

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

IN THE MATTER OF THE CLAIM OF

DORA FRANKENBUSH
112 Central Park South
New York 23, New York

Claim No. CZ-2,474

Decision No. CZ-2380

Under the International Claims Settlement
Act of 1949, as amended

GPO 942329

Counsel for Claimant:

Green & Etinger
505 Park Avenue
New York 22, New York

FINAL DECISION

The Commission issued its Proposed Decision on this claim on June 14, 1961, denying the claim for the reason that the bonds upon which it is based had not been taken or annulled by the Government of Czechoslovakia.

Claimant through her attorneys objected to the Proposed Decision, submitted new evidence, and requested a hearing. Such hearing was scheduled and held before the Commission on November 16, 1961. In her objections and at the hearing claimant urged that in 1935 she acquired 5,000 3% priority bonds of the "STEG" Company (Staats-Eisenbahn-Gesellschaft), a corporation organized under the laws of Austria-Hungary, issues numbered I through X at a price of 67.25 Austrian shillings a piece, and 1,000 3% priority bonds of the same company, of a supplemental issue, at an average price of 73.00 Austrian shillings a piece; that the Government of Czechoslovakia pursuant to international agreements concluded in 1923 assumed liability for a partial payment of these bonds; that such payments were made from 1926 through 1938 but were discontinued after 1938; and that on June 2, 1950 the Government of Czechoslovakia concluded a new agreement with the representatives of the bondholders pursuant to which payments had to be resumed. However,

subsequently, the Government of Czechoslovakia refused to service these bonds and this refusal, according to the claimant, constituted a taking of the bonds.

In support of the claim, at the hearing, claimant's attorney introduced the expert testimony of Louis M. Planer, a former member of the Advisory Council of the Vienna Stock Exchange. Mr. Planer testified as to the value of the "STEG" bonds on the stock exchange of Vienna during the years 1938 through 1945 and described the proceedings under which the "Caisse Commune" in Paris collected the funds from the various countries and distributed them among the bondholders. He further testified that the bondholders retained all their rights to payment of the unpaid interest and principal even though part payment for interest had been made during the years 1926 through 1938.

Claimant's attorney corroborated the statement of the expert by introducing evidence--correspondence originating from the Vienna Stock Exchange and the Creditanstalt-Bankverein, a leading Viennese bank.

The Commission having given consideration to the entire evidence on record, to the testimony of the expert, and oral argument, finds that the Government of Czechoslovakia assumed the servicing of these bonds under an agreement of November 14, 1925 which provided that Czechoslovakia should pay 62.808% of the outstanding interest due on the bonds at a rate of exchange of 27 Swiss francs for 100 gold francs (the currency of the bonds). Payments had to be made to the "Caisse Commune" of Paris for the account of all bondholders, and Czechoslovakia fulfilled its obligations under the 1925 agreement until the end of March 1938. It should be noted that preferential treatment was given to bondholders who were residents of countries other than Austria, Hungary, Czechoslovakia, Rumania, Poland and Yugoslavia because bondholders residing outside the territory of former Austria-Hungary participated in 32% of all the payments made to the "Caisse Commune" before former Austro-Hungarian bondholders could participate in the distribution of the funds.

^{1/} See "COMPASS" Financial Yearbook for Austria for the year 1953, pages 51-81 (Vienna, 1953).

On October 20, 1945, the Czechoslovakian Government issued a Decree No. 95/1945^{2/} ordering the registration of all bonds held within Czechoslovakia and in foreign countries, but under Section 14 of the said Decree, Czechoslovakian foreign bonds, whether issued by the State or otherwise, were expressly excluded from this registration.

On June 2, 1950 a new agreement had been concluded between the Government of Czechoslovakia and the "Caisse Commune" regarding the resumption of payments of pre-1914 bonds, including the "STEG" bonds discussed here. The Government of Czechoslovakia undertook to release certain blocked accounts owned by the "Caisse Commune", and to resume payment of interest which became due during the years 1946 through 1949. The rate of exchange which was previously fixed at 27% of the gold face value of the interest due, was raised to 54% for the interest due in 1948 and 1949. The first payment should have been made on April 1, 1951.^{3/}

However, the Government of Czechoslovakia failed to make this payment nor did it make subsequent payments for interest due on the bonds. Nevertheless, on November 23, 1959, the Government of Czechoslovakia agreed to reopen negotiations with the Government of France for the settlement of the "STEG" bonds, but according to information available to the Commission, such negotiations have not, to date, been commenced.

The question presented here is: whether the non-servicing of the bonds by the Government of Czechoslovakia after the agreement of June 2, 1950, constitutes a taking of claimant's interest in the bonds within the meaning of Section 404 of the International Claims Settlement Act of 1949, as amended.

