

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

In the Matter of the Claim of

MAX MAYER

Prospect Street Extension  
Mendham, New Jersey

Docket No. Y-976

Decision No. 1136

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

Counsel for Claimant:

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*affirmed*  
*12-21-54*

FINAL DECISION

By Proposed Decision No. 1136 of August 13, 1954 this claim was denied. Claimant presented his claim to this Commission as the alleged owner of 9,624 shares of stock of the Trepca Mines, Limited (hereinafter referred to as Trepca), a British corporation whose property in Yugoslavia was nationalized by the Government of Yugoslavia. The British corporation presented its claim for all of its shareholders as a corporate claim to a British Commission, of similar purpose as this Commission, under an Agreement dated December 23, 1948, between the Governments of the United Kingdom of Great Britain and Northern Ireland and Yugoslavia. The British Commission provisionally determined that Trepca established a claim in the amount of £Stg. 5,200,000. The award is to be paid from a British-Yugoslav Fund which cannot exceed £Stg. 4,500,000. This Commission held in its Proposed Decision No. 1136 that the shareholders of the British corporation are bound by the action of the corporation and that an individual shareholder, such as the claimant, has no standing to prosecute individual claims before this Commission.

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The Government of Yugoslavia filed no objection to the Proposed Decision. Claimant filed objections and requested a hearing. He also filed briefs in support of his objections, and additional evidence to the effect that he was at the pertinent time the beneficial owner of the 9,264 shares of stock of Trepca.

The hearing was held on October 12, 1954. The Commission has carefully considered the objections, the new evidence, and the oral argument presented by the claimant in support of the claim. It finds that the claimant now restricts his claim to an award from the United States fund compensating him for the balance of his loss not compensated to the British corporation.

The Commission is of the opinion that claimant has proved that he was the owner of the securities deposited on January 23, 1939 in the name of Simon Mayer, Buenos Aires, with the Hollandsche Bank Unie of Amsterdam, Holland. This bank, in a letter dated February 29, 1952 addressed to the Westminster Bank, Limited, London, confirms that it held from January 1939 until August 1945 £Stg. 2,359.15 Trepca Mines Stock in the name of West Nominees Limited and £Stg. 46.5 Trepca Mines Bearer Stock and that the beneficial owner of these securities was Mr. Simon Mayer. We understand from an affidavit dated May 19, 1952 of Albert Joseph Jones, an employee of the Westminster Bank Limited, of London, that each share of stock had a par value of 5 shillings each, and that the Westminster Bank Limited held from August 21, 1945 until March 22, 1950 the same stock in the name of Simon Mayer. According to this affidavit the amounts of £Stg. 2,359.15 and £Stg. 46.5, totaling £Stg. 2,406 represent 9,624 shares of stock of Trepca, upon which the claim is based. Claimant also filed a certified copy of a judgment entered on December 15, 1949 in the action of Mayer v. Mayer in the



Supreme Court of the State of New York, County of Westchester, which adjudged to the claimant the securities and cash on deposit with the Westminster Bank Limited of London, England, in all accounts at said bank in the name of Simon Mayer as having been then and at all times owned by the claimant. All this evidence has satisfied us that claimant was the owner of the 9,624 shares of stock of Trepca on December 5, 1946, when the property of Trepca was nationalized pursuant to the Law on the Nationalization of Private Enterprises of December 5, 1946 (Official Gazette No. 98 of December 6, 1946).


