

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

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In the Matter of the Claim of :

GUS KNEZEVICH :
Winnemucca, Nevada :

Docket No. Y-338

Decision No. 1123

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

Counsel for Claimant:

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affirmed
12-6-54

OK
WJ
12-10-54
OK
12-13-54
PCP

FINAL DECISION

On August 12, 1954, a Proposed Decision was issued herein, denying this claim on the sole ground that the claimant's alleged ownership of 4,273 shares of stock of the Dionicke Pivaro Sarajevo Brewery, a Yugoslav corporation, had not been established. The corporation was admittedly taken by nationalization on December 5, 1946; and the claimant's naturalization, as of March 28, 1927, is also established.

The claimant acknowledges that the shares of stock in question were purchased, not by himself but by his brother, Milos Knezevich, who, at the time of such purchases, was a citizen and resident of Yugoslavia. The claimant contends, however, that, in making such purchases, his brother was acting throughout as claimant's agent; that he, the claimant, supplied all of the funds therefor; and that these shares were at all times regarded as the claimant's, and not his brother's, property.

WJ
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It has been reported by the Government of Yugoslavia that such shares were registered with Yugoslav authorities in the name of the claimant, rather than that of his brother, pursuant to the Yugoslav regulation of 1946 requiring the registration of shares of stock in Yugoslav corporations. In its Proposed Decision, the Commission held that, upon the record then before it, this claim of beneficial ownership by the claimant had not been established.

After issuance of the Proposed Decision, a hearing was held in accordance with applicable Commission procedures. At that hearing, oral testimony was taken of both the claimant and of his brother, the latter having recently come to the United States. Additional documentary evidence was also submitted at that time and thereafter. Such additional documentary material includes letters to the claimant and his brother from the Leu & Co. bank in Switzerland through which, it appears, some of the shares were acquired, and letters to the claimant from other persons now in Yugoslavia who were apparently familiar with the circumstances surrounding the purchase of these shares by Milos Knezevich and of the relationship between him and his brother, the claimant, respecting the true ownership of the shares.

Upon consideration of all of such additional evidence, the Commission is now satisfied that the claimant has established his claim of beneficial ownership to the shares of stock in question, and that such ownership existed at the time of the taking of the corporation. The Commission has, therefore, concluded that its Proposed Decision should not be adhered to; and that an award should be made to the claimant on account of 4,273 shares of the stock of the Dionicke Pivaro Sarajevo Brewery, by reference to its value now to be considered.

Such data bearing upon valuation as is available to the Commission differs widely. As the Commission has indicated in

previous decisions, awards in such matters are generally made upon the basis of the 1938 values of the assets taken. *

Yugoslav authorities have submitted to the Commission a certified copy of the corporation's balance sheet as of September 30, 1940, as purportedly approved by the annual meeting of its stockholders on December 22, 1940. This statement reflects total assets of 21,521,788 dinars as against liabilities of 18,019,259 dinars, or a total book value of 3,502,529 dinars and a per share book value of 58.37 dinars. The Commission's investigators in Yugoslavia inquired specially into the large liability item of 17,768,181 dinars appearing on the balance sheet as "creditors"; and the underlying data in that regard submitted by Yugoslav authorities indicates that this item represented apparently valid debt obligations to various Yugoslav banks.

The Commission's investigators have also made a physical inspection of the major facilities of the corporation.

The claimant has also submitted some data bearing upon valuation, principally the affidavit of Milos Knezevich, his brother aforementioned. The latter states that he is an accountant by profession; that he has had extensive experience in valuation matters, particularly in relation to breweries; that he was for many years the chief accountant for the corporation in question; and that he made a personal inspection of most of the corporation's assets in 1945 and 1946. He states that in his opinion the net value of the corporation, as of 1946, was 84,192,100 dinars which would thus reflect a per share value of approximately 1,400 dinars per share. A detailed analysis of the various items in his evaluation statement, all of which the Commission has considered, would not here be feasible. It may be noted, however, in general, that this valuation utilizes throughout the highly inflated post-war prices for all important asset items.

