

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

IN THE MATTER OF THE CLAIM OF

MELANIE LINDENBAUM
140 West 86th Street
New York 24, New York

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CZ-2,770

Decision No. CZ-3092

GPO 942329

Counsel for Claimant:

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

PROPOSED DECISION

This is a claim in the amended amount of \$125,000 against the Government of Czechoslovakia under Section 404 of Title IV of the International Claims Settlement Act of 1949, as amended, by MELANIE LINDENBAUM, a national of the United States since May 18, 1944, the date of her naturalization.

The claim is based (1) upon the nationalization and other taking of certain real property located at Velke Ripnany and Behynce; (2) on the loss sustained by claimant as a creditor of a corporation which owned land confiscated by Czechoslovakia; and (3) on the loss claimant suffered as the assignee of this corporation's claims against Czechoslovakia for the confiscation of the land and for certain bank accounts.

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

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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.

(1) LAND IN VELKE RIPNANY AND BEHYNCE

The Commission finds that claimant was the owner of the following interests in real property:

Liber No.	Community	Claimant's Interest	Hectare Area of Property	Description	Claimant's Equity in Property by Hectares
167	Velke Ripnany	Sole owner	1.3120	Arable land	1.3120
327	" "	$\frac{1}{2}$ Interest	104.2267	" "	52.1133
328	" "	$\frac{1}{2}$ "	4.8365	" "	2.4183
329	" "	$\frac{1}{3}$ "	4.0645	" "	1.3548
330	" "	$\frac{1}{3}$ "	.2838	Houses and Structures	.0946
359	" "	$\frac{1}{2}$ Interest	.9604	Arable land	.4802
82	Behynce	Sole owner	3.5592	Arable land	3.5592
Claimant's Equity in Property					<u>61.3324</u>

This real estate was located in the area of Nitra, Slovakia and was improved with a farmhouse, auxiliary structures, stables, barns and an alcohol distillery. It had been previously owned by claimant's father Julius Simko who transferred the estate prior to World War II to his daughters, including the claimant herein.

The record before the Commission shows that this property was confiscated on November 29, 1946 by Decision No. 117,719/120/55-46 of the Confiscation Commission of the District National Committee of Nitra. The confiscation decree included all the property of Julius Simko, claimant's father, Marie Friedman and Margita Adler, claimant's sisters, and of the claimant Melanie Lindenbaum.

Claimant failed to submit evidence with respect to the value of the above real estate. Statistics and data on land values in Czechoslovakia, namely, the Fifth Supplement to the Listings of Agricultural Property, published by the President of the Federal Equalization Office, Bad Homburg, Germany (1960) disclose that the equivalent dollar value of the average farm land in the area of Nitra, Slovakia at the time of taking was \$200 per hectare. Considering that the property was improved and contained a large farmhouse, stables, barns and other structures, including an alcohol distillery, the Commission concludes that the value of claimant's interest in the property had a value of \$30,000 and that claimant under Section 404 of the Act is entitled for this item of the claim to compensation in that amount plus interest.

(2) LOAN TO GLEBA, INCORPORATED

A portion of this claim is based on the loss sustained by claimant as the creditor of the company GLEBA, Incorporated, of Glarus, Switzerland, which owed the claimant and three other creditors, members of claimant's family, an aggregate amount of 208,258.25 Swiss francs. GLEBA, Incorporated was the owner of a large tract of land near Kralovsky Chlumec in Czechoslovakia. Such land was confiscated by the Government of Czechoslovakia on or about February 4, 1949, and since the company GLEBA had no other substantial assets, it could not fulfill its obligations to creditors and in 1951 went into liquidation.

The Commission has held that the nationalization of property of a debtor company does not constitute a taking of the property of a creditor of such company, except when (1) the credit was secured on the property by a recorded mortgage or other lien in favor of the creditor; or (2) the credit was annulled, abolished, or repudiated

by special action of the Czechoslovakian Government.^{1/} There is no showing in the instant claim that the debt which forms the basis for this part of the claim was secured by a mortgage or lien on GLEBA's property, nor that such debt was ever annulled by the Government of Czechoslovakia.

