provisions"; and that therefore Apatini was not the owner of any property in Yugoslavia at the time the plant involved was taken.

There is no assertion that at the time Apatini acquired the properties involved, the transactions in that regard were other than customary commercial transactions, or that the acquisition of any of these properties was induced by fraud or duress or attended by any facts which, under generally recognized principles of law, might render such transactions void ab initio. The Yugoslav Government's report indicates that apparently substantial consideration was paid for the properties.

The Government of Yugoslavia has not submitted any facts upon which it might be held that the transactions by which Apatini acquired its properties were void ab initio; and it has provided no specification of the "Yugoslav legal provisions" upon which its conclusion

is apparently based. It would appear that its objection is based solely upon the fact that the properties were acquired during the war and assertedly operated for the benefit of enemy occupation forces.

Upon consideration of the foregoing objections of the Government of Yugoslavia, the Commission has concluded that neither such objection, nor any of the facts stated in the aforesaid report of the Government of Yugoslavia, constitute a permissible basis, under the Yugoslav Claims Agreement of 1948, for the denial of this claim.

For the foregoing reasons, the Proposed Decision of the Commission is hereby adopted as its Final Decision in this matter.

Dated at Washington, D. C.

DEC 15 1954

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

In the Matter of the Claim of

PETER PAUL AGOSTON
12 West 72nd Street
New York, New York

Docket No. Y-1478

Decision No. 1363

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

Counsel for Claimant:

ERNEST ANGELL, Esquire
1 East 44th Street
New York 71, New York

elc.
10/14/54

PROPOSED DECISION OF THE COMMISSION

OTC
9/28/54
out 13, 1954

The claimant, Peter Paul Agoston, a citizen of the United States since his naturalization on October 27, 1944, asserts a claim for \$167,500. The claim is alleged to derive from the nationalization by the Government of Yugoslavia in December 1946 of Apatini Kender Gyar, R.T. (Apatini Hemp Factory, Ltd.), a Yugoslav corporation located at Apatini, Yugoslavia. It is asserted that all of the outstanding shares of Apatini were at that time owned by a Hungarian corporation, Kispesti Textilgyar Reszvenytarsagag (Kispesti Textile Mills Ltd.); and that at the time of nationalization the claimant was the owner of 20,460 shares of Kispesti, representing 67% of the total of its 30,000 shares then outstanding. It is alleged that the total value of Apatini's assets was then approximately \$250,000; and claimant thus computes his claim at \$167,500.

Investigation by the Commission has disclosed that the Apatini plant was taken by confiscation on August 14, 1946, pursuant to the Enemy Property Law of November 21, 1944, effective February 6, 1945 (Official Gazette No. 2 of February 6, 1945).

4.2.5.

It is asserted that these shares had been owned since the early 1930's by Emanuel and Lilly Agoston, the claimant's parents; that Emanuel Agoston, his father, had been, throughout that period, the principal stockholder and chief executive officer of Kispesti, and that, at the time of taking, Kispesti had owned all of the shares of Apatini, a large Yugoslav hemp mill. The Commission is satisfied that these facts have been established.

The claimant's father, a national of Hungary, died on December 18, 1946, while on a visit to the United States. His mother, a national of Hungary, resided in New York, New York, between shortly after her husband's death and November 9, 1952, when she died.

The claimant rests his claim of ownership upon alleged gifts made to him by his parents on two separate occasions, involving, first, a block of 7,560 shares in 1940 and, later, in 1944, a block of 12,900 shares of Kispesti stock, representing a total of 20,460 shares theretofore owned jointly by his parents.

I. The Block of 7,560 Shares

The first block of shares is said to have been transferred pursuant to (1) a document, dated May 19, 1939, signed in Budapest by the claimant's parents and addressed to one Fritz Van Gelderen, in London; and (2) a supplemental document dated March 20, 1940, also signed by the claimant's parents in Budapest and addressed to one Eugen Berkovits, in Oxford, England.

In the first document, a simple letter, delivered to Van Gelderen at or about the time of its signing, the Agostons state that "with reference to our discussion of today . . . today we gave our son the assets constituting our property and listed in the enclosed inventory." It goes on to say that "The gift is effected by placing the assets at

your disposal as fiduciary appointed for our minor son;" that the property was to be "put at the disposal of our son" after the death of both parents; and that "in the future you will, concerning the management of the property handed over to you, follow our reasonable instructions."

