

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

In the Matter of the Claim of

ARTHUR G. DENES

and

MARGARET DENES

933 Palm Avenue

Hollywood 46, California

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

Docket No. Y-272

Decision No. 355

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*Approved
12-15-54*

AMENDED FINAL DECISION

On June 11, 1953, this claim was denied by a Final Decision on the ground that neither claimant was a national of the United States during the period covered by the Agreement. Subsequently, claimants, through their attorney, petitioned the Commission for a review and reconsideration of the Decision, and filed a supporting brief.

We have carefully reviewed the arguments advanced on claimants' behalf and conclude that there is no merit to the contention that claimant, Arthur Denes, was a citizen or national of the United States at any time during the period covered by the Agreement, and the denial of his claim is reaffirmed. However, as to claimant Margaret Denes, we find that she has been a citizen of the United States since July 21, 1920.

OR 2

The Commission finds it established by certified extracts from the Land Register of the County Court of Senta (Docket Nos. 318, 319 and 405, Cadastral District of Horgos), filed by claimants and the Government of Yugoslavia, and admissions of that Government, and a report by this Commission's investigator that claimant owned the entire interest in 2 parcels of land with a total area of 490 square fathoms, with structures on one of the parcels, and that she owned a one-half interest in 5 parcels of land with an area of 779 square fathoms, with structures on 2 of the parcels, when they were taken on August 17, 1947, pursuant to the Abandoned Property Law of August 2, 1946, as amended (Official Gazette Nos. 64 and 105 of August 9, 1946 and December 27, 1946, respectively).

The Government of Yugoslavia has appraised Margaret Denes' interests in the property at 12,658 dinars for the land and 73,019 dinars for the structures. This Commission's investigator has appraised the properties as follows:

		Interest of Margaret Denes
Docket No. 318:	373,820 dinars	186,910 dinars
Docket No. 319:	114,800 "	114,800 "
Docket No. 405:	<u>12,200</u> "	<u>6,100</u> "
	500,820 dinars	307,810 dinars

Both appraisals were based on 1938 values.

The Commission is of the opinion that the fair and reasonable value of the above property was 500,820 dinars and that the value of the interest of Margaret Denes therein was 307,810 dinars.

The extracts for Docket Nos. 318 and 405 record mortgages in the amounts of 50,000 dinars each on the one-half interest owned by Arthur Denes in those properties. Since they do not affect the interest of Margaret Denes, they will be disregarded. In addition, the extract for Docket No. 319, in which she is sole owner, records a mortgage in

the amount of 300,000 dinars plus 8% interest in favor of Opsta Privredna Banka D.D. of Subotica.

No evidence has been filed indicating that the mortgage has been satisfied.

In the circumstances, we are of the opinion that a deduction for the mortgage 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 a 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 mortgage must be made in order to reflect the actual amount of claimant's loss. We find that the proper amount to deduct for the mortgage, including interest, in this claim is 372,000 dinars and that amount will, therefore, be deducted from the value of the property.

Since the appraised value of this property is less than the value of the mortgage, no compensation can be given claimant for its taking.

Therefore, we find that the value of all property of claimant taken by the Government of Yugoslavia was 193,010 dinars. That amount converted into dollars at the rate of 44 dinars to 1 dollar, the rate adopted by the Commission in making awards based upon 1938 valuations, equals \$4,386.59.

Accordingly, in full and final disposition of this claim, the claim of Arthur Denes is denied and the claim of Margaret Denes is allowed, and an award is hereby made to Margaret Denes in the amount of \$4,386.59 with interest thereon at 6% per annum from August 17, 1947, the date of taking, to August 21, 1948, the date of payment by the Government of Yugoslavia, in the amount of \$226.08.

Dated at Washington, D. C. DEC 15 1954

DEPARTMENT OF STATE
INTERNATIONAL CLAIMS COMMISSION
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FINAL DECISION

MARVEL, CHAIRMAN. This claim presents the question whether claimants qualify under the terms of the Yugoslav Claims Agreement of 1948 and the International Claims Settlement Act of 1949, so as to be eligible for an award based upon the nationalization of their property by the Yugoslav Government in 1946 or 1948.

Section 2 (c) of said Act provides as follows:

(c) The term "nationals of the United States" includes (1) persons who are citizens of the United States, and (2) persons who, though not citizens of the United States, owe permanent allegiance to the United States. It does not include aliens.

