

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

In the Matter of the Claim of

GERTRUD KOLISCH
290 Riverside Drive
New York 25, New York

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

Docket No. Y-1751

Decision No. 1447

etc.
11-3-54

PROPOSED DECISION OF THE COMMISSION

*Or
9228
Nov 3, 1954*

This is a claim for \$66,000 by Gertrud Kolisch, nee Loewy, a citizen of the United States since her naturalization on March 4, 1946, and is for the taking by the Government of Yugoslavia of the enterprise known as "Linoleum" at Ilica 16, Zagreb, Yugoslavia, in which the claimant allegedly had a one-third interest.

The Commission finds it established by evidence filed by the claimant, by certified extracts from the Commercial Register of the City of Zagreb, filed by the Government of Yugoslavia, and admissions of that Government, that prior to December 24, 1938, the firm of Hinko Loewy and Brother, "Linoleum", trading in linoleum, oilcloth, cocomats, haberdashery, textiles and leather goods, was operated at 73 Ilica, Zagreb, by Gertrud Loewy, claimant herein, her brother Gjuro Loewy, and her mother, Lucija Pam; that on December 24, 1938, following their resignation from the firm, the names of Gertrud Loewy and Gjuro Loewy were canceled as "public members" of the firm, and the enterprise was transferred from the register of company firms to the register of private firms, as the solely owned enterprise of Lucija Pam, mother of claimant.

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According to the claimant, in addition to the one-third interest which she owned in the firm "Linoleum" in Zagreb, Yugoslavia, she owned an interest in a similar business in Vienna, Austria; that these interests in the firms in Vienna and Zagreb were acquired from her father who died in Vienna, Austria, on November 16, 1916; that after the occupation of Austria by the German Army prior to the outbreak of World War II, the Viennese business was immediately seized by a "Kommissar" and she was deprived of all rights with respect to it; the Kommissar also demanded that she sign a document transferring her share in the business in Zagreb to the German Reich; that after she declined to do this, she was forced to leave a power-of-attorney with an attorney in Vienna with instructions to "liquidate" her assets, including her share in the firm in Vienna; that after she fled Vienna, she decided that unless she divested herself of the appearance of ownership of one-third in the business in Zagreb, she would lose the same by virtue of the power-of-attorney referred to above. For these reasons, according to claimant, she decided, as a matter of outward appearance, to transfer her share in the business in Zagreb to her mother, and it was also decided that her brother should do the same thing, with the understanding that the ownership of claimant and her brother should not cease to exist and that the appearance thereof should be restored as soon as practical. In keeping with this agreement, on December 14, 1938, at London, England, claimant executed a withdrawal from the firm Hinko Loewy and Brother, 16 Ilica, Zagreb. Her brother executed a similar withdrawal and upon filing these documents in the District Court, as Commercial Court, at Zagreb, the change of ownership recited above was effected, so that thereafter, according to the records, the sole owner of the enterprise was Lucija Majnaric, mother of claimant, who had remarried an Aryan Yugoslav, Juraj Majnaric.

The claimant has filed the following documents in support of her contention that she remained the owner of a one-third interest in the business "Linoleum" in Zagreb, and that the transfer on December 24, 1938, of her one-third interest in favor of her mother, was made without consideration and was executed for the sole purpose of concealing her ownership and protecting it from confiscation as Jewish-owned:

1. An affidavit of November 12, 1952 by George Low (Loewy), brother of claimant, that ". . . we agreed that Gertrude Kolisch should execute a petition to the Commercial Register in Zagreb, canceling her name as partner of the firm 'Linoleum', thus eliminating her name and the appearance of her part-ownership, provided, nevertheless, that she should remain the owner of one-third of the business and of all of its assets until such time as her re-instatement in the firm and in the Commercial Register would seem advisable. . . ." and that "This petition was only signed by Gertrude Kolisch under duress in order to prevent a confiscation of her share in the business by an illegal act of an illegal government. Gertrude Kolisch never received a penny of consideration for said release and considered herself at all times a one-third owner of the property in Zagreb."