Van Gelderen was an old friend and business associate of the Agostons who had business interests in London. He is said to have been killed in Holland during the war.

No physical transfer of any of the assets was made. For many years, all of these assets had already been in Van Gelderen's possession in a London safe deposit box under his control. Certain of the American securities then in that box and particularly referred to in the subsequent document were in the name of Van Gelderen. It is said that Van Gelderen held these securities on behalf of the elder Agoston.

The purpose of the original delivery of these assets to Van Gelderen is clearly indicated in the affidavit of Eugen Berkovits, dated November 17, 1947, an old friend, associate and financial advisor of the Agoston family. Mr. Berkovits states that the claimant's father, in anticipation of possible future anti-Semitic pressures, had begun, in the early 1930's, to accumulate assets in foreign countries. The purpose was "to build up a cache as a reserve for himself and his family if he were ever obligated to leave Hungary."

Lilly Agoston, the mother, in her affidavit of June 25, 1951, stated that the purpose of this first alleged gift was to "assure to him (the son) the ownership of part of the stock in Kispesti." The claimant was then 15 years of age. He was about to depart for the United States; and this transaction was made in order, his mother says, "to put him individually and if possible this stock interest in Kispesti, beyond the reach of anti-Semitic forces in Central Europe." He did so leave in October 1939. However, he was told nothing about this

document at the time of its execution and, in his affidavit of September 15, 1952, states that he did not know about it for several years thereafter.

The second document, dated March 20, 1940, was also in the form of a letter, addressed and delivered to Eugen Berkovits. The purpose of this letter, as stated in Mrs. Agoston's affidavit, was to relieve Mr. Van Gelderen of his responsibilities because he was then planning to leave England and return to Holland and, according to Mrs. Agoston, "we further decided to make absolute the gift of the agreement of May 9, 1939". Mr. Eugen Berkovits had been another close friend and business associate of the Agostons. Mr. Berkovits, while then still in England, left for Canada shortly thereafter, arriving in Canada in July 1940 where he has since resided.

This second document recites that Mr. Van Gelderen "has requested us to relieve him of the management of Peter's estate". It goes on to "appoint you (Berkovits) as the manager of the estate" and "you will therefore take over from Van Gelderen the estate". It adds: "To the interpretation of the gift agreement dated May 9, 1939, we herewith state that it was and it is our intention to donate to our son our whole foreign estate, with the provision that you shall manage the same without restriction during the minority of our son".

There then follows a list of the assets involved. The list includes, not only 7560 "pieces" of Kispesti shares, but also a quantity of gold and miscellaneous securities, including some stock in American corporations. The paper concludes with a statement that the provisions in the earlier letter relating to the withholding of these assets from Peter until after the death of both parents are cancelled. Although Mr. Berkovits states that "thereafter, I regarded myself as holding these securities as trustee for the sole benefit of Peter Paul Agoston",

there was no document evidencing Mr. Berkovits' assumption of any responsibilities in this regard.

Nor was any physical delivery of these assets made to Mr. Berkovits. In October 1939, Mr. Van Gelderen had already given him access to the safe deposit box by giving him a duplicate key. It is said that before Van Gelderen left England, he endorsed in blank all of the securities, including those in the American corporations, which had theretofore been issued in his name.

Both of the alleged gift documents remained in the possession of Mr. Berkovits from 1940 until October 1945. They were then delivered by him to Mr. Tibor Fabian in New York City. Mr. Fabian was an old business acquaintance and friend of the Agostons. Mr. Fabian then retained the claimant's present attorney to "act for Peter Agoston" in the obtaining of the assets on deposit in the London bank. The two documents were then, in October or November 1945, delivered to the attorney who has at all times thereafter retained possession of them.

In 1943, the claimant appears to have signed a form TFR-500 (Treasury Department form for claim of foreign property) in which he indicated a claimed ownership of 25.3% of the Kispesti capital stock. On the basis of 30,000 outstanding shares, this would reflect 7590 shares.

Upon his departure from England, Mr. Berkovits left the contents of the safe deposit box behind. They were later, in 1947, delivered to the United States through the efforts of the claimant's present attorney. Upon an appropriate power of attorney from Mr. Berkovits, access was obtained to the safe deposit box.