The corporation's shares were apparently not traded in on any European stock exchange. However, Milos Knezevich who testified that he purchased the shares for his brother, the claimant, over a period of years between 1930 and 1940, testified, at the hearing before the Commission, that those shares (about 800) which he purchased between 1930 and 1933 cost approximately \$6 per share, and that the balance of the shares, approximately 3,400, which were purchased in or around 1939 or 1940, cost between 60¢ and 70¢ per share.

The Commission is of the opinion, upon the basis of the foregoing and all other evidence and data before it, that the fair and reasonable value of this stock as of the year 1938 was 120 dinars per share. That amount converted to dollars at the rate of 44 dinars to one dollar, the rate adopted by the Commission in making awards based upon 1938 valuations, equals \$2.73 per share.

AWARD

It having been determined that an award should be made herein on account of the claimant's ownership of 4,273 shares of the stock of the corporation involved, this claim is allowed and an award is hereby made to Gus Knezevich, claimant, in the amount of \$11,665.29, 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 \$1,198.49.

Dated at Washington, D. C. DEC 14 1954

* 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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July 4, 1954

PROPOSED DECISION OF THE COMMISSION

This is a claim by Gus Knezevich, a citizen of the United States since his naturalization on March 28, 1927, for the value of 4,273 shares of stock allegedly owned by him in the Dionicke Pivaro Sarajevo Brewery prior to its nationalization by the Government of Yugoslavia.

In his statement of claim, the claimant stated that the cost of the stock to him was \$10,500 but that by the time of nationalization its value had increased greatly, to an extent not known to him. The claim was therefore asserted for "the fair value" of the stock at the time of nationalization. Subsequent to the filing of the claim, the claimant submitted certain data upon the basis of which he suggested that his shares had a value, as of 1941, of a little over \$100,000.

For the reasons hereinafter indicated, the Commission has concluded that this claim must be denied for inadequacy of proof of ownership by the claimant of the stock in question. The evaluation question is therefore not reached.

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The claimant acknowledges that nominal ownership of the stock has never been in him; and it is clear that he has never had possession of the stock certificates. As indicated by his attorney in a letter to the Commission, dated August 17, 1951, in response to the Commission's inquiries in that regard, "the certificate numbers of the shares of stock and the face value of such shares of stock are not known to claimant. We are not aware of any method by which we can obtain such information. We do know however that the stock was issued in the name of claimant's brother Milos Knesevich". As the claimant put it in a statement of claim submitted to the Department of State on February 16, 1948, "Claimant's interest arises as beneficial owner of stock held by his brother Milos Knesevich, agent . . . Claimant purchased these securities by remitting funds to his brother, Milos Knesevich, during the years 1930 to 1940".

A claim of beneficial ownership of personal property, the legal title to which is in some other person, should be supported by proof as clear, consistent and convincing as might reasonably be expected under all of the circumstances. The Commission is of the opinion that such proof, the burden of which rests upon the claimant, has not been produced in connection with this claim.

To support his asserted beneficial ownership, claimant has attempted to prove that he provided the funds for the purchase of the stock. The evidence submitted, however, is contradictory and, in the judgment of the Commission, inadequate.

The Statement of Claim filed with the Commission in 1951 asserts that the claimant invested \$10,500 in the stock. Three years earlier, however, in his statement to the Department of State above referred to, the claimant had stated that he "invested a total of \$5,000".

The claimant has submitted some documentary evidence that he transmitted, to or for the account of his brother, the following sums of money (aggregating \$3,212.54) on the following dates: November 30, 1939--\$500;

December 19, 1939--\$1150; December 26, 1939--\$1,000; May 11 or 18, 1940--\$250.04; February 21, 1941--\$312.50. The latter two payments, it will be noted, were made after the years 1930 to 1940 during which the stock is said to have been acquired. There is no indication on any of these documents, moreover, of the nature or purpose of any of these payments. The claimant explains the absence of records of additional and prior payments by the statement that, in 1944, all of his records "from 1927 through 1943 were destroyed including any that had a bearing on the subject funds."

