

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

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In the Matter of the Claim of

ANTONIA HATVANY
41 West 54th Street
New York, New York

Docket No. Y-1063

Decision No. 910

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

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PROPOSED DECISION OF THE COMMISSION

This is a claim for \$2,346,454.67 by Antonia Hatvany, a citizen of the United States since her naturalization on November 18, 1935. The claim is based upon claimant's asserted ownership of 18,949 bearer shares, or approximately 10%, of the capital stock of a Swiss corporation, Union des Usines et des Exploitations Forestieres de Nasic, S. A. (hereinafter called "Union Nasic") of Geneva, Switzerland, which owned, directly or indirectly, all of the 600,000 shares of stock of a Yugoslav industrial company, Nasic Tvornica Tanina i Paropila, D.D. (Nasic Oak Extract Factory and Steam Sawmill, Ltd., hereinafter called "Nasica") of Zagreb, Yugoslavia.

*affirmed
4/14/54*

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There is no doubt as to the nationalization or taking by the Government of Yugoslavia of the property of Nasica. By communication of November 5, 1952, the Yugoslav Government informed the Commission:

"1) The enterprise 'Nasice Tvornica Tanina i Paropila, d.d.' in Zagreb was confiscated by the Decree of the District Court of Zagreb, No. K2 520/45 of November 27, 1945, which was confirmed by the Decree of the Supreme Court in Zagreb No. K 355/46 of February 18, 1946."

It is understood therefrom that the property was confiscated on February 18, 1946, under the Enemy Property Law of November 21, 1944 (OFFICIAL GAZETTE No. 2, February 6, 1945), amended July 31, 1946 (OFFICIAL GAZETTE No. 63, August 6, 1946). However, it is unnecessary to decide the precise date of taking because we are of the opinion that the claim must be denied because the claimant has not established ownership of any shares of stock of Union Nasic.

Claimant's asserted ownership of the Union Nasic stock revolves about the affairs of a family fund called the "Hatvany Family Management," an investment fund handled by Ig. Deutsch & Sohn, a private bank located in Budapest, Hungary, and operated by members of the Hatvany family. At all times of interest here, Andrew Hatvany, claimant's brother, then a national of Hungary, was a member and managing partner of Ig. Deutsch & Sohn. A substantial portion of the bank's activities are said to have consisted of the management of family interests, including those of the members of the Hatvany family, whether related by blood or marriage. The interests of the family members were combined into a common pool and investments were made for the common account, with profits and losses being credited or debited to that account. It is alleged that there was no fixed time for distribution of profits and that as any member desired funds, withdrawals and adjustments were made, thus resulting in unequal and un-

divided participations in the profits and income.

At the outbreak of the war, apparently in the period 1939-1941, the Hatvany Family Management allegedly consisted of interests by three family groups: (1) the heirs of Joseph Hatvany, with an interest of approximately 39 percent; (2) the heirs of Charles Hatvany, with an interest of about 24 percent; and (3) the heirs of Alexander Hatvany, with an interest of about 37 percent. The first group (Joseph Hatvany) consisted of Mrs. Joseph Hatvany and her children, and Andrew Hatvany, Bernard Hatvany, and claimant Antonia Hatvany. According to an affidavit by claimant's brother, Andrew Hatvany, he had a general power-of-attorney (not filed or otherwise submitted) from his sister, who had emigrated to the United States from Hungary in 1925 (1920 according to claimant) and was fully empowered to act in Hungary on her behalf; that "For reasons relevant to the exchange restrictions and the international situation," claimant's participation in the family pool was not formally recorded, although recognized among the family, and, through "informal and unrecorded" adjustments, substantial credits in her favor were made. These credits were not used by claimant. Among the interests of the Hatvany family, said to have been extensive, were stock interests, including about 50,000 shares of Union Nasic. Of these shares of stock, 34,680 were held in Geneva by Comptoir Financier, a security management firm, for the account of Ig. Deutsch & Sohn, each of whose managing partners, Andrew Hatvany and Dr. Albert Hirsch, had authority to dispose of the shares.

