

FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
WASHINGTON 25, D. C.

IN THE MATTER OF THE CLAIM OF

DAGMAR KANE, WILLIAM KANE
LORETTA KANE, EVA DAGMAR KANE
and WILLIAM J. KANE
6703 Westbury Avenue
Montreal, Quebec, Canada

Claim No. CZ-1,368

Decision No. CZ-2847

Under the International Claims Settlement
Act of 1949, as amended

Counsel for Claimants:

Samuel Herman, Esquire
1317 F Street, N. W.
Washington 4, D. C.

FINAL DECISION

This claim as originally filed against the Government of Czechoslovakia under Section 404, Title IV, of the International Claims Settlement Act of 1949, as amended, was in the amount of \$434,285.00 for asserted losses resulting from the nationalization or other taking of certain real property and deposits in Czechoslovakian banks.

By Proposed Decision dated November 8, 1961, the portion of the claim based on the asserted ownership of real property by claimants and the taking thereof by the Government of Czechoslovakia was denied for the reason that claimants had not established that they had ownership interests in the subject property at the time of the alleged taking, or that such property was owned by a national of the United States on the date of such taking. The portion of the claim based on the deposits in Czechoslovakian banks was also denied because it had not been established that the deposits, in the so-called new crown currency, which were established subsequent to November 15, 1945, had been taken by the Government of Czechoslovakia. Copies of the Proposed Decision were duly served upon the claimants, who filed objections thereto and requested a hearing on the matter, which was held on February 15, 1962.

Claimant, DAGMAR KANE, appeared at the hearing, at which time the amount claimed was amended and which presently is asserted as follows: Real property 2,700,000 crowns, or \$54,000.00; personal property 500,000 crowns, or \$10,000.00; and bank account \$6,504.58, for a total amended amount claimed of \$70,504.58.

After having considered the evidence, the testimony at the hearing and having reviewed the entire record, the Commission finds no basis for granting an award with respect to the bank deposits. Therefore, it is concluded that the denial of this part of the claim must be and the same is hereby affirmed. The claim of \$10,000.00 for the asserted loss with respect to personal property represents a new item. The Commission finds that the record does not contain evidence sufficient to form the basis for finding that claimants owned personal property which was taken by the Government of Czechoslovakia. This part of the claim is, therefore, also denied.

Claimants assert that on April 13, 1948, they acquired from one Jan Odehnal, father of DAGMAR KANE, ownership, in equal shares of one-fifth (1/5) each, of a family estate consisting of approximately 160.67 hectares of land and certain improvements, all of which were taken without compensation by the Government of Czechoslovakia in May 1948 pursuant to Czechoslovakian Agrarian Reform Law 46/1948 Sb. The basic evidence upon which claimants rely to establish their acquisition of ownership of the subject property is a "Notarial Deed" dated April 13, 1948 executed by the aforesaid Jan Odehnal, by which he transferred to claimants in equal shares, his claim against the Government of Czechoslovakia for the expropriation of the subject property when it was entered in the Compensation Register.

It was determined in the Proposed Decision that claimants never acquired ownership of the property prior to its taking in May 1948 and thus, the claim was denied.

At the hearing, testimony and material was presented to the effect that when the "Notarial Deed" was executed in the office of one Dr. Josef Freitinger, a Czechoslovakian attorney, the intent of Jan Odehnal was to transfer to claimants all of his rights and interests which he had in the property at that time; that the attorney advised that the document so executed would accomplish such a transfer of ownership of any interest in the property owned by Jan Odehnal; and that relying on this advice and belief that his interests in the property had been transferred, Jan Odehnal left Czechoslovakia a few days subsequent to that execution of the deed.

It appears from the record that on April 2, 1948, the Ministry of Agriculture, representing the Czechoslovak Government, prepared a draft agreement with Jan Odehnal, with the express view of taking over the subject property for the sum of 2,700,000 crowns. Thereafter, upon being apprised of the execution of the "Notarial Deed", it appears that the Czechoslovak Ministry of Foreign Affairs reported to the American Embassy in Prague, that the Ministry of Agriculture refused to sign the agreement and thus, the Czechoslovak State did not consider the agreement binding. In the same note, the Ministry of Foreign Affairs advised, in substance, that the agricultural property which was the subject of the draft agreement had been taken pursuant to the provisions of Agrarian Reform Law 46/1948 Sb. and would be subject to compensation proceedings thereunder.

It further appears that the Czechoslovakian Government through its Ministry of Agriculture was a participant in the transaction between Jan Odehnal, the record owner of the property, and his daughter and her family, claimants herein; and that upon the transfer of his interest in the agricultural estate to American citizens, the Government of Czechoslovakia refused to proceed with the transaction according to the draft agreement and invoked the provisions of the new Agrarian Reform Law 46/1948 Sb.

