

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

In the Matter of the Claim of

WILLIAM BURGER

and

THERESIA BURGER

1863 Palmetto Street,  
Ridgewood, Queens,  
New York

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

Docket No. Y-1055

Decision No. 788

ok.  
10/21/54

Counsel for Claimants:

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FINAL DECISION

On April 22, 1954, the Commission issued a Proposed Decision granting an award of \$6,127.07, plus interest, to William Burger, and denying the claim of Theresia Burger on the ground that she was not a national of the United States at the time the property in question was taken. Objections with supporting briefs have been filed by the claimants and by the Government of Yugoslavia.

Claimants allege error, first, in awarding compensation to William Burger for only a one-half interest in the property, it being asserted that he was the owner of all the property. Secondly, exception is taken to the Commission's interpretation of the Yugoslav Claims Agreement of 1948 as barring claims of those who were not citizens of the United States at the time of the taking.

846

With respect to the first objection, the certified land register extracts filed by the Government of Yugoslavia show that each claimant was the record owner of a one-half interest in the property. The photostatic copy of the deed to the property reveals both claimants as purchasers. Claimants allege that the property was placed in both names simply as a matter of convenience and not for the apportioning of legal ownership, and that they own the property as tenants by the entirety, which, they argue, means that William Burger was seized of the entire property since it was his funds which were used for its acquisition.

The Commission is informed that in no jurisdiction within Yugoslavia are tenancies in entirety recognized and that joint conveyances to a husband and wife are construed as creating tenancies in common. Furthermore, it is noted that in an affidavit executed on September 10, 1947, by the claimants and filed with the State Department, it is stated "your deponents are both owners of the said property" and "Theresia Burger owns the property with her husband, William Burger, in equal shares."

Upon consideration of the foregoing, the Commission finds no merit in the claimants' first exception.

Claimants also urge that, on equitable grounds, the claim should be allowed as to Theresia Burger, although she admittedly did not become a citizen of the United States until March 2, 1948.

The Agreement of July 19, 1948, between the Governments of the United States and Yugoslavia settled "all claims of nationals of the United States" for the "nationalization or other taking by Yugoslavia of property" (Article 1), who were nationals of the United States "at the time of nationalization or other taking" (Article 2). It

expressly excluded nationals of the United States "who did not possess such nationality at the time of the nationalization or other taking" (Article 3). The International Claims Settlement Act of 1949 provides in part:

" Sec. 4. (a) The Commission shall have jurisdiction to receive, examine, adjudicate and render final decisions with respect to claims of the Government of the United States and of nationals of the United States included within the terms of the Yugoslav Claims Agreement of 1948, . . .

" Sec. 2. (c) The term "nationals of the United States" includes (1) persons who are citizens of the United States, and (2) persons who, though not citizens of the United States, owe permanent allegiance to the United States. It does not include aliens."

Further clarification as to category (2), as delineated by the statute, was provided in the statement of the representative of the State Department before the Committee on Foreign Affairs of the House of Representatives in answer to a specific request for elaboration:

" Section 2 (c) on page 2, to which you refer, Mr. Congressman, is the usual statement of the type of people, the citizens and those who owe allegiance, for whom this Government under international law may properly render diplomatic protection.

The people who are not citizens, referred to in section 2 (c), are people who are nationals of the United States because they owe permanent allegiance thereto. The classic example used to be the Filipinos. There are people of that category now in the Virgin Islands and in the Canal Zone, for example, who are not citizens but for whom we are responsible internationally." (Hearings on H.R. 4406, Eighty-first Congress)

Claimant, Theresia Burger, was not a national of the United States upon the date of taking within the foregoing meaning of the term. It may also be noted that, in the above-mentioned affidavit of September 10, 1947, it was stated that she was, then, of Yugoslav nationality. Accordingly, she has no standing to assert a claim against the fund created by the Yugoslav Claims Agreement of 1948, and her claim must be denied.

The brief filed by the Government of Yugoslavia is directed to the valuation of the property accepted by the Commission.

The record has been re-examined in the light of these objections and it appears that the valuation factors cited in the Yugoslav brief were given consideration by the appraisers initially, and by the Commission in its formal consideration of the claim. No compelling reason for modification of the Commission's conclusion as to the fair value of the property is found. The other grounds for modification presented by the Government of Yugoslavia have been given due consideration.

Upon consideration of all of the matters herein, the Commission hereby adopts the Proposed Decision issued on April 22, 1954, as its Final Decision on the claim.

Done at Washington, D. C. **OCT 20 1954**

INTERNATIONAL CLAIMS COMMISSION OF THE UNITED STATES  
DEPARTMENT OF STATE  
Washington, D. C.

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PROPOSED DECISION OF THE COMMISSION

This is a claim for \$21,000 by William Burger and Theresia Burger, citizens of the United States since their naturalizations on April 3, 1928, and March 2, 1948, respectively, and is for the taking by the Government of Yugoslavia of that property recorded under Docket Nos. 1194 (parcels 8585 and 8586/1) and 4843 (parcel 8586/2) of the Cadastral District of Backo Petrovo Selo.

The Commission finds it established by certified extracts from the Land Register of the District Court of Becej (Docket Nos. 1194 and 4843, Cadastral District of Backo Petrovo Selo), filed by the Government of Yugoslavia, and admissions of that Government that each claimant owned a one-half interest in three parcels of land with a total area of 34 yutars, 1348 square fathoms, with structures on one of the parcels, when they were taken by the Government of Yugoslavia on February 6, 1945, pursuant to the Enemy Property Law of November 21, 1944, (Official Gazette No 2, of February 6, 1945).

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As stated above claimant Theresia Burger became a national of the United States on March 2, 1948. The Agreement of July 19, 1948, between the Governments of the United States and Yugoslavia settled "all claims of nationals of the United States" for the "nationalization or other taking by Yugoslavia of property" (Article 1), who were nationals of the United States "at the time of nationalization or other taking" (Article 2). It expressly excluded nationals of the United States "who did not possess such nationality at the time of the nationalization or other taking" (Article 3). Since claimant Theresia Burger was not a national of the United States at the time of taking, her claim was not settled by the Agreement of July 19, 1948, and it is not, therefore, within the jurisdiction of this Commission.

Claimants have filed a photostatic copy of a deed dated October 13, 1930 which shows that the claimants purchased the three parcels of land which are the basis of this claim for 359,158 dinars. A three-party committee designated by local Yugoslav authorities appraised the land at 275,000 dinars and the structures at 29,000 dinars. An investigator for this Commission appraised the land at 418,078 dinars and the structures at 121,104 dinars. Both appraisals were made on the basis of 1938 values.

The Commission is of the opinion, on the basis of all evidence and data before it, that the fair and reasonable value of all property of claimants which was taken by the Government of Yugoslavia was 539,182 dinars as of the year 1938.\* That amount converted into dollars at the rate of 44 dinars to \$1, the rate adopted by the Commission in making awards based upon 1938 valuations, equals \$12,254.14.\*

Claimants have requested the Commission, in writing to determine the counsel's fee. An agreement of record authorizes a fee of 10% of the award.

DECISION

On the above evidence and grounds, the claim of Theresia Burger is denied and the claim of William Burger is allowed and an award is hereby made to William Burger, in the amount of \$6,127.07 with interest thereon at 6% per annum from February 6, 1945, the date of taking, to August 21, 1948, the date of payment by the Government of Yugoslavia, in the amount of \$1,301.29.\*

The Commission determines that 10% of the total paid pursuant to such award shall be paid to J. Wolfe Chassen, counsel for claimant.

Dated at Washington, D. C.

APR 22 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.