The safe deposit box contained not only the 7560 shares of Kispesti stock, but a total of 12,000, of which 4440 shares were said to be owned by George Popper, claimant's uncle. All of these shares

were transmitted to the claimant's attorney for the account of the claimant. All of them were then delivered by the claimant's attorney to Mr. Fabian, who, he says, later delivered 7560 shares to the claimant and 4440 to Mr. Popper, as the rightful owner of the latter amount. The American securities theretofore endorsed in blank were thereafter transferred into the name of the claimant and the gold sold for his account.

Upon all of the facts before it and in consideration of the unusual nature of all of the circumstances, the Commission is satisfied that in 1940, Emanuel Agoston had sufficiently divested himself of his ownership in and control over the 7560 shares of the stock in question in favor of his son, the claimant, to justify the conclusion that the latter was the owner thereof at that time and that he continued to be such owner until after the taking of the Apatini property.

II. The Block of 12,900 Shares

However, the Commission must reach a contrary conclusion with respect to this second block of shares. Lilly Agoston states that "Long after Peter had gone to the United States, my husband and I determined to donate to him the remainder of our joint holdings of Kispesti stock". They therefore executed a formal notarial instrument of gift on February 24, 1944 before Doctor Bela Somogyi, notary at Budapest." A copy of this document (not a photostat of the original) was submitted to the Commission; appended to it is a certification by a notary public in Belgrade that it was a copy submitted to him for certification on November 6, 1945.

This document purports to "make today irrevocably gift to our son Peter" of 12,900 shares of Kispesti stock under the conditions, first, that the usufruct of these shares be reserved until the death of both parents and, second, that "this deed of

donation becomes effective in case our son has accepted it by simple written declaration--for which no formality is required--and has recognized the engagements comprised in it".

Mrs. Agoston states that "shortly after this act and date, however, my husband and I determined to and did surrender to Peter the life income right retained by us as stated immediately above". Thus, within 20 days after the execution of the first document, it is said, another document was signed by the Agostons entitled a "Declaration". This document, dated March 16, 1944, purports to renounce the right of usufruct theretofore reserved by the parents and states that they consider "the declaration of acceptance as carried out and the gift as effective"; and that the earlier provisions relating to acceptance by Peter are "cancelled". This document was neither witnessed nor notarized as had the former document, although the latter document would seem to have had far greater significance to the elder Agostons.

Apparently, neither of these documents was ever delivered to anyone until after Mrs. Agoston's arrival in the United States after her husband's death on December 16, 1946 and, except for the notary public who witnessed the first document, there is no evidence that anyone other than the elder Agostons saw either document until after Mrs. Agoston's arrival in the United States.

The affidavit of Ervin Doroghi who was the attorney for Kispesti and an intimate acquaintance of the elder Agostons for many years until the death of Emanuel Agoston indicates that Mr. Doroghi did not know of the existence of either of these documents until 1945 or 1946; nor does it appear that he ever saw any of them. He states only that in the latter part of 1945 or the early part of 1946 Emanuel Agoston had indicated to him

that Peter had become the owner of his Kispesti stock.

The claimant himself says that he knew nothing about this latter gift until August 1946 when, on a visit to his parents in Budapest, "my father informed me fully of the February 1944 gift of the second block of Kispesti shares. I naturally thanked him for it and told him that I most gladly accepted it. At all times since then I have considered these shares to be my own property". This visit is said to have occurred between August 20 and August 30, 1946. Apparently, the claimant did not at that time see either of the documents above-described; nor was he given any indicia of title (e.g., a key to the safe deposit box) which might conceivably be regarded as constituting symbolic delivery. It is clear also that notwithstanding the alleged gift, Emanuel Agoston continued to vote these shares in his own name and without any indication of any other ownership.

The only other information in the record pertinent to this transaction is that contained in a letter dated June 21, 1948 from one Tamas Tormay to Mr. Fabian. Mr. Tormay describes himself as "managing clerk in the office of Dr. Ervin Doroghi".

Mr. Tormay states that, in some way not indicated, he ascertained that the safe deposit box of Emanuel Agoston in the Commercial Bank of Budapest contained 12,850 shares of Kispesti stock "held together by a paper band marked 'property of Peter Paul Agoston'". He adds that "we cannot deliver the shares so much as the owner did not grant a power of attorney to anybody to deliver the shares".

There is no evidence as to when the paper band was placed around the certificates; although, presumably, it was done before Mr. Agoston's visit to the United States in October 1946, during

which visit he died.