Additionally, a reading of the legislative history of the enactment of Title IV of the International Claims Settlement Act of 1949 leads to the conclusion that it was the intent of Congress to exclude from Title IV ordinary debt claims.

In testimony before the respective committees of the two Houses of Congress, the position of the Department of State was that: "The United States Government, in its negotiations with the Government of Czechoslovakia, has been seeking a lump-sum compensation settlement for the nationalization or other taking by that Government of American-owned property, not for creditors' claims". Pointing out that Congress could, if it wished, provide compensation for creditor claims (as, indeed it did, for certain limited Bulgarian, Hungarian, and Rumanian creditor claims in Title III by adding Section 303 (3)), the representatives of the Department said it "wishes to point out the basis upon which the Department has been negotiating with Czechoslovakia, and that such payments to creditors out of the limited fund would result in a diminution of recovery to the nationalization claimants".

The House and Senate Committee reports ^{2/} on the bills which became Public Law 85-604 and added Title IV to the Act, show unmistakably that the Congress did not wish to provide compensation under Section 404 for creditor claims, but elected to utilize available

^{1/} See In the Matter of the Claim of Skins Trading Corporation, Claim No. CZ-3,978, Decision No. CZ-734 (1961).

^{2/} Report No. 2227, House of Rep., 85th Congress, 2d Session.
Report No. 1794, Senate Report, 85th Congress, 2d Session.

funds as partial compensation for those claims which had been the subject of negotiations between the two Governments. Thus, in the House Report, it is said, "At the present time, negotiations are being conducted with Czechoslovakia with respect to claims which are the subject of this legislation, with a view to obtaining a lump-sum settlement from that nation of all such claims. Unless an agreement is entered into before the expiration of 1 year after enactment covering such claims, the funds for the payment of such claims will be derived from the proceeds of the sale by the United States of certain Czechoslovakian steel mill components ..." (emphasis supplied). The claims which are the subject of this legislation then are the claims which were the subject of negotiation, and do not include creditor claims.

Additionally, the following paragraph from the Senate Report on the bill is significant in showing the clear intent to restrict creditor claims to those authorized under section 403 and not to compensate such claims under section 404:

The committee recognizes that by limiting actions in the United States Court of Claims under section 403 to the claims of persons who have been deprived of property without just compensation it may not be affording relief to persons, such as creditors, who may have valid claims against Czechoslovakian debtors. It believes, however, that if any portion of the proceeds referred to in section 402 were allowed to be used for the satisfaction of creditors or other persons whose claims are not based upon an actual interest in the steel mill equipment or its proceeds, this action would deplete, perhaps seriously, the amounts which could be recovered by Americans whose property was nationalized by Czechoslovakia.

Accordingly, this portion of the claim predicated upon the loan to GLEBA, Incorporated is hereby denied.

(3) ASSIGNMENT OF GLEBA'S CLAIMS AGAINST CZECHOSLOVAKIA

As stated above, GLEBA, Incorporated was the owner of a large tract of land in Czechoslovakia. The evidence submitted to the Com-

mission shows that this property consisted of approximately 309 cadastral yutars (or $178\frac{1}{2}$ hectares) of land registered under Liber Nos. 378, 418 and 600 of the Community of Strazne and under Liber No. 521 of the Community of Velky Kamenec, in the area of Kralovsky Chlumec, Slovakia; that the entire property was confiscated by a decree of the Czechoslovakian Ministry of Agriculture, No. 6870/49/IX-A-21 of February 4, 1949, pursuant to the Czechoslovakian laws of Agrarian Reform; and that on November 3, 1951 GLEBA, Incorporated, then a company in liquidation, assigned jointly to four members of the family Lindenbaum - namely, to the claimant, to her husband Markus Lindenbaum, and their children Susanne Ingeborg Lindenbaum and George Jack Lindenbaum - all the claims the company had for the confiscation of the land, and also for certain bank accounts in the aggregate amount of 107,819.60 Czech crowns deposited with the Rolnicka Vzajomna Pokladnice (Farmers' Mutual Savings Bank) in Piestany, Czechoslovakia.

