

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

IN THE MATTER OF THE CLAIM OF

JOSEPH SINGER ✓
106 Heyward Street ✓
Brooklyn, New York ✓

Claim No. CZ-3,993 ✓

Decision No. CZ- 2556

Under the International Claims Settlement
Act of 1949, as amended

GPO 942329

Counsel for Claimant:

FREDERIC M. ALBERTI, Esquire ✓
60 East 42nd Street ✓
New York 17, New York ✓

PROPOSED DECISION

This is a claim for \$8,000 against the Government of Czechoslovakia under Section 404 of Title IV of the International Claims Settlement Act of 1949, as amended, by JOSEPH SINGER, a national of the United States since July 26, 1955, the date of his naturalization, for the nationalization or other taking of assertedly inherited real property in Lucenec, Czechoslovakia.

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.

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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.

Claimant has failed to submit evidence sufficient to form the basis for findings by the Commission of facts essential to an award under Section 404 of the Act.

Claimant was afforded an interview in New York City on May 12, 1960 with a view of enabling him to substantiate the claim. However, no evidence has been submitted which would have indicated that the relatives from whom claimant allegedly inherited the property were, in fact, owners of the realty; that claimant acquired title to the property by inheritance; and that the property was taken by the Government of Czechoslovakia.

Investigation conducted independently by the Commission overseas did not reveal that claimant's relatives, Carolina Fischer, Joseph, Paul, Moses and Herman Fischer in Lucenec owned the property upon which the claim is based, and that claimant inherited any interest in such property.

Section 531.6 (d) of the Commission's regulations (45 CFR) provides that

The claimant shall be the moving party and shall have the burden of proof on all issues involved in the determination of his claim.

Claimant herein has not established that he owned property which was nationalized or otherwise taken by the Government of Czechoslovakia on or after July 26, 1955, the date he became a national of the United States.

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FINAL DECISION

The Commission issued its Proposed Decision on this claim on July 26, 1961 denying the claim for the reason that claimant failed to submit evidence that he inherited the property upon which the claim is based, and for the further reason that claimant did not establish that the property was taken subsequent to July 26, 1955, the date he became a United States citizen.

Claimant through his attorney filed objections to the Proposed Decision and submitted extracts from the land register of Lucenec, Czechoslovakia which show, among other things, that claimant in 1947 was recorded as part owner of the property involved in this claim and that such property was confiscated on June 10, 1955. Claimant also submitted affidavits executed by Nathan Greenfeld, Abraham Klein and Bella Klein to the effect that part of the property recorded in the name of Joseph Singer was equitably owned by Henry Singer, his brother, a national of

the United States since his naturalization on September 3, 1953. Claimant, therefore, requests that Henry Singer be added as party claimant to the proceedings.

Section 405 of the International Claims Settlement Act of 1949, as amended, provides that a claim shall not be allowed unless such claim has been owned by a national of the United States since its inception until the date of filing with the Commission.

Joseph Singer's claim arose on June 10, 1955. At that time he was not a national of the United States and his claim for the above property is not compensable under the Act.

Henry Singer's claim based upon his equitable ownership in the real property recorded in the name of his brother, Joseph Singer, cannot be entertained by the Commission for, among other things, the following reasons:

It is well settled that ownership of real property is subject to the laws in effect within the territory where such real property is situated. Beale, The Conflict of Laws, section 50.1, p. 292; Goodrich on Conflict of Laws, 3d Ed., p. 454. This Commission, in the Matter of the Claim of Anna Langenecker, in Decision Y-1374, Claim No. Y-591, reaffirmed a statement in the case of The United States of America on Behalf of John Bezanos v. The Republic of Turkey, (Opinions of the U. S. Commission established pursuant to the American-Turkish Claims Settlement of 1934, p. 250): "It is recognized throughout the world that all incidents of ownership of real property are governed by the law of the place where the property is situated."

The real property involved here is located in the territory of Slovakia which with respect to the laws on real property was governed by Hungarian Customary Law until January 1, 1951. The Hungarian Customary Law relating to ownership of real property is largely based on the

Austrian Civil Code and on the Austrian laws which introduced land registers and procedures for the recordation of real property rights in Hungary (and Slovakia) during the period 1852 through 1867.¹

By Section 322 of the Austrian Civil Code, where land registers or similar records are established, the legal possession of a right in real property can be acquired only by a regular entry in the public books; and by Section 431 of the said Code, in order to transfer ownership of real property, the acquisition thereof must be evidenced by an instrument in writing, duly acknowledged and recorded in public books established for that purpose.

The Customary Law of Hungary does not recognize equitable ownership in real property. Trusts in the meaning of the American law are wholly unknown in the territory where that law is in effect.² The rule is that the record owner of real property is considered as the legal owner as against the whole world - except as against the sovereign, and if there are rights acquired by third persons, these are contractual rights only. Exceptions to this rule, such as the recognition for limited purposes of a non-recorded title of an heir in decedent's realty pending the entry of an inheritance decree, or of a non-recorded title of a grantee designated in a written instrument duly executed and acknowledged, need not be discussed here.

In the present case, claimant asserts that his brother had such rights in the real property recorded in claimant's name, since by agreement claimant acquired title to the real property not only for himself but also for his brother Henry. However, even if such agreement were enforceable as against the record owner, it did not create

¹ Armin Ehrenzweig, "System des Oesterreichischen Allgemeinen Privatrecht", 1st Volume, p. 35, published Vienna, 1925.

² Martindale-Hubbell Law Directory for 1951, Article, Hungary Law Digest by Dr. Charles Havos of the Budapest Bar, caption "Trusts".

an ownership interest in favor of the claimant to any share (title) to the property since the agreement was not reduced to writing, duly acknowledged and recorded in the office of the land register pursuant to local law.

The Commission, therefore, has denied claimant's request that Henry Singer be added as party claimant to the proceedings.

In view of the foregoing, it is

ORDERED that the Proposed Decision be and the same is hereby entered as the Final Decision on this claim.

Dated at Washington, D. C.

NOV 15 1961

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

COMMISSIONERS

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[Signature]