Both these claimants were born in Hungary and were citizens of that country. A certificate of naturalization was issued to claimant, Arthur G. Denes, on March 1, 1915. On December 18, 1926, the United States District Court, District of Minnesota, entered an order finding that claimant, Arthur G. Denes, at the time of filing his application for citizenship in the District Court for the State of Minnesota, in the County of Ramsey, at St. Paul, Minnesota, prior to March 1, 1915, did not intend to become a permanent citizen of the United States, and thereupon ordered that the certificate of naturalization theretofore issued to the claimant, Arthur G. Denes, be set aside and cancelled. We find that thereafter Arthur G. Denes remained

an alien until he acquired American citizenship by naturalization on May 13, 1949, as he took no steps to petition the United States District Court, District of Minnesota, which had cancelled his naturalization as aforesaid, to set aside such order dated December 18, 1926.

It is unnecessary for us to pass upon the effect of the fact that Arthur G. Denes was a veteran of World War I, particularly in view of Section 504 of the Nationality Act of 1940 (8 U.S.C.A. 904) and the fact that such status was never presented to the United States District Court, District of Minnesota.

We point out that this claimant, in accordance with the usual procedure, became a citizen of the United States by naturalization on May 13, 1949. As Arthur G. Denes was not a national of the United States at any time between September 1, 1939 and July 19, 1948, he is not eligible to assert a claim against the fund established by the Yugoslav Claims Agreement of 1948.

With respect to claimant, Margaret Denes, we find that a certificate of citizenship was issued to her on May 19, 1947, on the basis that she derived citizenship of the United States on July 21, 1920 through marriage on that date to Arthur G. Denes, who was naturalized as a United States citizen on March 1, 1915 by the District Court at St. Paul, Minnesota. The case of Alfonso Battaglino v. George C. Marshall, Secretary of State 172 Fed.(2d) 979; certiorari denied 338 U.S. 829⁷ is controlling upon this Commission. The Circuit Court there held that when a naturalization is cancelled pursuant to the second paragraph of Section 15 of the Act of 1906, such cancellation makes the naturalization void and the certificate of naturalization a nullity ab initio, with the result that persons who claim or derive citizenship through such naturalization must be regarded as never having acquired American citizenship. We thus find that claimant,

Margaret Denes, was not a national of the United States during the period September 1, 1939 to July 19, 1948.

We have carefully considered the arguments of claimants that this Commission should consider these claimants as citizens of the United States "de facto" for the purposes of the Yugoslav Claims Agreement of 1948 and the International Claims Settlement Act of 1949. We hold that the claims of citizens of the United States included within the terms of the Yugoslav Claims Agreement of 1948, which were espoused by the Government of the United States and settled by that Agreement, did not include claims of persons who were not citizens of the United States according to the law of the United States.

This claim is denied in whole. This final decision constitutes a full and final disposition of this claim proceeding.

Commissioner McKeough concurs in the above.

June 11, 1953

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PROPOSED DECISION

MARVEL, CHAIRMAN. This claim seeks the recovery of approximately fourteen thousand dollars, the asserted value of real property alleged to have been nationalized by the Yugoslav Government in 1946.

The claim is before this Commission upon the proceeding of the Solicitor of the Commission pursuant to Section 300.16 of the Rules of Practice and Procedure of the Commission.

Evidence before the Commission shows that both these claimants were born in Hungary and were citizens of that country. A certificate of naturalization was issued to claimant Arthur G. Denes on March 1, 1915. On July 30, 1920 the claimants were married. By decree of the United States District Court, District of Minnesota, dated December 18, 1926, the certificate of naturalization issued to claimant Arthur G. Denes was cancelled for the reason stated therein. Thereafter Arthur G. Denes remained an alien until he acquired American citizenship by naturalization on May 13, 1949. The question here is whether claimants were nationals of the United States at the time of the alleged nationalization of their property by the Yugoslav Government in 1946, or at any time between September 1, 1939 and July 19, 1948.

The case of Alfonso Battaglino v. George C. Marshall, Secretary of State 172 Fed.(2d) 979; certiorari denied 338 U.S. 829⁷ is controlling upon this Commission. The Circuit Court there held that when a naturalization is cancelled pursuant to the second paragraph of Section 15 of the Act of 1906, such cancellation makes the naturalization void and the certificate of naturalization a nullity ab initio, with the result that persons who claim citizenship through the naturalization must be regarded as never having acquired American citizenship. It may be added that Section 338(d) of the Nationality Act of 1940 which became effective on January 13, 1941 specifically provides that women and children in the category in question do not lose their derivative citizenship as a result of the cancellation of the naturalization of a husband or father, but this Act has only a prospective application and came too late to apply to Mrs. Denes.

As neither of the claimants was a national of the United States at any time between September 1, 1939 and July 19, 1948, neither can assert a claim against the fund created by the Yugoslav Claims Agreement of 1948.

The claim is denied in whole.

Commissioners McKeough and Baker concur in the above.

September 17, 1952