The Commission finds that at the time of taking of the land GLEBA was a corporation whose entire capital stock was owned by Markus Lindenbaum, a national of the United States, and that by virtue of the assignment of November 3, 1951 GLEBA, Incorporated transferred the claims in equal shares to the claimant and to the three aforementioned members of her family; consequently, claimant is entitled under Section 404 and 406 (c) of the International Claims Settlement Act of 1949, as amended, to compensation for a one-fourth ($1/4$) interest in the claim relating to the confiscation of GLEBA's land.

The Commission further finds that the value of the $178\frac{1}{2}$ hectares of land taken from GLEBA, Incorporated in the area of Kralovsky Chlumec was \$36,000. In arriving at such value, the Commission gave consideration to the fact that on November 28, 1936 "FLORA", a corporation of

Vaduz, Liechtenstein, sold the aforesaid tract of land to GLEBA, Incorporated for the stipulated purchase price of 106,500 Swiss francs, which, at the then prevailing rate of exchange, amounted to approximately \$26,000. However, since the average farm land in the area of Kralovsky Chlumec at the time of taking had a value of approximately \$200 per hectare based upon information of the German Government recited above under (1), the Commission concludes that the total value of the entire tract of land measuring approximately $178\frac{1}{2}$ hectares at the relevant time of taking was \$36,000 and that claimant is entitled for this item of the claim to compensation commensurate to her one-fourth ($1/4$) interest in such land in the amount of \$9,000 plus interest.

With respect to the amount of 107,819.60 Czech crowns on deposit with the Farmers' Mutual Savings Bank in Piestany, which also was assigned to claimant, the Commission finds that the said amount was deposited to the credit of GLEBA's account in 1946 and 1948. The Commission has held that deposits made on or before November 15, 1945 in Czech crowns were annulled by Section 7 of Czechoslovak Law No. 41/1953, and that such annulment constituted a taking of property within the meaning of Section 404 of the Act.^{3/} However, the account in the instant claim was established after November 15, 1945 in so-called "new currency" of Czechoslovakia and Law No. 41/1953 did not annul such accounts. Balances of accounts in "new currency" were converted into post-1953 Czechoslovak currency by means of a sliding scale, but while these measures may have caused a loss in terms of foreign exchange, there is no evidence to show that GLEBA's deposit was affected by any other action of the Czechoslovak Government which would constitute a taking of property under Section 404 of the Act.^{4/}

^{3/} See In the Matter of the Claim of John Stipkala, Claim No. CZ-1,616, Decision No. CZ-135 (1960).

^{4/} For a detailed discussion of this question, see In the Matter of the Claim of Karolin Furst, Claim No. CZ-1,381, Decision No. CZ-682 (1960).

The Commission, therefore, concludes that it has not been established that the bank account in favor of GLEBA, Incorporated was subject to a taking within the meaning of Section 404 of the Act and this part of the claim relating to the bank deposit is hereby denied.

RECAPITULATION

In view of the foregoing, claimant is entitled to the following compensation:

Property	Value	Date of Taking	6% Interest from Date of Taking to 8/8/58	Total Award
Land in Ripnany Land of GLEBA, Inc.	\$ 30,000.00	11/19/46	\$ 21,045.00	\$ 51,045.00
	9,000.00	2/ 4/49	5,136.03	14,136.03
Total	\$ 39,000.00		\$ 26,181.03	\$ 65,181.03

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Pursuant to Title IV of the International Claims Settlement Act of 1949, as amended, an award is hereby made to MELANIE LINDENBAUM in the principal amount of Thirty-nine Thousand Dollars (\$39,000) plus interest thereon at the rate of 6% per annum from the above stated dates of taking to August 8, 1958, the effective date of Title IV of the Act, in the amount of Twenty-six Thousand One Hundred Eighty-one Dollars and Three Cents (\$26,181.03) for a total award of Sixty-five Thousand One Hundred Eighty-one Dollars and Three Cents (\$65,181.03).

Dated at Washington, D. C.

BY DIRECTION OF THE COMMISSION:

Francis T. Masterson

Francis T. Masterson
Clerk of the Commission

FEB 21 1962

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THIS DECISION WAS ENTERED AS THE COMMISSION'S
FINAL DECISION ON MAR 21 1962

Francis T. Masterson

Clerk of the Commission