It is further alleged that at a family meeting held in Hungary around November 1942, it was agreed that a portion of the Union Nasic

shares held in Switzerland "equivalent to the percentage of interest in the Hatvany Family pool held by the heirs of Joseph Hatvany, should be transferred to his sister, Antonia Hatvany" and that the balance of the Union Nasic shares should be transferred to other members of the Hatvany family residing outside of Hungary. The larger distribution of 18,949 out of 34,680 shares to Antonia Hatvany is said to have been made to offset drawings by members of the group from balances existing in favor of Antonia Hatvany, who had not drawn against her accrued interests. No value was then placed upon the shares of stock, since "the matter of valuation and the adjustment of interests in the remaining assets of the family pool should await the end of the war." Directions assertedly were given thereafter to Comptoir Financier for the distribution of 18,949 shares to Antonia Hatvany, 8,504 shares to a member of group (2), and 7,227 shares to members of group (3). It is noted that if, as stated by Andrew Hatvany, the group (1) interest of about 39 percent had been allocated to claimant, her share of the 34,680 shares would have amounted to 13,525 shares, not the 18,949 shares claimed. An affidavit by Severin de Charmant, son-in-law of Dr. Albert Hirsch, bears upon this matter. According to de Charmant, Dr. Hirsch, who died in 1944, stated to him that at a family meeting "in November and December 1942," a decision was reached as to the distribution of the 34,680 shares of Union Nasic stock by allocating to Antonia Hatvany "18,984 shares," the balance of 15,731 shares going to members of groups (2) and (3); that the full 39.11 percent interest of group (1) would have produced only 13,583 shares for Antonia Hatvany; and that, therefore, the additional 5,386 shares were placed in a separate account for Antonia Hatvany, to so

remain until another member of the family residing in France, Jean Hatvany, a member of family group (2), could be notified of the intended transfer of the full 18,949 shares to Antonia Hatvany. It is further alleged that no effort was made to inform Antonia Hatvany of the purported transfers in December 1942 because of enemy censorship of mail and that not until the cessation of hostilities was she made aware of the transfers. Although the meeting in November 1942, is referred to as a meeting of the "family council," it appears that the meeting referred to was that of the Board of Directors of Union Nasic, held on November 20, 1942, and attended by Dr. Albert Hirsch as a member of the Board. Andrew Hatvany is not listed as a member of the Board of Directors and apparently was not present at that meeting. The exhibit relating to that meeting consists merely of an attendance list indicating that the chairman of the Board of Directors and six other members were present, and that the meeting opened at 11:05 a.m., and closed at 11:45 a.m.

Aside from discrepancies in the number of shares, the "explanation" offered by the Severin de Charmant affidavit does not aid in an understanding of the reason why the apparently disproportionate share of over 54 percent, rather than 39.11 percent, was allocated to Antonia Hatvany. The affidavit of Andrew Hatvany likewise sheds little or no light on several matters which might be of interest. The bases for the division of interest between the three family groups and within each group are not shown, and evidentiary material demonstrating the large interest of claimant resulting from the assertedly specific obligations of other members of the family has not been presented. Although it is said that the records of Ig. Deutsch & Sohn "relating to these transactions" were destroyed by

bombardments in 1945, and thereafter during the Russian occupation, it is not apparent why the bank would have had corroborating evidence of particular significance on this matter. According to the affidavit of Andrew Hatvany, claimant's interest was not formally recorded. All adjustments were "informal and unrecorded." Consequently, if the matters of record bearing upon claimant's ownership of the stock were limited to the generalities indicated above, the presentation would fall far short of establishing claimant's ownership. However, considerable reliance seems to be placed by claimant on certain record-keeping practices of a security management firm as providing corroborating evidence of claimant's ownership of the shares of stock.

According to a joint affidavit of two managing clerks of Comptoir Financier, a Swiss security management firm at Geneva, the firm holds and manages securities and other property for clients, utilizing the Geneva branch of the Banque de Paris et des Pays-Bas for the safe-keeping of shares, securities, etc. of its clients. That bank is not informed of the name of the owner. It keeps its records in the name and for the account of Comptoir Financier under account numbers assigned by Comptoir Financier. When a client wishes to sell, exchange, deposit or withdraw securities, he notifies Comptoir Financier which, in turn, instructs the bank to take appropriate action by reference to a specified account number.