It would thus appear that the purpose and intent of the Government of Czechoslovakia in refusing to consummate the draft agreement was to defeat the claims of American citizens into whose hands had come all rights and interests resulting from the transaction.

After having considered the entire record, the Commission finds that claimants acquired ownership interests of one-fifth (1/5) each in the subject property by virtue of the "Notarial Deed"; that they owned such interests on May 15, 1948, when the property was taken, without compensation, by the Government of Czechoslovakia pursuant to Law 46/1948 Sb.; and that the value of the property was 2,700,000 crowns, or \$54,000.00, converted at the official exchange rate of \$1.00 per 50 crowns prevailing at the time of taking.

Accordingly, it is hereby concluded that claimants are each entitled to an award in the principal amount of \$10,800.00, plus interest thereon at the rate of 6% per annum from the date of taking to August 8, 1958, the effective date of Title IV of the Act.

A W A R D S

An award is hereby made to DAGMAR KANE in the principal amount of Ten Thousand Eight Hundred Dollars (\$10,800.00), plus interest in the amount of Six Thousand Six Hundred Twenty-nine Dollars and Thirty-six Cents (\$6,629.36), for a total award of Seventeen Thousand Four Hundred Twenty-nine Dollars and Thirty-six Cents (\$17,429.36);

an award is made to WILLIAM KANE in the principal amount of Ten Thousand Eight Hundred Dollars (\$10,800.00), plus interest in the amount of Six Thousand Six Hundred Twenty-nine Dollars and Thirty-six Cents (\$6,629.36), for a total award of Seventeen Thousand Four Hundred Twenty-nine Dollars and Thirty-six Cents (\$17,429.36);

an award is made to LORETTA KANE in the principal amount of Ten Thousand Eight Hundred Dollars (\$10,800.00), plus interest in the amount of Six Thousand Six Hundred Twenty-nine Dollars and Thirty-six Cents (\$6,629.36), for a total award of Seventeen Thousand Four

Hundred Twenty-nine Dollars and Thirty-six Cents (\$17,429.36);

an award is made to EVA DAGMAR KANE in the principal amount of Ten Thousand Eight Hundred Dollars (\$10,800.00), plus interest in the amount of Six Thousand Six Hundred Twenty-nine Dollars and Thirty-six Cents (\$6,629.36), for a total award of Seventeen Thousand Four Hundred Twenty-nine Dollars and Thirty-six Cents (\$17,429.36);

and an award is made to WILLIAM J. KANE in the principal amount of Ten Thousand Eight Hundred Dollars (\$10,800.00), plus interest in the amount of Six Thousand Six Hundred Twenty-nine Dollars and Thirty-six Cents (\$6,629.36), for a total award of Seventeen Thousand Four Hundred Twenty-nine Dollars and Thirty-six Cents (\$17,429.36).

Accordingly, it is hereby

ORDERED that the Proposed Decision heretofore issued be amended to conform with the foregoing and as so amended be and the same is hereby entered as the Final Decision on this claim; and it is further

ORDERED that the awards granted herein be certified to the Secretary of the Treasury.

Dated at Washington, D. C.

SEP 14 1962

Edward J. De
Theodore Joffe
Lavern R. Dilweg

COMMISSIONERS

FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
WASHINGTON 25, D. C.

IN THE MATTER OF THE CLAIM OF

DAGMAR KANE, and WILLIAM KANE,
Individually and in behalf of
their children, LORETTA KANE,
EVA KANE and WILLIAM KANE
6703 Westbury Avenue
Montreal, Quebec, Canada

Claim No. CZ-1368 ✓

Decision No. CZ- 2847

Under the International Claims Settlement
Act of 1949, as amended

Counsel for Claimants:

GPO 942329

Samuel Herman, Esq.
1317 F Street, N.W.
Washington 4, D. C.

PROPOSED DECISION

This is a claim against the Government of Czechoslovakia under Section 404, Title IV, of the International Claims Settlement Act of 1949, as amended, by DAGMAR KANE and WILLIAM KANE, Individually, and in behalf of their children, LORETTA KANE, EVA KANE and WILLIAM KANE, for the nationalization or other taking of certain real property and deposits in Czechoslovakian banks.

Section 404 of the Act provides, inter alia, that the Commission shall determine the validity and amount of claims by nationals of the United States against the Government of Czechoslovakia for losses resulting from the nationalization or other taking on and after January 1, 1945, of property, including any rights or interests therein, owned at the time by nationals of the United States.

