

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

IN THE MATTER OF THE CLAIM OF

JOHN H. LUSDYK
10 Vassar Place
Scarsdale, New York

Claim No. CZ-3,219

Decision No. CZ-2517

Under the International Claims Settlement
Act of 1949, as amended

GPO 942329

Counsel for Claimant:

LEO REALBERG, Esquire
20 Vesey Street
New York 7, New York

PROPOSED DECISION

This is a claim in the amount of \$165,669.54 against the Government of Czechoslovakia under Section 404, Title IV of the International Claims Settlement Act of 1949, as amended, by JOHN H. LUSDYK, a national of the United States since his naturalization on February 28, 1949.

The claim is based on the nationalization or other taking by the Government of Czechoslovakia of (1) claimant's bank deposits, (2) his fractional interests in three buildings situated in Prague, Czechoslovakia, and (3) his inheritance rights in "Nathan Eisler", a wholesale food importing business of Prague, Czechoslovakia.

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

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after January 1, 1945 of property including any rights or interests therein owned at the time by nationals of the United States.

Bank Deposits

Claimant bases his claim, in part, on two bank deposits: one in the amount of 62,800 Czech crowns deposited in the Zivnostenska Banka of Prague in old (pre-1945) currency and the other in the amount of 149,377.40 Czech crowns deposited in the same bank in new (post-1945) currency.

The record herein discloses that claimant's attorney in Prague in 1951 used the entire balance of the deposit in old currency for the payment of property taxes. In 1953 the Government of Czechoslovakia enacted legislation declaring that bank deposits in old currency were annulled. Since at that time he did not own any deposits in old currency, such action by the Czechoslovakian Government did not affect claimant's rights.

With respect to the deposit in post-1945 currency, the Commission finds that by Law No. 41/53 Sb. on Monetary Reform, such deposits were converted into a new (post-1953) crown currency by means of a sliding scale. This monetary reform, however, was also coupled with a general readjustment of wages and prices. The balances in bank deposits resulting from the currency reform have been subject to foreign exchange controls and, under certain circumstances, they may have been used for the benefit of the owner within Czechoslovakia for the payment of obligations, for donations to close relatives and to other residents in that country, and for similar purposes.

It is a recognized rule of international law that a state has the right to make every effort to stabilize its currency. This may cause a loss in terms of foreign exchange but as long as there is no discrimina-

tion between nationals and aliens, no claim under international law arises. A state is not liable under international law for fluctuations in the value of its currency. (See In the Matter of the Claim of Borden Covel, Administrator of the Estate of Leo Sigmund Kuhn, Deceased, Decision No. 25-B of the American-Mexican Claims Commission established under the Act of Congress approved December 18, 1942, General Docket No. 2775.)

The Commission concludes that the claimant herein has not established that the conversion of his deposit from pre-1953 currency to post-1953 currency constituted nationalization or other taking of property within the meaning of Section 404 of the International Claims Settlement Act of 1949, as amended.

Accordingly, that part of the claim based on the nationalization or other taking of the bank deposits is denied.

Buildings

The Commission finds that claimant owned a 95/504th interest in an apartment house located at 1 Peterske Namesti, Prague; a 1/2 interest in an apartment house located at 6 Vlasimska, Prague; and a 1/3 interest in a factory building and dwelling house registered under No. 760 in Stare Strasnice, Czechoslovakia.

Law No. 80/52 Sb., effective January 1, 1953, compelled owners of buildings with a gross rental income of 15,000 Czech crowns or more to deposit the rent in special accounts. From such accounts, real property taxes (45 to 50% of the gross rent) were deducted. Additionally, at least 30% of the rent was then transferred into a building repair account. Thus, in Czechoslovakia, owners of apartment houses having a gross rental income of 15,000 Czech crowns or

more were and are precluded from the free and unrestricted use of their realty and the fruits of such property. To all intents and purposes, the owners of such property, despite the fact that they may have remained record owners, lost all control over the property and were little more than collecting agents for the Czechoslovakian Government. In view of the foregoing, the Commission has concluded that improved real property having a gross rental income of 15,000 Czech crowns or more per year is considered as constructively taken by the Government of Czechoslovakia on January 1, 1953.

The houses located at No. 1 Peterske Namesti and 6 Vlasimska are in the category of apartment houses having a gross rental income of 15,000 Czech crowns per year or more, and the Commission finds that these two houses were taken by the Government of Czechoslovakia on January 1, 1953.

Claimant has not established that the structures registered under No. 760 in Stare Strasnice had a rental income of more than 15,000 Czech crowns. To the contrary, the evidence on record indicates that the rental income of the structures did not exceed the said amount. In view thereof, and in view of the further fact that no evidence was submitted indicating that these structures were nationalized or otherwise taken between February 28, 1949, the date of claimant's naturalization and August 8, 1958, the date of enactment of Title IV of the Act, that portion of the claim relating to the structures in Stare Strasnice is hereby denied.

The Commission finds that the value of claimant's 95/504th interest in the house located at No. 1 Peterske Namesti was \$25,600 and that the value of his one-half (1/2) interest in the house situated at No. 6 Vlasimska in Prague was \$7,000. Accordingly, the Commission

concludes that claimant is entitled under Section 404 of the Act to such compensation for the portion of his claim embracing his interest in the two aforesaid apartment houses, plus 6% interest thereon, as specified below.

