

I did not know of any trust deposit in my name and, as clearly stated with the Commission, I did not know the basis of the deposit, of which I was not aware, but upon independent data as to the liquidation of the VINOSET.

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

In the Matter of the Claim of

HANS H. KOHLER
1710 South Beverly Glen Blvd.
Los Angeles 24, California

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

Docket No. Y-526
Decision No. 316-A

Approved
HC
12-6-54

FINAL DECISION

A Proposed Decision was entered denying this claim for the following reasons: (1) that the evidence did not establish that the company in which claimant owned stock was taken by the Government of Yugoslavia during the period covered by the Agreement; (2) that even if the company were considered to have been taken, claimant would not be entitled to an award, since he has received prompt, effective and adequate compensation; (3) that claimant did not establish that he has been deprived by Yugoslav authorities of income and other benefits.

Subsequent to the issuance of the Proposed Decision, the claimant filed the following objections, which we quote:

"1. Until my receipt of the Proposed Decision, I had no knowledge and received no notice from any source whatsoever as to the liquidation of the VINOSET; the appointment of a trustee on my behalf; the transfer of the VINOSET to the People's Committee; or the establishment or existence of an account, 1,153,046 dinars, as of December 31, 1953, in the Ljubljana Branch, National Bank of Yugoslavia. I do not know Slavko Kosenina and have never heard from him.

RG
JMM

I did not know of any trust deposit in my name and, as clearly appears from my Statement of Claim filed with the Commission, I did not compute my claim on the basis of the deposit, of which I had no knowledge, but upon independent data as to value obtained by me.

"2. The so called 'liquidation' of the VINOGET, being after the Nationalization Law of December 6, 1946, was clearly a forced liquidation for the purpose of turning the property over to the People's Committee. Forced liquidations are 'takings' as referred to in the Agreement of 1948.

"3. I do not consider the dinar trust account deposit, established in 1947, as 'just, adequate and effective' compensation. The Agreement of 1948 between the United States and Yugoslavia provides for dollar compensation. The Commission in addition now applies a conversion rate of 44:1, 1938 values, with 6% interest from date of taking to August 21, 1948. As an American citizen and Veteran of World War II I am entitled to equal treatment in dollar compensation with all other American citizens. A trust account in blocked dinars established without my knowledge or consent is not 'effective' compensation. Otherwise the Yugoslav Government would not have paid \$17,000,000 compensation.

"4. I object to the disallowance of loss of profit for the period of at least November 21, 1944 to September 10, 1946, when the property was admittedly taken and under the control of the Yugoslav Government by confiscation decree. I have sufficiently shown the basis for computing such loss of profit in the evidence in support of my claim."

We have carefully considered these objections, but conclude that they are without merit and have been fully answered in the Proposed Decision. Therefore, the Commission hereby adopts such Proposed Decision as its Final Decision on the claim.

Dated at Washington, D. C.

DEC 8 1954

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

In the Matter of the Claim of

HANS H. KOHLER,
1710 South Beverly Glen Blvd.,
Los Angeles 24, California.

Docket No. Y-526

Decision No. 316-A

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

dc.
HE
8/31/54

PROPOSED DECISION OF THE COMMISSION

77
42ms
27, 1954
WJ
This is a claim for \$40,377.31 (\$25,526.58 for interest in "Vinocet," \$7,373.08 for loss of income and \$7,477.65 for bank account) plus interest by Hans H. Kohler, a citizen of the United States since his naturalization on July 16, 1942, and is for the taking by the Government of Yugoslavia of a wine and alcohol-vinegar factory known as "Vinocet" located in Vic-Ljubljana, Yugoslavia, in which claimant had a 30.7% interest, and a savings account in a bank in Vic-Ljubljana. The claim with respect to the bank account was denied by Decision No. 316, and this decision is confined to the claim for the factory.

The Commission finds it established from a certified extract from the Commercial Register of the County Court of Ljubljana that the claimant owned 37,666.66 2/3 shares in Vinocet of the total of 125,000 shares outstanding.