Section 405 of the Act provides as follows:

A claim under Section 404 of this title shall not be allowed unless the property upon which the claim is based was owned by a national of the United States on the date of nationalization or other taking thereof and unless the claim has been held by a national of the United States continuously thereafter until the date of filing with the Commission.

CZ-8
CZ-10
CZ-14

Claimants allege that on April 13, 1948, they and their children acquired from Jan Odehnal, father of DAGMAR KANE, a family estate consisting of 160.67 hectares of land, a family castle with 32 rooms, kitchen, etc., and several other houses and appurtenances, all of which were taken by the Government of Czechoslovakia in May 1948 pursuant to Law No. 46/1948.

In support of said allegation, claimants have submitted a document dated April 14, 1948 referred to as a "Notarial Deed" by which the said Jan Odehnal purported to transfer to claimants and their children "his claim against the Government of Czechoslovakia . . . when it is secured by him and entered in the Compensation Register". (emphasis supplied). This document further recites in substance that by a protocol registered in the Ministry of Agriculture under Deed No. 37. 512/48 - 1X/3-31 of April 2, 1946 (sic), the correct year apparently being 1948, the said Jan Odehnal undertook to apply to the Ministry of Agriculture for the compensation "(Expropriation Price)" which was fixed by estimate "in accordance with the second section, Paragraph 44 of the Compensation Law at the sum of Kcs. 2,700,000".

It does not appear that any real property was transferred or assigned to claimants by this document. On the other hand, it does appear that this document was an attempt to assign to claimants, any compensation to which Jan Odehnal may have been entitled to receive from the Government of Czechoslovakia for the taking of his property. Moreover, claimants have submitted a letter dated February 23, 1949 from the American Embassy in Prague in which it is reported that the Minister of Foreign Affairs of the Czechoslovakian Government in response to a request, investigated the status of the "assignment" and reported that the claim by Jan Odehnal had been refused because the "agreement" to take over his estate for consideration in the sum of 2,700,000 crowns did not go into force and effect because the

Czech Minister of Agriculture did not sign the said agreement. It was further reported that any assignment of a claim in the amount of 2,700,000 crowns based on the agreement likewise became "inapplicable and inoperative". Additionally, the report recites that the property which was the subject of the so-called agreement remained the property of Jan Odehnal and would be dealt with pursuant to Law No. 46/1948 Sb.

It appears from the record that Jan Odehal, a Czechoslovak national, died on January 3, 1956 and that the property which is the subject of this claim was taken by the Government of Czechoslovakia prior to his death pursuant to Law No. 46/1948 Sb. Thus, the claim resulting from the taking of this property arose in favor of a Czechoslovak national.

In view of the foregoing the Commission concludes that claimants have not established that they had an ownership interest in the subject real property at the time it was taken by the Government of Czechoslovakia. On the contrary, as stated above, it does appear that the subject property was owned by aforesaid Jan Odehal, a Czechoslovak national, at the time of taking. Accordingly, the claim not having been owned by a national of the United States on the date it arose, it is not compensable under the statute and must be and it hereby is denied. (Sec. 405 of the Act, supra).

Other portions of the claim are based upon deposits in accounts with the Zivnostenska Banka, Brno, Czechoslovakia which were established in 1948.

The Commission has determined that deposits made on or before November 15, 1945, in pre-World War "old koruna", and blocked as of November 1, 1945 pursuant to Decree 91/45 Sb., were annulled by Section 7 of Law 41/53 Sb., effective June 1, 1953 and that such annulment constituted a "taking" of property within the meaning of Section 404 of the Act.

The deposits involved in the instant claim, however, were made in 1948 in "new koruna" which were established by Decree 91/45 Sb. as of November 1, 1945. While Law 41/53 Sb., effective June 1, 1953, annulled the right to payment of bank deposits in old koruna made on or before November 15, 1945, it did not annul the right to payment of bank deposits in new koruna made after that date. There is no evidence to show that the deposits upon which this claim is based were taken by the Government of Czechoslovakia. Moreover, a prohibition against the transfer of funds outside of a country is an exercise of sovereign authority which, though causing hardships to non-residents having currency on deposit within the country, may not be deemed a "taking" of their property within the meaning of Section 404 of the Act.

Accordingly, the Commission concludes that claimants have not established that the Government of Czechoslovakia took any action which amounted to a nationalization or other taking of the bank deposits involved herein and these portions of the claim are also denied.

The Commission deems it unnecessary to make determinations with respect to other elements of the claim.

Dated at Washington, D. C.

NOV 8 1961

BY DIRECTION OF THE COMMISSION:

Francis Masterson

Francis T. Masterson
Clerk of the Commission

*Witness
lgb
[Signature]*