Since it is clear that the elder Agoston had retained, at all times until his death, complete control over this second block of shares and had made no delivery thereof, actual or symbolic, the Commission cannot find that a valid gift thereof was ever completed in favor of the son. Moreover, even if it could be said that the alleged gift of these shares was completed by acceptance by the claimant on the occasion of his visit to his parents during August 20 to August 30, 1946, this did not occur until after the date of taking above indicated.

Upon all of the facts before it, the Commission has concluded that it is established that, at the time of the taking of the Apatini property, the latter company was wholly owned by Kispesti; that at that time the claimant was the owner of only 7,560 shares of Kispesti stock, of which a total of 30,000 shares were outstanding; that, accordingly, the claimant was then the owner of an indirect interest, to the extent of 25.2%, in the Apatini assets; and that an award should be made to him on that basis.

The claimant has submitted nothing by way of a physical appraisal of such assets, nor any significant records in support of his asserted value thereof; nor has the Government of Yugoslavia submitted such appraisal or any other report of evaluation which may have been made by it.

Qualified investigators for the Commission who inspected the physical assets of Apatini and who examined all available records have appraised its assets at 2,200,000 dinars (in terms of 1938 values).

Apatini was engaged in the business of purchasing raw hemp from growers in the vicinity of the plant and processing it through early stages for transmittal to its parent company, Kispesti, in Hungary, for further processing and manufacture. Its various assets and their evaluation by the Commission's investigators are as follows:

1. Buildings and Structures

The processing plant and adjoining structures covering an area of approximately 850 square meters, a building for administration and workers' quarters having an area of approximately 315 square meters. Yugoslav experts consulted by the Commission's investigators estimate the cost of construction (in 1935) at between 1.2 and 1.4 million dinars. The Commission's investigators arrived at a construction cost figure of 1,379,000 dinars. Applying a depreciation factor of 1% per year to the highest of the figures above-indicated, 1,400,000 dinars, results in an evaluation for these assets of approximately 1,250,000 dinars

2. Machinery and Equipment

Upon the basis of a physical inspection of these assets by the Commission's investigators and their discussion with local experts familiar with original costs of such equipment, it is estimated that its original cost aggregated approximately 600,000 dinars and that a reasonable evaluation for such equipment on a depreciated basis would be 420,000 dinars

3. Land

All land recorded in the name of Apatini aggregated approximately 62 jutars including 24.9 jutars of plowland, 7.8 jutars of marshland, .8 jutars of meadowland, 25.3 jutars of pasture, .3 jutars of vineyards, .2 jutars of garden and 3.1 jutars of lots, lakes and roads. On the basis of a physical inspection of these parcels of land, examination of available Land Classification Maps and discussions with local residents familiar with land values, the Commission's investigators have concluded that a fair appraisal of these real properties would be 466,000 dinars

4. Inventories

No accurate information as to inventory at the time of taking was available. However, it appears from all the circumstances that the inventory could not have been very large. The Commission considers it reasonable, on the basis of its investigators' findings, to fix a valuation for this item of 64,000 dinars

5. Accounts Payable and Receivable

No records in this regard were available; but, since the company's transactions were largely with its parent company for which it acted as a "feeder" plant, these items were presumably insignificant.

No financial or operating statements were available. Yugoslav Government representatives have stated that all of the company's books were destroyed during the war. In any case, since Apatini was wholly owned by Kispesti and apparently shipped virtually all of its products to Kispesti for further processing, it is unlikely that either financial statements or profit and loss statements would be of any significance

as indications of value on an earnings test basis.

The Commission is of the opinion, on the basis of all evidence and data before it, that the fair and reasonable value of the Apatini properties was 2,200,000 dinars as of the year 1938. That amount converted into dollars at the rate of 44 dinars to \$1, the rate adopted by the Commission in making awards based on 1938 valuations, equals \$50,000.

AWARD

It having been established that, at the time of its taking, the claimant had an indirect ownership interest in Apatini, to the extent of 25.2%, this claim is allowed and an award is hereby made to Peter Paul Agoston, claimant, in the amount of \$12,600 with interest at 6% per annum from August 14, 1946, the date of taking, to August 21, 1948, the date of payment by the Government of Yugoslavia, in the amount of \$1,524.42.

Dated at Washington, D. C.

OCT 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.