These shares of stock are said to have been acquired by the claimant through his brother during the 10 years between 1930 and 1940. It would seem reasonable to believe that at some time during that period, when private, international communication was quite free, the claimant would have received from his brother some written communication reflecting the acquisition of at least some of these shares of stock and something in writing by way of acknowledgment of the claimant's interest therein. This would be the kind of record which, in such a transaction, a reasonably prudent businessman would be expected to retain. However, no such evidence has been submitted to the Commission.

In further supporting his claim of ownership, the claimant also relies upon (a) certain correspondence between him and the Leu & Co's Bank in Zurich, Switzerland in December 1939 and January 1940, pursuant to which he gave a power of attorney to his brother on a \$500 deposit account with that bank in claimant's favor opened on November 30, 1949, and (b) a letter, dated September 10, 1946, from him to the Privrednov Banci za Bosny i Hercegovinu in Sarajevo, Jugoslavia (a copy of which has been submitted) in which letter he asserted ownership of the shares of stock in question.

The power of attorney was not executed until after the stock is said to have been acquired; the stock had never been and was never thereafter in the possession of the Leu & Co. Bank; no specific reference was made in that correspondence to the stock; and there is nothing in the

correspondence or in the execution of the power of attorney which seems in any way to substantiate claimant's assertion of ownership.

The letter to the Sarajevo Bank also is not persuasive. It should be noted, first, that it was not written until September 10, 1946, after confiscation and the other processes of taking were well under way in Yugoslavia, and at least 6 years after the stock is said to have been fully acquired. In pertinent part, that letter from claimant reads as follows:

"I am hereby informing you that I am the owner of 4,273 shares of stock in the Dionicke Pivaro Sarajevo.

They are deposited with you for safekeeping. The deposit is in the name of my brother, engineer, Milas Knezevic, who was acting as my agent.

My address is Gaso Knezevich, Winnemucca, Nevada, USA."

Apparently, the letter was the first notification by the claimant to this bank that he had any claim of interest in these shares of stock and it seems clear that, until that time, there was no indication on the bank's records that the stock was being held for the claimant by an agent. This would be somewhat inconsistent with the impression conveyed in the Statement of Claim that the shares "were deposited for safekeeping with the Privrednoj Banci za Bosny i Hercegovinu, Sarajevo, Jugoslavija in the name of my said brother, Milos Knezevich, as my agent"; the impression there being given that the stock had at all times been held by that bank in an agency account having a named principal.

In the light of the foregoing, the Commission has carefully considered the significance and weight of certain additional material which might be said to support claimant's contention. In a letter dated June 3, 1948, Narodna Bank in Sarajevo, replying to a letter from the claimant dated April 30, 1948 (not submitted to the Commission, or otherwise described), advised the claimant that "your 4,273 shares in "Pivare" (brewery) a.d. Sarajevo which was deposited with former Zemoljska Banka Za Bosna i Hercegovina" had been duly declared in accordance with the Yugoslav Regulation (of June 17, 1946) on the Issuance and Declaration of Shares. The fact of such declaration is apparently confirmed in a memorandum

dated June 2, 1949 from the American Embassy in Belgrade to the Department of State in which the Department is advised that the Yugoslav Ministry of Foreign Affairs had informed the Embassy that the "shares of stock in the Pivaro A.D. Sarajevo owned by him (the claimant) have been declared in time . . ." (In the same communication the Ministry of Foreign Affairs is also said to have stated that the claimant "under Yugoslav law is considered to be a Yugoslav citizen in good standing.")

Although these statements refer, first, to "your 4,273 shares" and, second, to the shares of stock "owned by him" (the claimant), neither of them have any significant bearing on the question of ownership as of the time of taking. The bank with which the shares were on deposit was required by law to declare and turn in the stock pursuant to the Regulation above mentioned. At the request of either the claimant or his brother, this declaration could easily and properly have been made, at that time, in the name of either of them. In practice, neither the Narodna Bank or the Yugoslav Ministry of Foreign Affairs had to be concerned with where true ownership rested at the time of taking but accepted and could properly accept, as the declared owner, the name of the person indicated as the owner at the time the certificates were deposited.

Upon all the evidence, the Commission is of the opinion that, at least for the purposes of this kind of claim, the proof is not sufficient to satisfy the claimant's burden of proof.

For the foregoing reasons, this claim is denied.

Dated at Washington, D. C.

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