

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

In the Matter of the Claim of

BARBARA SCHUSZTER
3326 Princeton Avenue,
Philadelphia 24, Pennsylvania

Docket No. Y-454

Decision No. 904

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

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9/2/54

OK
9/2/54
8, 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. SEP 15 1954

J. A. Kintek

INTERNATIONAL CLAIMS COMMISSION OF THE UNITED STATES
DEPARTMENT OF STATE
Washington, D. C.

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PROPOSED DECISION OF THE COMMISSION

This is a claim for \$3,200 by Barbara Schuszter, a citizen of the United States since February 27, 1929, the date of her naturalization by the United States District Court at Philadelphia, Pennsylvania, and is for the taking by the Government of Yugoslavia of a house and several parcels of land as recorded under Dockets 2404 and 3152 of the Cadastral District of Kula, and Docket 13 of the Cadastral District of Bela Pustara, in her name and the name of her deceased husband, Michael Schuszter.

It is established by evidence filed by claimant (copies of Contracts of Sale) and the Government of Yugoslavia (certified extracts from the pertinent land records) and admissions of that Government, that claimant, Barbara Schuszter, and Michael Schuszter, deceased, were the owners, in equal shares, of the property identified and described below when it was 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):

Ja. Kuistek

<u>Docket Number</u>	<u>Parcel Number</u>	<u>Description</u>	<u>Area in Yutars of 1600 Sq. Fathoms</u> (Yutars - Sq. Fath)	
3152	2606	Flowland	5	723
2404	2598/3	"		22
	2599/5	Flowland & House		96
	2598/4	Flowland		94
	2599/6	"		79
	2599/8	"		11
13	45	"	6	400
	7			

The claimant alleges that Michael Schuszter, the recorded owner of a one-half interest in the above property, died intestate in the City of Philadelphia, Pennsylvania on January 9, 1941, and that there was no administration or probate proceedings upon the estate in Yugoslavia or Pennsylvania. As evidence of the date of death, claimant filed a Certificate of Death showing that Michael Schuszter died on January 9, 1941. Claimant also filed the affidavits of two persons who swear that they knew the deceased and that he died intestate. On the basis of the above evidence, the Commission is satisfied that claimant's husband died intestate on January 9, 1941 and that at the time the property was taken Michael Schuszter was the recorded owner of a one-half interest therein. Accordingly, the decedent's interest in the real property would pass to his heirs in accordance with the laws of intestacy at the situs of the real property.

The real property owned by Michael Schuszter at the time of his death was located in the "Vojvodina area" where there is no code governing the descent and distribution of real property. Such descent and distribution is governed by the Hungarian law which, in effect, states:

"In case deceased died intestate, all his property, both inherited and acquired, is inherited by his children in equal shares.

"If there are no children, but a surviving spouse, the latter inherits all the acquired property of the deceased, while the inherited property goes back to the parent, or the decedents of the parent, from whom the deceased inherited the property."

The above evidence shows that all of the property owned by Michael Schusztter, deceased, was acquired by purchase. As evidence of her right to succeed to the property owned by her deceased husband, claimant filed her own affidavit stating:

"Husband died without a Will on January 9th, 1941, in Philadelphia, and as we were alone, husband and wife only, without any children it was our understanding and agreement that . . . the survivor shall receive the entire property . . .

"My husband had no children. I was his first and only wife. We knew each other since early childhood; we both came from the same town of Kula in Yugoslavia where we were also married in the year 1903 on August 18th. One year later (in 1904) we both came to the United States, settled in Philadelphia and lived here our lives together . . ."

Claimant also filed the affidavit of two persons who swear that Michael Schusztter "had no children."

Upon consideration of that evidence, the Commission is satisfied that Michael Schusztter left surviving him a wife, claimant herein, and no children.

The Commission is well aware that under the laws of Yugoslavia the right to legal ownership of inherited real property must be determined by a judicial proceeding in that country. However, the Commission is also of the opinion that even though no such proceedings were had, the heirs of the decedent have certain rights and interests in and with respect to the property which could culminate in legal ownership, and that those rights and interests were included in the Agreement between the Governments of the United States and Yugoslavia.

Claimant has filed no corroborative evidence of value. A three-party commission appointed by local Yugoslav authorities, appraised the property recorded under Dockets 2404 and 3152 at 139,113 dinars. A member of this Commission's staff in Belgrade independently appraised all of the above-described property at 256,482 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 gross value of all property of claimant which was taken by the Government of Yugoslavia was 256,482 dinars as of the year 1938.*

However, under the laws of Yugoslavia, persons who succeed to real property by inheritance, such as claimant herein, are obligated to pay inheritance taxes on the value of the property (See Law Concerning Direct Taxation, effective January 1, 1946, Chapter III, Article 24, Official Gazette No. 854, November 20, 1945). The Peoples 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, Chapter 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 128,241 dinars is 11% or 14,106 dinars. That amount will, therefore, be deducted from the value of the property.

According to the above-mentioned extracts and reports, the property recorded under Docket 2404 of the Cadastral District of Kula was encumbered by a mortgage dated September 2, 1943 in favor of "Pance Janos, and the wife of Pance Janos, of Kula" in the amount of 1,366.78 pengos. As evidence indicating that part of the mortgage debt was satisfied, claimant filed a statement by Janos Pance in which he states "Barbara Schusztter . . . paid everything she owed to me and I am now satisfied." No evidence has been filed indicating

a release from the co-mortgagee (the wife of Janos Pance). In the circumstances, we are of the opinion that a deduction for part of the mortgage must be made and find the proper amount to deduct therefor is 683 dinars (In re Claim of Joseph E. Stiassni, Docket No. Y-1806, Proposed Decision No. 884).

On the basis of all the above evidence and data, we find that the net value of all property of claimant which was taken by the Government of Yugoslavia was 241,693 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 \$5,493.02.*

Although claimant asks \$3,200 for the property taken, as indicated above, we find from the evidence and data of record, including an on-the-spot investigation, that it was worth \$5,493.02.

Commission's awards prior to July 1, 1953 were limited to the amounts claimed. The Commission is now of the opinion that awards should not be so limited but should reflect the actual value of the property taken. It is clear from the Commission's records, that many claimants have been absent from Yugoslavia for many years and consequently out of touch with property values even though they have maintained contact with those using their property. It is also clear that many claimants have never been in Yugoslavia and have never had first-hand knowledge regarding values there. Many claimants, including those who were in Yugoslavia prior to the war, state that they do not know the value of their property, particularly as of the time of taking. All claimants were, nevertheless, required to state "the amount of the claim" in their Statement of Claim. We believe it is unjust under such circumstances to hold a claimant to such a statement made adjunctly, as it was in many cases, as a mere matter of speculation when an on-the-spot investigation and appraisal has

established the actual value of the property to be in excess of the amount so claimed. This is feasibly corroborated by the modern liberalization of the rules of pleading to permit amendment after the submission of the evidence to conform the pleadings to the proof. We are directed, moreover, by the law establishing the Commission to apply in the decision of the claims within our jurisdiction, principles of international law, justice and equity. We are persuaded that justice and equity require the allowance of a claim, if otherwise judicially valid, for the amount found to be the true value of the property taken, even though it had earlier been valued at a smaller amount by a claimant who was unacquainted with the necessary facts. We, therefore, propose to allow this claim for the full value of the property taken.

AWARD

On the above evidence and grounds, this claim is allowed and an award is hereby made to Barbara Schusztter, claimant, in the amount of \$5,493.02 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 \$1,166.62.*

Dated at Washington, D. C.

JUN 14 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.