The Yugoslav Government concedes that Vinocet was confiscated as German property pursuant to the Enemy Property Law of November 21, 1944 (Official Gazette No. 2 of February 6, 1945) by a decision No. Zp1 1736/45 of the Local Commission for Confiscating Enemy Property of Ljubljana of November 14, 1945. However, the Yugoslav Government states that this decision was annulled by decision No. 586/L - 117 of the Federal Commission for Confiscating Enemy Property of April 18, 1946, as a majority of the shares of the company were not owned by Germans. The Yugoslav

0795
JMM

Government further reports that by decision No. Zp 4736/45 of the District Court of Ljubljana of September 10, 1946, the property of Vinocet was returned to the shareholders, and that Mr. Slavko Kosenina of Ljubljana was appointed trustee of the shares of claimant in his absence.

The Government of Yugoslavia states further that Vinocet continued its activities until October 25, 1947, when it was decided at a shareholder's meeting to have an evaluation of the Company's property in order to liquidate it and distribute its assets. A certified copy of the Minutes of this meeting has been filed. Among those recorded as present is Slavko Kosenina, as the court-appointed trustee of the absent Dr. Hans Kohler. A certified copy of an evaluation of the property of Vinocet made by a three-party commission shows that the property was appraised at 3,800,000 dinars, based on 1938 values, plus 30 percent "for the increased price of commodities". A certified copy of the Minutes of the resumed meeting of October 31, 1947, with the same persons present, records that they agreed to the evaluation of 3,800,000 dinars, and the trustee Slavko Kosenina was to arrange payment of the share of claimant, in accordance with the subsequent instructions of the court. The document further records that by payment of "the private shareholdings the above named shareholdings of the firm 'Vinocet' renounce all their rights as of September 30, 1947, i.e., to any claims arising from their membership" in the firm and bind themselves "to declare the ceding of their shareholdings" in favor of the People's Local Committee for the purpose of cancellation from the Commercial Register.

In a letter of December 24, 1947, a certified copy of which has been filed, Slavko Kosenina declared to the Ljubljana Branch of the Investment Bank of Yugoslavia that the value of claimant's interest in Vinocet was established in the amount of 1,145,200 dinars, which he requested to be remitted to the Savings Bank of the City of Ljubljana. A certified copy of a letter dated December 30, 1953, from the Ljubljana Branch of the National Bank of Yugoslavia, which succeeded the Savings Bank, states that

the balance of an account in the name of "Dr. Kohler-Kosenina, attention Slavko Kosenina" was 1,153,046 dinars as of December 31, 1953. The Yugoslav Government states that this deposit is at claimant's free disposal and that he may appoint any person in Yugoslavia as his trustee in place of Slavko Kosenina, if he so desires.

It is our understanding that the owners of the majority of the outstanding stock of a Yugoslav corporation may, without the consent of the owners of the balance of the stock, vote to liquidate the corporation. Thus, there would appear to be no legal basis for objection on the part of a minority stockholder, such as claimant, to the appointment by the court of a representative for him or for the action of such representative in agreeing to the liquidation. We believe that minority stockholders assume risks of this sort.

On the basis of the foregoing, we hold that it has not been shown that Vinocet was nationalized or otherwise taken by the Government of Yugoslavia between September 1, 1939 and July 19, 1948, the period covered by the Agreement between the Governments of the United States and Yugoslavia.

Even were it shown that the liquidation of Vinocet was forced upon the majority of the stockholders, or that they acted in bad faith, and we construed such action as a taking of property within the meaning of Article 1 of the Agreement with Yugoslavia, it would not appear that claimant would be entitled to compensation unless it were also shown that the money deposited in his name did not represent prompt, effective, and adequate compensation. (See Hackworth, DIGEST OF INTERNATIONAL LAW, Vol. III, p. 662) In this connection it appears that claimant has computed his claim with reference to the amount actually deposited for him. Also, our own investigators have evaluated claimant's interest in the corporation at approximately the same amount. It is recognized that the Yugoslav dinar has depreciated in value,

in reference to the United States dollar since the time of the deposit, but under generally accepted principles of international law a state is not liable for losses sustained by private parties because of the depreciation of currency. Moreover, any decline in value after July 19, 1948 occurred outside the period covered by the Agreement with Yugoslavia.

For the foregoing reasons we conclude that this item of the claim must be denied.

Claimant also alleges that he has been deprived by Yugoslav authorities of income and other benefits due him by virtue of his ownership interest in Vinocet from October 1, 1944 to July 19, 1948. He does not otherwise describe the income and other benefits and has filed no evidence that any proceeds therefrom have been withheld from him by the Government of Yugoslavia. In the circumstances, this item of the claim must also be denied.

For the foregoing reasons, this claim is denied in its entirety.

Dated at Washington, D. C.

SEP 2 1954