

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

In the Matter of the Claim of

RENEE SANCER

300 Riverside Drive
New York, New York

Docket No. Y-1641

Decision No. 1448

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

Counsel for Claimant:

ALVIN E. HEUTCHY

521 Fifth Avenue
New York, New York

and

PAUL NEUBERGER

16 West 46th Street
New York 36, New York

affirmed
12-20-54

FINAL DECISION

A Proposed Decision was entered in this claim on November 3, 1954, in which an award was made to Renee Sancer, claimant, in the amount of \$140,003.52 plus interest in the amount of \$15,557.61.

Subsequent to the issuance of the Proposed Decision the Government of Yugoslavia filed a brief, as amicus curiae, objecting to the amount of the award as being excessive. One point of these objections is that the building at Terazije No. 45 suffered damage by burning in 1941 or 1942 to the extent of 30% of its value and that "the authorities made repairs so that these damages cannot be seen at the present time". It is noted from the land extract, however, that the property passed into the ownership of the puppet state of Serbia

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on October 17, 1942. The Government of Yugoslavia has not shown that the "authorities" referred to were those of the present Government of Yugoslavia, and under these special circumstances we do not consider it proper to deduct for war damage.

The claimant likewise has objected to the amount of the award, but as being too low. The only evidence she has submitted on this point is an affidavit by one Lajar Radiovjevic, a former resident of Belgrade familiar with construction costs, to the effect that the land and building at Terazije 45 was worth 10,319,200 dinars in 1938. It is evident from his affidavit that he is relying on memory and a description of the property furnished him and has made no recent inspection of the premises, if at all. Our finding as to value was based on an appraisal and personal inspection of the property by our own investigator.

We do not consider that the evidence submitted by the Government of Yugoslavia or the claimant is persuasive as to the value of the properties, and the findings as to value set out in the Proposed Decision will stand.

Thirty days having elapsed since the claimant herein and the Government of Yugoslavia were notified of the Commission's Proposed Decision on the above claim, and the brief and evidence filed by the Yugoslav Government and the objection and evidence filed by the claimant having received due consideration, the Commission hereby adopts such Proposed Decision as its Final Decision on the claim.

Dated at Washington, D. C.

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PAUL NEUBERGER,
16 West 46th Street,
New York 17, New York.

ok.
11-9-54

PROPOSED DECISION OF THE COMMISSION

This is a claim for \$554,730 plus interest by Renee Sancer, a citizen of the United States since July 25, 1946, and is for the taking of real property registered under Docket Nos. 1203, 187, and 1253, Belgrade.

The Commission finds it established from a report of its investigator and by photostatic copies of certified extracts from the Land Register of the County Court of Belgrade (Docket Nos. 1203 and 1253, Cadastral District of Belgrade 5 and Docket No. 187, Cadastral District of Belgrade 7), filed by the claimant, that the claimant was the owner of 3 parcels of land with a total area of .35303 hectares, with structures on 2 of the parcels, when they were taken on October 14, 1946, pursuant to the Decree of November 21, 1944, as amended on July 31, 1946, covering the Transfer into State Ownership of Enemy Property, State Administration of Property Belonging to Absent Persons and Sequestration of Property Alienated by Force by the Occupation

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Authorities (Official Gazette No. 2 of February 6, 1945 and Official Gazette No. 63 of August 6, 1946).

As corroborating evidence of value, the claimant has filed an appraisal made by Eng. Pavle Karlov M.P. who has appraised the land and buildings at 20,450,000 dinars on the basis of 1939 values and buildings only at 47,760,000 dinars on the basis of 1948 values. It is obvious, however, that his appraisal has included property not owned by claimant, and omitted property which she did own. For example, he has appraised a building at 20 Sarajevska Street. Claimant, however, did not own property at this address nor any building on that street. She did own a lot at 22 Sarajevska Street and both she and this Commission's investigator agree that there was no building on this site. His appraisal has also included buildings at Bogolavljenska 9, Macvan-ska 24 and Teslina Street, No. 25. However, both claimant and the evidence filed agree that the only buildings she owned which were taken by the Government of Yugoslavia were located at Terazije No. 45 and at the corner of Slatariceva No. 2 and Aleksandra Stemboliskog No. 6. Therefore, the appraisal submitted by the claimant will be disregarded.

A three-party committee designated by local authorities appraised the properties as follows:

Docket No. 1203:	4,585,210 dinars
Docket No. 187:	804,125 "
Docket No. 1253:	<u>441,900</u> "

Total 5,831,235 dinars

An investigator for this Commission has also appraised the properties, as follows:

Docket No. 1203:	6,610,474 dinars
Docket No. 187:	1,212,241 "
Docket No. 1253:	<u>363,700</u> "

Total 8,186,415 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 properties was 8,186,415 as of 1938.

In each land extract submitted by claimant, the sole entry in the encumbrance list is: "The liens omitted as unnecessary." Certified extracts covering these same properties have been filed by the Yugoslav Government in which a list of encumbrances is given. While all extracts show encumbrances, the only ones which affect the value of claimant's interests are those recorded in Docket No. 1203, the two others being referred to therein as "subsidiary dockets" in which mortgages are recorded as a "super-guaranty for the principal debt" encumbering the realty recorded under Docket No. 1203. The latter shows the following entries, all in favor of the State Mortgage Bank of Belgrade:

April 5, 1929	:	300,000 dinars plus expenses
August 19, 1935	:	850,000 dinars plus expenses
December 12, 1936	:	850,000 dinars plus expenses

While the extract shows cancellations and additional encumbrances during the occupation, such transactions were voided by Article 6 of the Decree on the Transfer of Enemy Property into Ownership of the State (Official Gazette No. 2/45). According to a report of the National Bank, which succeeded the State Mortgage Bank, the encumbrances amounted to 2,026,260 dinars on December 30, 1942. No evidence is available as to any additional increase for interest or expenses.

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 debt for which the mortgage was 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 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 Yugoslav debt settlement law. Accordingly, we hold that, in the absence of evidence that a mortgage of record has been satisfied, a deduction for the mortgages 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 in this claim is 2,026,260 dinars and that amount will, therefore, be deducted from the value of the property.

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 claimant which was taken by the Government of Yugoslavia was 6,160,155 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 upon 1938 valuations, equals \$140,003.52.*

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 and an award is hereby made to Renee Sancer, claimant, in the amount of

\$140,003.52 with interest thereon at 6% per annum from October 14, 1946, the date of taking, to August 21, 1948, the date of payment by the Government of Yugoslavia, in the amount of \$15,557.61.*

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.

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* 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.