The next question to be determined is what is the balance of the loss not compensated to the British corporation for which claimant asks an award for his share thereof from the 17,000,000 dollar fund under the Yugoslav Claims Agreement of 1948? We are of the opinion that claimant is entitled only to what appears to be his proportionate loss for which the British corporation has not obtained and will not receive compensation from the British-Yugoslav Fund. He is not entitled to the entire amount of his proportionate share in the value of the property taken by the Government of Yugoslavia, because the Corporation received an award from the British Commission for that value and it can be reasonably expected that it will collect at least part of such award. The benefit claimant will directly or indirectly receive from such collection is reflected in any dividends which may be declared and paid by the corporation and in the increased value of the shares of stock. Although the claimant admits that he should be compensated for only his proportionate share in the value of the property taken by the Government of Yugoslavia less any and all possible payments made to Trepca by the British Commission, he has made no effort to calculate his actual loss. \*



In order to ascertain claimant's loss we must resort to the quotations of Trepca's shares of stock at the Stock Exchange in London because we have no other material on hand which would give us a better foundation to establish such loss. Claimant furnished us with the Records of Prices and Dividends of the Trepca shares in London for the years 1936 to 1953 and from these records we find that in 1945, prior to the established policy of the Government of Yugoslavia to socialize or nationalize industrial properties, the average quotation for one Trepca share was 10s 3 3/4d. In 1947, after the nationalization of all industrial properties in Yugoslavia, the average quotation of a Trepca share was 7s 0d. Hence the loss claimant has suffered in the opinion of the business community and by the standards adopted by people who deal in securities amounted to 3s 3 3/4d per share. According to the Statistical Yearbook for the Year 1938 of the United Nations Organization (page 375) the exchange rate of the pound sterling during the years 1945 to 1947 with respect to the United States dollar was \$4.03 for 1 L sterling. Consequently, the amount of the loss of 3s 3 3/4d in United States dollars was \$0.67 per share at the time when the nationalization of Trepca's property took place.

As claimant owned 9,264 shares of stock of Trepca at that time, he probably suffered a loss of \$6,206.88 as the result of such taking by the Government of Yugoslavia; therefore, the Proposed Decision is vacated, and in full and final disposition of the claim an award is hereby made to Max Mayer, claimant, in the amount of \$6,206.88 with interest thereon at 6% per annum from December 5, 1946, the date of taking, to August 21, 1948, the date of payment by the Government of Yugoslavia, in the amount of \$637.69.

Done at Washington, D. C. DEC 29 1954





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*July 21*  
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Counsel for Claimant:

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New York 20, New York

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PROPOSED DECISION OF THE COMMISSION

This is a claim for \$29,049 by Max Mayer, a citizen of the United States since his naturalization on December 6, 1944, and is for the nationalization by the Government of Yugoslavia of those properties in Yugoslavia of the British Corporation, Trepca Mines, Ltd. (hereinafter referred to as "Trepca"), in which the claimant alleges he owned 9,624 shares of stock at the time of the nationalization.

Article 1 of the Nationalization of Private Enterprises Act of December 5, 1946 (Official Gazette No. 98 of December 5, 1946) provides:

"On the day this law becomes effective, all the private economic enterprises of general, national and republican importance in the following branches of economy are nationalized and pass into State ownership:

(1) Mining and extractive industry."

An Edict issued by the Presidium of the People's Assembly of the Federative People's Republic of Yugoslavia on July 19, 1946 and published in the Official Gazette of Federative People's Republic

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of Yugoslavia No. 59 of July 23, 1946 lists "Trepca" as item 235 on page 689 of an Exhibit attached to the Edict as being of general, national importance.

The claimant has filed an affidavit of May 19, 1952 by an employee of the Westminster Bank Limited, London, England, in which it is alleged that the Bank presently holds certificates for 9,624 shares of stock of "Trepca" for the account of Max Mayer; that these certificates were held from 1939 to August 21, 1945 for the account of a Dutch bank, but were owned by one Simon Mayer; that from August 21, 1945 to March 22, 1950 the certificates were held for the account of Simon Mayer; and that since March 22, 1950 the certificates have been held for Max Mayer. The claimant has also filed a certified copy of a judgment of December 15, 1949 by the Supreme Court of the State of New York, County of Westchester, according to which the court found that the claimant" . . . is and at all times has been the lawful owner of securities and cash on deposit at the Westminster Bank Limited, of London, England . . ."