2. An affidavit of November 12, 1952 by Charles Kolisch, husband of the claimant, that "Gertrude Kolisch would execute a petition to the Commercial Register in Zagreb, canceling her name as partner of the firm 'Linoleum', thus eliminating her name and the appearance of her part-ownership, provided, nevertheless, that she should remain the owner of one-third of the business and of all of its assets until such time as her reinstatement in the firm and in the Commercial Register would seem advisable . . ." and that ". . . I know, and there is not a particle of doubt in my mind, that this petition was only signed by Gertrude Kolisch under duress in order to prevent a confiscation of her share in the business by an illegal act of an illegal government. Gertrude Kolisch never received a penny of consideration for said renunciation and considered herself at all times a one-third owner in the property in Zagreb."

3. An affidavit of January 28, 1953 by Oscar Naschitz, who visited Mrs. Lucija Majnaric, the claimant's mother, in Zagreb on or about October 1, 1945 that ". . . At the occasion of said visit, the said Mrs. Lucija Majnaric told me the entire story of the loss of her businesses in Austria and Czechoslovakia, of the occupation of Yugoslavia by German troops, of her sufferings, and she pointed out to me that, although she had lost the greater part of her businesses, she was extremely happy that she could retain the firm in the name of 'Linoleum', inasmuch as the net worth of said business enterprise, more specifically its inventory and equipment, upon a very conservative valuation, amounted to a minimum of ten million Dinars."

4. An affidavit of April 28, 1954 by Fanny Megla, a governess in the household of Lucija Majnaric for thirty years and an acquaintance of the claimant since 1917, that "I know of my own knowledge that during the month of July, 1938, the mother of Gertrude Kolisch and George Low, Mrs. Lucija Pam, travelled from Zagreb to Abbazia to implore Mrs. Gertrude Kolisch to sign an application eliminating her from the commercial register of the firm 'Linoleum', and giving up her formal partnership interest in said firm. Mrs. Lucija Pam was afraid that she would be subject to persecution, if she would remain a partner with Gertrude Kolisch. Lucija Pam also told me on many instances that she would ask for these papers only as a matter of form in order to satisfy the Nazi authorities, but that, as a matter of substance, her daughter would remain the owner of her inherited part in the firm."

5. A statement by an individual who was well acquainted with the management of the enterprise that "I know that, in 1938, Djuro Lewy and Gertrude Kolisch gave up their parts (shares) in the firm, which they owned to 1/3 part (share) each, in favor of their mother Majnaric Lucia, believing that in that way the firm 'Linoleum' would be saved from confiscation, because its owner was married to an Aryan - a Yugoslav, Juraj Majnaric. Namely, Lucia Majnaric and her children were Hebrews. I know that this transfer in the ownership of the firm was but formal, and that Djuro and Gertrude had received no compensation from Lucia Majnaric, nor from any other person, for giving up their shares in the firm."

6. An affidavit of Rudolf Demski, dated September 20, 1954 to the effect that he was informed by claimant's mother regarding the reasons and circumstances under which claimant's interest was transferred to her.

That this claimant and her brother withdrew from the firm "Linoleum" in 1938 is confirmed by the Yugoslav Government but it takes the position that since claimant's mother was the record owner it did not take claimant's property.

However, the Commission is persuaded by the evidence of record that claimant retained beneficial ownership of a one-third interest in the firm and that such interest was taken by the Yugoslav Government on May 20, 1946 pursuant to a decision of the District Court of Zagreb, No. Kz. z. 275/1946-1 of that date, under Law No. 241 regarding Illicit Speculation and Economic Sabotage, dated April 23, 1945 (Official Gazette No. 26 of April 25, 1945).

A member of the Commission's staff in Yugoslavia ascertained that at the time of the confiscation, the Zagreb People's Committee fixed the total value of merchandise at 2,843,051 dinars at 1939 values. The Commission's investigator also evaluated 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 the property taken was 3,640,000 dinars and that claimant's interest thereon amounts to 1,213,333 dinars, in accordance with 1938 values. 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 \$27,575.75.*

AWARD

On the above evidence and grounds, this claim is allowed and an award is hereby made to Gertrud Kolisch, claimant, in the amount of \$27,575.75, with interest thereon at 6% per annum from May 20, 1946, the date of taking, to August 21, 1948, the date of payment by the Government of Yugoslavia, in the amount of \$3,730.64.*

Dated at Washington, D. C.

NOV 3 1954

* For the Commission's reasons for the use of an exchange rate of 44 dinars to \$1 and the allowance of interest, see the attached copy of its decision in the claim of Joseph Senser.

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*approved
HE
12-15-54*

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. DEC 15 1954

*ZRR
HMM*