The Commission held in Proposed Decision No. CZ-397, In the Matter of the Claim of CHARLES H. SISAM, Claim No. CZ-1,551, that pursuant to Section 7 of Czechoslovak Law No. 41/53 all domestic bonds which were blocked under Decree No. 95/45 were annulled effective June 1, 1953; but since the blocking

^{2/} Official Gazette No. 45 of October 23, 1945.

^{3/} See "COMPASS" ibid., page 54.

Decree No. 95/45 did not apply to foreign bonds, such annulment did not affect bonds expressed in United States dollars issued by the Government of Czechoslovakia in 1922 and 1924.

With respect to the bonds in the present claim, the Commission finds that the blocking Decree No. 95/45 was not applicable to "STEG" bonds, since they were clearly foreign bonds expressed in a foreign currency (gold francs). Consequently, Law No. 41/1953 of June 1, 1953 did not annul the "STEG" bonds, and no action was taken by the Czechoslovakian Government subsequently which could be construed as a repudiation of these bonds. This view is fortified by the fact that the Government of Czechoslovakia agreed to reopen negotiations for the settlement of the "STEG" bonds as late as 1959.

It is possible that such negotiations may take place in the near future and that the "STEG" bondholders will obtain additional payments if Czechoslovakia and the "Caisse Commune" reach a new agreement.

The Commission concludes that the failure of the Government of Czechoslovakia to service payment of the "STEG" bonds under the agreement of June 2, 1950 does not constitute a nationalization or taking of claimant's rights within the meaning of Section 404 of the Act.

In view of the foregoing, it is

ORDERED that the Proposed Decision No. CZ-2380 be and the same is hereby entered as the Final Decision on this claim.

Dated at Washington, D. C.

JAN 3 1962

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Edward J. O'Connell
Theodore Jaffe
Lavern R. Dilweg

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GREEN & ETTINGER ✓
635 Madison Avenue ✓
New York 22, New York ✓

PROPOSED DECISION

This is a claim in the amount of \$2,000,000.00 against the Government of Czechoslovakia under Section 404 of Title IV of the International Claims Settlement Act of 1949, as amended, by DORA FRANKENBUSH, a national of the United States since June 6, 1944, the date of her naturalization. The claim is based upon the asserted nationalization or other taking by Czechoslovakia of 6,000 certificates of bonds of 500 Swiss Francs each issued by the former Austrian-Hungarian State Railroad Company ("STEG" bonds).

Section 404 of the Act provides, inter alia, for the determination by the Commission, in accordance with applicable substantive law, including international law, of 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.

C2-13

The Commission finds that in 1935 Dora Frankenbush acquired by purchase 6,000 certificates of 3% priority bonds of the former Austrian-Hungarian State Railroad Company, and that she is still the owner of these bonds which are deposited with a bank in Vienna, Austria.

A study of the history of these 3% "STEG" bonds reveals that they were issued at various times in denominations of 500 gold francs each by the former Austrian-Hungarian State Railroad Company, that in 1909 the Government of Austria-Hungary assumed the obligation for the payment of these bonds; that subsequent to World War I the obligations of the former Austrian-Hungarian Government were assumed proportionately by the states succeeding the Empire of Austria-Hungary, including Czechoslovakia; that Czechoslovakia fulfilled its proportionate obligation with respect to the payment of these bonds until 1938; that on June 2, 1950, the Government of Czechoslovakia concluded an agreement with the "Caisse Commune", an agency set up after World War I in Paris, France, to which payments had to be made for the benefit of the bondholders of former Austro-Hungarian obligations; and that the Government of Czechoslovakia in that agreement undertook to continue the Czechoslovakian service of the bonds which had been in default since 1938.

The Commission's records disclose that the Government of Czechoslovakia, pursuant to Section 7 of Law No. 41/53 Sb., effective June 1, 1953, annulled all domestic bonds which were blocked under a previous decree No. 95/45 Sb. In view of the foregoing, however, the Commission concludes that the above decree No. 95/45 Sb. and the annulment decree No. 41/53 Sb. did not apply to the above-described issue of 3% "STEG" bonds, and that the annulment of domestic bonds did not affect the rights of bondholders of the 3% "STEG" bonds.

There is no evidence before the Commission to show that subsequent to June 1, 1953 the Government of Czechoslovakia took any action with respect to the aforesaid bond issue which could be construed as a nationalization or other taking of property within the meaning of Section 404 of the Act.

The Commission, therefore, concludes that claimant has not established that the property upon which this claim is based was nationalized or otherwise taken.

Accordingly, the claim must be and is hereby denied.

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

Dated at Washington, D. C.

BY DIRECTION OF THE COMMISSION:

JUN 14 1961



Francis T. Masterson
Clerk of the Commission

THIS DECISION WAS ENTERED AS THE COMMISSION'S
FINAL DECISION ON JAN 3 1962



Clerk of the Commission

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