This evidence leaves us in doubt as to whether the claimant, Max Mayer, owned the securities on which the claim is based when the corporation was nationalized, or at any time prior to July 19, 1948, the date of the Agreement with Yugoslavia and, consequently, whether he is an eligible claimant. However, this question need not be decided since the claim must be denied on other grounds.

Claimant's counsel has informed the Commission that pursuant to the Agreement of December 23, 1948 between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Yugoslavia, "Trepca" filed a claim in the amount of 8,837,255 pounds with a British commission, of similar purpose to this Commission, and



that he has been informed by "Trepca" that the British Commission has "... provisionally determined that the company established a claim against the 4,500,000 [pound] British-Yugoslav fund in the amount of 5,200,000 [pounds]."

The Commission is not informed as to the amount actually paid to "Trepca" or whether any such amount fully compensated "Trepca" for its losses.

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 a claim by a national of the United States which is based upon stock ownership in a corporation which has filed its own claim and has received an amount of a lump-sum paid by Yugoslavia to the Government of Yugoslavia if the corporation is a national. We are also not referred to the situation which heretofore may have been determined by an international claims tribunal.

Article 9 of the Agreement of July 19, 1948, provides:

"In the interest of protecting the Government of Yugoslavia from the possible assertion through third countries, or otherwise, of claims falling within the scope of this Agreement, the Government of the United States will supply to the Government of Yugoslavia, certified copies of such formal submissions as may be made by claimants to such agency as may be established or otherwise designated by the Government of the United States to adjudicate claims to participation in the funds to be paid by the Government of Yugoslavia pursuant to this Agreement and of the corresponding awards of such agency with respect thereto."

The obvious and quite understandable purpose of these provisions is to avoid duplication of payment based upon the same claimed aggrievement. Multiplicity of demand could arise from a claim before the same tribunal of a corporation and, separately, another by its stockholders, or from more than one request for compensation



for the same property or property right by the same claimant. A problem of that kind arising before the same adjudicating authority would not pose a difficult problem. If a corporation were recognized as a proper claimant and its property loss were the subject of an adjudication, it follows that the determination would be binding upon the corporate stockholders. Since it is the value of the res which is of real significance, an award made to compensate for its loss must preclude the recognized beneficiary from making further demands upon the fund provided for total compensation, whether such additional demand be made directly or indirectly. Since, as we believe, the corporation and its stockholders must be regarded as a single entity for the indicated purpose, an award to one would preclude an award to the other. We are also of the opinion that, on the basis of action by a single determining agency, the same view must result regardless of the measure of the award. These, we believe, are basic, and seemingly elementary, principles. We are also of the view, and so find, that where, as here, two claims tribunals have before them separate claims for the same properties and based upon the same taking by the Government of Yugoslavia, the same result must follow.

By an Agreement dated December 23, 1948, between the Government of the United Kingdom and the Government of Yugoslavia, a fund of 4,500,000 pounds sterling was provided by the Government of Yugoslavia "in full satisfaction and discharge of all claims of British nationals arising on or before the date of signature of the present Agreement out of various Yugoslav measures affecting British property" (Article II). The term "British nationals" is defined in the Agreement as embracing "Companies, firms and associations incorporated or constituted under



the laws in force in the territory of the United Kingdom of Great Britain" (Article IV). The Trepca corporation falls within the meaning of the term "British nationals."

Since the corporation elected to prosecute a claim for the taking of its properties by availing itself of the British- Yugoslav Agreement and fund, and as it has apparently succeeded in obtaining recognition of its right to claim an award, we believe that its stockholders are bound by that action. Therefore, consistent with principles of international law and recognized concepts of justice and equity in the prevention of unjust enrichment, the Commission finds that the claimant herein, Max Mayer, has no standing to prosecute the present claim; and that, insofar as the Agreement of July 19, 1948, is concerned, his remedy is the same as, and follows that of, the corporation Trepca.

For the foregoing reasons, the claim is denied.

Dated at Washington, D. C.

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