

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

In the Matter of the Claim of

LJUBA PFAFF
P.O. Box 19
Elberta, Alabama

Docket No. Y-1801

Decision No. 1202

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

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11-16-54

Nov 16, 1954

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. NOV 17 1954

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PROPOSED DECISION OF THE COMMISSION

This is a claim for \$1,500 by Ljuba Pfaff, a citizen of the United States since her naturalization on December 18, 1940, and is for the taking by the Government of Yugoslavia of a house and land in Gunja, Yugoslavia.

The Commission finds it established by a certified extract from the Land Register of the District Court of Zupanja (Docket No. 245, Cadastral District of Gunja), filed by the Government of Yugoslavia, and admissions of that Government that claimant and her husband, Jacob Pfaff, each owned a one-half interest in one parcel of land with a total area of 841 square fathoms, with a structure thereon, and that the land and structure were taken by the Government of Yugoslavia on February 6, 1945, pursuant to the Enemy Property Law of November 21, 1944 (Official Gazette No. 2, of February 6, 1945).

Claimant's husband, Jacob Pfaff, died in the United States on December 19, 1936 as evidenced by a certified copy of his death certificate filed by the claimant. He died testate and left surviving his widow (claimant) and seven children. By the terms of his will, all of his real property was devised to claimant. In connection with the probate of his will in Cuyahoga County, Ohio Probate Court, three of

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the children, residents of the United States, filed waivers and consented to the probate. The remaining four children, residents of Yugoslavia, were not cited nor did they file waivers or consents. A final account filed by the administrator of the above decedent's estate and approved by the Probate Court on December 20, 1937, recited "Real Estate transferred to Ljuba Pfaff, surviving spouse by terms of will of dec'd."

However, under the local law of descent in Croatia (situs of the property), in effect on the date of death of Jacob Pfaff, his children could elect to take, against the terms of the will, one-half of their intestate share (Austrian Civil Code, Secs. 732, 757 and 765, introduced in Croatian law in 1852). The aggregate share of the four children residing in Yugoslavia, according to that law, is $12/56$ of their father's $1/2$ interest in the property. Claimant, therefore, took the remaining $44/56$ interest in her husband's one-half interest of record, which together with her own one-half interest of record gave her a $25/28$ interest in the entire property.

According to the land extract, the property was burdened with life estates in favor of Filip Waechter and Katarina Waechter. Claimant has filed proof that Katarina Waechter died on January 15, 1945. Consequently, her life estate was extinguished prior to the taking, but the life estate of Filip Waechter, who was alive on February 6, 1945, was not extinguished prior to the taking.

Claimant has filed no corroborating evidence of value. A three-party committee designated by local Yugoslav authorities appraised the land and the structure at 18,000 dinars. An investigator for this Commission appraised the same property at 55,928 dinars. Both appraisals were made on the basis of 1938 values. Based upon the appraisal of the investigator, the value of claimant's $25/28$ interest is 49,936 dinars.

As stated above, all of the property was encumbered with a life estate in favor of Filip Waechter. According to the evidence of record, he was 77 years of age at the time of taking. The claimant's interest in all of the property was, therefore, a remainder interest, and the value of that interest must be determined.

The Commission does not have actuarial and income data with respect to Yugoslavia, and so far as it has been able to determine, reliable data for Yugoslavia is not available. It has, therefore, adopted as a basis for the valuation of life and remainder interests the Makehamized mortality table, appearing as Table 38 of United States Life Tables and Actuarial Tables 1939-41, and a $3\frac{1}{2}\%$ interest rate, compounded annually, as prescribed by United States Treasury Department regulations of June 3 and 4, 1952 for the collection of gift and estate taxes, respectively. (See 17 F.R. 4980, 26 C.F.R. 86.19 (f); 17 F.R. 5016, 26 C.F.R. 81.10 (i).) According to that method of valuation, a remainder interest in property which is subject to a life estate of a person aged 77 years is valued at 80.33% of the entire estate. Therefore, since the value of the encumbered property is 49,936 dinars, the remainder interest is 80.33% of that amount, or 40,114 dinars.

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 40,114 dinars as of the year 1938.*

Under the laws of Yugoslavia, persons who succeed to real property by inheritance, such as claimants 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 People's 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 15,759 dinars (the value of the interest in the property which claimant inherited from her husband) is 3.5% thereof, or 552 dinars. That amount deducted from the total value of claimant's interest in the property (40,114 dinars) leaves 39,572 dinars as the value of claimant's net interest in the property, which, converted into United States dollars at the rate of 44 dinars to \$1, the rate adopted by the Commission in making awards based upon evaluations as of the year 1938,* equals \$899.36.

AWARD

On the above evidence and grounds, this claim is allowed and an award is hereby made to Ljuba Pfaff, claimant, in the amount of \$899.36 with interest thereon at 6% per annum from February 6, 1945, the date of taking, to August 21, 1948, the date of payment by the Government of Yugoslavia, in the amount of \$191.01.*

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.