

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

In the Matter of the Claim of

GEORGE SCHERER
2437 West Jackson Boulevard
Chicago, Illinois

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

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:: Docket No. Y-501
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:: Decision No. 1444
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Counsel for Claimant:

CLIFFORD K. RUBIN, Esquire
77 West Washington Street
Chicago 2, Illinois

BERNARD J. LEPCOLD, Esquire
2041 West Fond Du Lac Avenue
Milwaukee 5, Wisconsin

approved
for
12-28-54

FINAL DECISION

The Commission issued a Proposed Decision herein on November 3, 1954 denying the above-entitled claim on the ground that the Commission was not satisfied that claimant had not expatriated himself pursuant to the provisions of Section 2 of the Act of March 2, 1907 (34 Stat. 1228; 8 U.S.C. 17), as amended by Section 409 of the Nationality Act of 1940 (54 Stat. 1137; 8 U.S.C. 907), and Section 401(a), (b) and (c) and Section 402 of the Nationality Act of 1940. The Government of Yugoslavia filed no brief as amicus curiae with regard to the decision. Claimant filed objections to the Proposed Decision and a Memorandum of Law to support the allegation that he was at all times, subsequent to the date of his birth on August 3, 1917 at Steelton, Pennsylvania, a citizen of the United States and entitled to the rights and privileges thereof.

On the basis of the above, and after a full consideration of the testimony given by the claimant at a hearing scheduled in accordance with his request and the affidavits furnished by him, the

J.A. Kinatich
JMM

Commission is now satisfied that claimant committed no acts of expatriation and that he was at all times subsequent to August 3, 1917 a citizen of the United States and entitled to the rights and privileges thereof.

Claimant asks compensation in the amount of \$10,00 for the taking by the Government of Yugoslavia of a house, barn and silo located at "Kapitanovo No. 28 Badjlevina, Slavonia," 3 horses, 6 cows and various other items of personal property.

Claimant filed no evidence of ownership or taking, but requested the Commission to obtain the same through the Government of Yugoslavia.

It is established by a certified extract from the Land Registry Office of the County Court at Pakrac, and admissions of the Government of Yugoslavia that claimant was the sole owner of a house, stable, barnshed and 14 yochs, 883 square fathoms, of land, as recorded under Docket No. 38 of the Cadastral District of Kapetanovo Polje, 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).

As evidence of value of the real property, claimant filed the affidavit of two persons who swear that the house and land had a value of \$8,000 in 1945. This Commission's investigator personally inspected claimant's property and appraised it, in accordance with 1938 values, at 200,357.25 dinars. The Government of Yugoslavia also filed an appraisal report for 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 200,357.25 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 \$4,553.57.*

Claimant also asks compensation for the taking by the Government of Yugoslavia of various items of personal property. He testified at the above hearing that certain items of personal property were on the premises when he returned to the farm in 1944.

The Government of Yugoslavia informed the Commission:

" . . . it has been verified that the Claimant took with himself all his personal property and livestock when emigrating to Austria in May of 1944. It was possible because the occupier put freight wagons at disposal of the members of the organization 'Kulturbund', the member of which was the Claimant, too. Therefore, the Yugoslav authorities did not take over any Claimant's personal property at the time of confiscation."

This Commission's investigator could find no trace of the personal property owned by claimant. Claimant filed no other evidence of ownership or taking of the personalty. This Commission has consistently held that the burden of establishing a claim before it rests upon each claimant. We are not persuaded by the evidence of record that claimant's personal property was taken by the Government of Yugoslavia and, accordingly, the claim therefor is denied.

The record indicates that claimant authorized Clifford K. Rubin and Bernard J. Lepgold, as his counsel, to represent him before this Commission. The record also shows that Clifford K. Rubin requests the Commission to apportion his fee in accordance with the written agreement filed. Pursuant to that agreement, Mr. Rubin is to receive, as his fee, 10% of the amount awarded. No basis was furnished the Commission from which it could apportion such fee. Therefore, the Commission refuses to apportion counsel fees herein.

