

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

In the Matter of the Claim of

JOHN GRISAN (also known as
GIOVANNI GRISAN)
1330 Fifty-fourth Street
Brooklyn, New York

Docket No. Y-969

Decision No. 1258

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

Counsel for Claimant:

HARVEY L. RABBITT
406-410 Southern Building
Washington, D. C.

PROPOSED DECISION OF THE COMMISSION

This is a claim for \$9,000 by John Grisan, a citizen of the United States since his naturalization in the United States on January 24, 1930, and is for the taking by the Government of Yugoslavia of two stone houses of five and two rooms, respectively, with a yard, located at Via San Martino #38, and a vegetable garden at Via Mutila, both located in Pula, Yugoslavia, and income therefrom.

Extracts from the Land Register of the County Court of Pula (Docket Nos. 2790 and 2314, Cadastral District of Pula) filed by the Government of Yugoslavia and admissions of that Government establish that claimant owned two parcels of land with a total area of 667 square meters, with structures on one of the parcels.

The Commission finds it established from the land records above referred to and admissions of the Yugoslav Government, that the property recorded under Docket No. 2790 was taken by the Government of Yugoslavia on April 28, 1948, on the basis of a decision of the People's Committee of the City of Pula, Section for Communal Affairs,

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Conf. No. 86/53-1/4-Ek of July 13, 1953, pursuant to the Second Nationalization Act of April 28, 1948 (Official Gazette No. 35 of April 29, 1948).

As to the property recorded under Docket No. 2314, the Government of Yugoslavia asserts, and the certified extract from the land register covering this property referred to above show, that this property was expropriated on the basis of a decision of the Prefect for Istria, of May 3, 1942, No. 8287/IV and that the right of ownership was recorded in favor of the Municipality of Pula (Commune di Pola). The Government of Yugoslavia further reports that at the time of the expropriation proceedings, the sum of 9,387.50 lire was paid in compensation for this property. In 1942 the Municipality of Pula was a part of the sovereign Government of Italy. It is evident, therefore, that this parcel of land was not nationalized or otherwise taken by the Government of Yugoslavia. The Agreement of July 19, 1948 between the Governments of the United States and Yugoslavia settled all claims for the "nationalization or other taking by Yugoslavia of property" (Article 1). Accordingly, that part of the claim based on the taking of the property recorded under Docket No. 2314 does not come within the jurisdiction of this Commission and must be denied.

Claimant alleges that he acquired the property recorded under Docket No. 2790 by purchase for about \$3,500 in cash and \$2,500 in other valuable consideration, and that he improved it at a cost of about \$1,000. He has filed no other corroborating evidence of the value of the property. A three-party committee designated by the local Yugoslav authorities appraised the land and structures at 43,700 dinars. An investigator for this Commission appraised the land at 30,150 dinars and the structures at 69,053 dinars, after deducting war damage of 12%, which is not compensable under the Agreement with Yugoslavia. 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 fair and reasonable value of all property of claimant which was taken by the Government of Yugoslavia was 99,203 dinars as of the year 1938.*

Claimant asks compensation for the loss of income from the property. Claimant filed no corroborating evidence on the matter.

The Commission, in its determination of claims against Yugoslavia, is directed by the International Claims Settlement Act of 1949 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 between the Governments of the United States and Yugoslavia contains no specific provision regarding loss of use of property, loss of profits, and the like. Generally, international and domestic arbitral tribunals in the determination of international claims allow compensation for indirect damages such as loss of use of property, loss of profits and the like, if such losses are reasonably certain and are ascertainable with a fair degree of accuracy. They do not allow compensation for indirect damages if they are conjectural or speculative or not reasonably certain or susceptible of accurate determination. See Diplomatic Protection of Citizens Abroad, Edwin M. Borchard, Sections 172, 173 and cases cited therein.

We are of the opinion that it has not been proven that it was reasonably certain that the profits expected or any profits would have been realized by claimant. The claim for such profits must therefore be denied. However, claimant may be compensated in terms of interest for the loss of the use of the compensation he was entitled to receive on the date the property was taken, from the date of taking to the date of payment by the Government of Yugoslavia. Both the Agreement with Yugoslavia and the International Claims Settlement Act contemplate the allowance of interest by the Commission for the delay in payment of compensation by the Government of Yugoslavia.

According to the above-mentioned extracts and reports, the property recorded under Docket No. 2790 was encumbered by a mortgage dated June 21, 1946 in favor of the Allied Military Administration (Governo Militare Alleato), Venezia, Giulia, in the face amount of 50,000 lire. The Government of Yugoslavia reports that this encumbrance came into being by reason of repairs made by the Allied Military Government to the two buildings because of war damage to these structures.

The Government of Yugoslavia, and the Commission's own investigator, both evaluated the work done in repairing such war damage as 12% of the value of the structures. However, since 12% was deducted for war damage in the appraisal of the property it would clearly be unjust to deduct it again. In the circumstances, we are of the opinion that a deduction for the mortgage should not be made.