"Nathan Eisler"

The record in the file discloses that prior to 1939 the firm of "Nathan Eisler", a wholesale company for the importation of food, was owned by Hynek Arnstein, claimant's grandfather, and Robert Arnstein, claimant's uncle. During the war, Hynek and Robert Arnstein died. In 1945 the company was placed under national administration, but in 1947 such national administration was revoked and the company turned over to the presumptive heirs of the deceased owners.

The record further shows that the Czechoslovakian Ministry of Foreign Trade on March 18, 1949 issued a decree nationalizing the aforesaid company pursuant to Law No. 119/1948 Sb., effective as of January 1, 1948.

The question arises whether the company was taken on March 18, 1949, the date of the decree of the Czechoslovakian Ministry of Foreign Trade, or on January 1, 1948, the date determined by that decree as the effective date of nationalization.

The Commission has held that certain Czechoslovak nationalization laws enacted on April 28, 1948 had retroactive effect as of January 1, 1948 because the laws expressly provided that ownership of the nationalized companies passed to the State on January 1, 1948. But such holding was based among other things on the ground that the enterprises in question were under the management and control of national administrators on January 1, 1948 and the change over, after nationalization, was the affirmation of an already accomplished fact.

As stated above, the firm of "Nathan Eisler" was under national administration until 1947, but on or about February 1, 1947, national administration was revoked and the business property returned to the owners, including the claimant herein. However, the record discloses that said firm was actually operated by the owners thereof during 1947 and 1948 and not by a national administrator.

Moreover, unlike the other nationalization laws of April 28, 1948, Law No. 119/1948 Sb. under which the firm of "Nathan Eisler" was nationalized does not provide for a retroactive date of taking. Section 5 of the Law directs the Minister of Foreign Trade to publish in the Official Gazette of Czechoslovakia the names of the enterprises which are being nationalized and the date when such nationalization takes place. In ordering the nationalization of the "Nathan Eisler" company, the Minister of Foreign Trade placed the date of nationalization back for more than fourteen months, at a time when the company was still operated and owned by the partners.

The Commission, therefore, concludes that the retroactive date of January 1, 1948 is not applicable in this instance and that the firm of "Nathan Eisler" was, in fact, nationalized on March 18, 1949.

The Commission further finds that at the time of nationalization claimant owned a one-sixth (1/6) interest in the aforesaid company which he inherited from his grandfather, Hynek Arnstein, and that the value of claimant's one-sixth interest was \$62,000. Accordingly, the Commission concludes that claimant is entitled under Section 404 of the Act to such compensation for his interest in the firm of "Nathan Eisler", plus 6% interest thereon specified below.

Claimant also requests compensation for an interest in the aforesaid company which he asserts having inherited from his uncle, Robert

Arnstein. The record shows that claimant acquired a 11/168th interest in the estate of his uncle as a result of a compromise settlement among 31 heirs before the appropriate probate court in Prague in May, 1950, two years after the nationalization of the firm of "Nathan Eisler", and that the value of this company was expressly excluded from the compromise settlement. The Commission, therefore, concludes that claimant has not established that he had inherited any ownership interest from the estate of Robert Arnstein at the time of nationalization of "Nathan Eisler"; and, therefore, his claim for an additional 11/168ths interest in this company is hereby denied.

Recapitulation

Accordingly, claimant is entitled to compensation, as follows:

<u>Property</u>	<u>Claimant's Share</u>	<u>Date of Taking</u>	<u>6% Interest from Date of Taking to 8/8/58</u>	<u>Total</u>
House No. 1 Peterska Nam.	\$ 25,600.00	1/1/53	\$ 8,605.95	\$ 34,205.95
House No. 6 Vlasimska	7,000.00	1/1/53	2,353.19	9,353.19
"Nathan Eisler"	<u>62,000.00</u>	<u>3/18/49</u>	<u>34,926.65</u>	<u>96,926.65</u>
	\$ 94,600.00		\$ 45,885.79	\$ 140,485.79

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Pursuant to the provisions of Title IV of the International Claims Settlement Act of 1949, as amended, an award is hereby made to JOHN H. LUSDYK in the amount of Ninety-four Thousand Six Hundred Dollars (\$94,600.00) plus interest thereon at the rate of 6% per annum from the respective dates of taking, as specified above, to August 8, 1958, the effective date of Section 404 of the Act, in the amount

of Forty-five Thousand Eight Hundred Eighty-five Dollars and Seventy-nine Cents (\$45,885.79), for a total award of One Hundred Forty Thousand Four Hundred Eighty-five Dollars and Seventy-nine Cents (\$140,485.79).

Dated at Washington, D. C.
JUL 19 1961

BY DIRECTION OF THE COMMISSION:

Francis T. Masterson

Francis T. Masterson
Clerk of the Commission

THIS DECISION WAS ENTERED AS THE COMMISSION'S
FINAL DECISION ON AUG 24 1961

Francis T. Masterson

Clerk of the Commission

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