Accordingly, in full and final disposition of the claim, the Commission awards George Scherer, claimant, \$4,553.57, 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 \$967.10.*

Dated at Washington, D. C.

DEC 3 0 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.

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Docket No. Y-501

Decision No. 1444

Counsel for Claimant:

CLIFFORD K. RUBIN, Esquire
77 West Washington Street
Chicago 2, Illinois

ok.
11/3/54

PROPOSED DECISION OF THE COMMISSION

This is a claim for \$10,000 by George Scherer, and is for the taking by the Government of Yugoslavia of a house, barn, silo, farm equipment, livestock, furniture and 15 acres of land located at Kapetanovo, Badjlevina, Pakrac Slavonia, Yugoslavia.

Claimant became a citizen of the United States on August 3, 1917, the date of his birth at Steelton, Pennsylvania.

The Government of Yugoslavia informed the Commission that claimant became a citizen of Yugoslavia in 1938 at the time of his enlistment in the Yugoslav Army and that in 1942 he joined the German Army as a soldier. To corroborate those statements, that Government filed with the Commission a statement made by Marko Nikolic to the District Public Prosecutor's Office in Pakrac wherein he recites:

"Djuro Serer arrived from the USA as a child with his parents and they settled at Kap. Polje. . . In the early part of 1942 he joined the German Army as a volunteer - namely, the Gestapo . . . and he left Kap. Polje. In 1943 he returned to Kap. Polje in the uniform of a German soldier (Gestapo man). . . There are still witnesses to this fact in Kap. Polje today and they are: Ivan Krenek, Josip Tome, and Ivan Staf . . ."

J.A. Kwiatk

on
SWS
Nov 3, 1954

That Government also filed a statement made by Ilija Rek, a farmer from Kapetanovo Polje, wherein he recites:

"Djuro Sere is well known to me . . . since he was my fellow villager and neighbor in the village. . . I really do know that Djuro Serer was carried on the citizenship register as a Yugoslav citizen, and I know this from the fact that he served in the former Yugoslav Army and that foreign citizens could not do so. These facts are generally known to all our villagers."

It is established by a certified extract from the Land Registry Office of the County Court at Pakrac, and admissions of the Government of Yugoslavia, that claimant was the sole owner of a house and 14 yochs, 883 square fathoms, of land, as recorded under Docket No. 38 of the Cadastral District of Kapetanovo Polje, 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. Claimant filed no evidence of ownership and taking of the personal property. The Government of Yugoslavia informed the Commission:

"... it has been verified that the Claimant took with himself all his personal property and livestock when emigrating to Austria in May of 1944. It was possible because the occupier put freight wagons at disposal of the members of the organization 'Kulturbund', the member of which was the Claimant, too. Therefore, the Yugoslav authorities did not take over any Claimant's personal property at the time of confiscation."

Articles 1(a) and 2 of the Yugoslav Claims Agreement of 1948 provide compensation to American nationals who were such at the time their property was taken. In adjudicating claims before it, this Commission has consistently held that it is not enough to be a citizen of the United States at the time of such confiscation but that the claim to be within the jurisdiction of this Commission must have a continuous national character from the date of its origin to the date of settlement.

This Commission has also consistently held that the burden of establishing a claim before it rests with each claimant. By reason of the provisions of Section 2 of the Act of March 2, 1907 (34 Stat. 1228; 8 U.S.C. 17), as amended by Section 409 of the Nationality Act of 1940 (54 Stat. 1137; 8 U.S.C. 907), and Section 401(a), (b) and (c) and Section 402 of the Nationality Act of 1940, supra, the Commission is not satisfied that claimant was a citizen of the United States on February 6, 1945, the date his property was taken or on July 19, 1948, the date of the Agreement between the Governments of the United States and Yugoslavia.

Accordingly, the claim must be and hereby is denied.

Dated at Washington, D. C.

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