The Commission finds that the net value of the property of claimant which was taken by the Government of Yugoslavia was ^{99,203-}~~90,917~~ dinars, 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 ^{2,254.61}~~\$2,066.30~~.*

Claimant's counsel has requested the Commission, in writing, to determine his fee, and asserts that his contract with the claimant is for a fee of 10% of the award.

AWARD

On the above evidence and grounds, this claim is allowed and an award is hereby made to John Grisan (also known as Giovanni Grisan), claimant, in the amount of ^{2,254.61}~~\$2,066.30~~ with interest thereon at 6% per annum from April 28, 1948, the date of taking to August 21, 1948 the date of payment by the Government of Yugoslavia in the

amount of ~~\$39.06~~.*

42.62

The Commission determines that 10% of the total paid pursuant to such award shall be paid to Harvey L. Rabbitt, counsel for claimant.

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.

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FINAL DECISION

On September 9, 1954, the Commission issued its Proposed Decision herein making an award of \$2,066.30 principal, and \$39.06 interest, to the claimant, for the taking of his real property recorded under Docket No. 2790, Cadastral District of Pula, by the Government of Yugoslavia. The Proposed Decision denied compensation for that part of the claim based on the alleged taking by the Government of Yugoslavia of the real property recorded under Docket No. 2314, Cadastral District of Pula, and for loss of income therefrom. Both the claimant and the Government of Yugoslavia have filed objections to the Proposed Decision.

Claimant's objections to the Proposed Decision assert that he is entitled to an award for the alleged taking of the real property recorded under Docket No. 2314 and for the loss of rents and profits from both parcels of property. In support of such objections, he has filed his own affidavit and an

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affidavit by a sister, a resident of the Province of Gorizia, Italy.

The Government of Yugoslavia has filed a brief as amicus curiae objecting to the amount of the award.

The Proposed Decision finds that the real property recorded under Docket No. 2314 was expropriated on the basis of a decision of the Prefect for Istria, of May 3, 1942, No. 8287/IV, and the right of ownership recorded in favor of the Municipality of Pula; that at the time of the expropriation proceedings, the sum of 9,387.50 lire was paid in compensation for this property; that in 1942 the Municipality of Pula was a part of the sovereign Government of Italy; and that this parcel of land was not nationalized or otherwise taken by the Government of Yugoslavia. Claimant in his affidavit dated October 23, 1954, filed in support of the objections to the Proposed Decision, asserts that the 9,387.50 lire paid in compensation for the land was deposited with the Municipality of Pula to his credit, and that thereafter when the Municipality of Pula was taken over by the Government of Yugoslavia, said Government also appropriated the deposit standing to his credit. No corroborating evidence has been presented that the Government of Yugoslavia took or appropriated the deposit of 9,387.50 lire allegedly deposited to claimant's credit.

The Proposed Decision also denies compensation for loss of income and rents from such property because such damages were conjectural or speculative, and suggests that claimant may be compensated in terms of interest for the loss of the compensation he was entitled to receive on the date the property was taken. Claimant's sister in an affidavit of October 15, 1954, filed in

support of the objections to the Proposed Decision, swears that she occupied both parcels of property until the latter part of 1947 when the Government of Yugoslavia allegedly took the property; that during the period of her occupation she paid a rental of 80 lire per month; and that the amount of such rental was low because of her relationship to claimant. No evidence has been presented that the Government of Yugoslavia took any rentals during the pertinent time under the Yugoslav Claims Agreement of 1948.

As set forth in the Proposed Decision, the property recorded under Docket No. 2790 was encumbered by a mortgage in the face amount of 50,000 lire, which encumbrance came into being by reason of repairs made by the Allied Military Government to the two buildings because of war damage. The Government of Yugoslavia, and the Commission's own investigator, both evaluated the work done in repairing such war damage as 12% of the value of the structures. The Proposed Decision found that since 12% was deducted for war damage in the appraisal of the property that it would be clearly unjust to deduct such amount again, and that a deduction for the mortgage should not be made. However, inadvertently, in determining the net value of the property of claimant which was taken by the Government of Yugoslavia, the deduction of 12% for the mortgage was in fact made.

The objections filed by claimant and the Government of Yugoslavia have been fully considered. The award in the Proposed Decision was erroneously based upon a value of claimant's property of 90,917 dinars instead of the correct valuation of 99,203 dinars. The Commission hereby adopts such Proposed Decision, with the following exceptions, as its Final Decision on the claim:

1. The amount found as the value of the property is 99,203 dinars, which converted into dollars at the rate of 44 dinars to \$1, equals \$2,254.61.
2. Interest is allowed at the rate of 6% per annum from April 28, 1948, the date the property was taken to August 21, 1948, the date payment was made by the Government of Yugoslavia, in the amount of \$42.62.

Accordingly, in full and final disposition of the claim an award is hereby made to John Grisan, claimant, in the amount of \$2,254.61 with interest thereon in the amount of \$42.62.

Dated at Washington, D. C. DEC 21 1954