According to the aforesaid affidavit, 34,680 shares of Union Nasic stock were transferred to Comptoir Financier on September 24, 1937, for the account of Ig. Deutsch & Sohn. The stock was placed for safe-keeping with the bank and the account there was maintained in the name of Comptoir Financier. Early in December 1942, Dr. Albert Hirsch who, together with claimant's brother, Andrew Hatvany, had authority to act for

Ig. Deutsch & Sohn, is said orally to have instructed Comptoir Financier to divide the 34,680 Union Nasic shares by transferring 18,949 shares to Antonia Hatvany in two accounts, one account to contain 13,563 shares and the second 5,386 shares and that the latter account of 5,386 shares was to be closed out and the shares transferred to Antonia Hatvany's account of 13,563 shares upon receipt of proper notice to that effect. Following the oral instructions, the affiants of Comptoir Financier state that "a rough memorandum was prepared and signed by Dr. Hirsch," which memorandum "reproduced in broad outline the substance of Dr. Albert Hirsch's instructions." A translated copy of a document dated December 3, 1942, and a photostat copy of the original of that document is on file. The face of that document indicates, though not clearly, that a new account, No. 2007, had been opened on that date for Antonia Hatvany, consisting of 13,563 shares. Another notation at the bottom of the document is as follows:

No. 2007
Instructions
Mr. de Ch. 3.10.44 5,386 shares

The inference presumably to be gained is that, at a later date, on October 3, 1944, Mr. de Charmant may have given directions with reference to 5,386 shares. It also appears from the face of the document that account No. 2007 was initially established as follows:

"C. F. No. 2007 (new account)

in the name of Baron BERNARD

HATVANY No. 1. (Hotel Continental, PAU)

Are authorized to dispose of this account:

Baroness Antonia HATVANY

contingently. Baron Andrew HATVANY

13,563 shares."

The affiants say that the first two lines - the reference to Baron Bernard Hatvany - "were struck out with pencil," but the matter is not otherwise explained.

Other evidence of asserted recognition of claimant's ownership of Union Nasic shares consists of two undated file cards for account No. 2007 in the name of Baroness Antonia Hatvany, one of which indicates a power-of-attorney in favor of Baron Andrew Hatvany; two sheets, each dated December 10, 1942, unsigned, without addressee, or any other identifying notation as to the persons sending or receiving the information, that 13,563 shares of Union Nasic stock had been entered into file C. 2007 and that 5,386 shares of that stock had been entered into file C.639 (separately said to have been claimant's file for the 5,386 shares); and a copy of a letter dated October 3, 1944, from "de Charmant," without indication as to the intended receiver, that 5,386 shares of Union Nasic stock was to be withdrawn from account No. 639 and placed into account No. 2007. Apparent confirmations of these transactions, likewise without identifying names or addresses, have been submitted. Finally, in connection with the Comptoir Financier affidavit, a translated copy of a letter dated December 10, 1942, from Antonia Hatvany to Comptoir Financier requests, in pertinent part, that the latter "deposit all the securities and cash, which I have handed over to you, or which I may possibly hand over to you in the future, in an account to be opened in your books under No. C 2007." Since this letter admittedly was not signed until "after the last war," though pre-dated, and as claimant was not aware of the purported transfer for several years after 1942, it would not appear to have any significance.

Other documents from Comptoir Financier consist of two "Declarations" dated May 30, 1951, which advise that on September 24, 1937, 34,680 shares of Union Nasic were placed in an account at the disposal

of Ig. Deutsch & Sohn; that on December 10, 1942, 18,949 shares from that account were placed at the disposal of Baroness Antonia Hatvany; and that the 18,949 shares are the sole property of claimant. The Commission also has given careful consideration to all other matters of record which have been filed in support of the assertion of ownership in claimant of the 18,949 shares of Union Nasic stock.

In the determination of claims such as this, the Commission is cognizant of the political, economic, racial and other measures and disturbances on the Continent in the period beginning in 1939 which caused many dislocations, and makes allowance for the use of unusual methods for the protection of private interests. When it does so, however, it must at least have proper and sufficient proof that the methods selected were carried out.

In the instant claim the claimant came to the United States in 1920, at which time she was 26 years old. At that time, Union Nasic had not been organized and neither claimant nor, so far as appears, any members of the Hatvany family or their banking and security facilities owned any interest in Nasica. Whatever may have been claimant's financial interests, either in her own right or as a member of a group, is not disclosed. The necessary inference, therefore, is that the interests and relationships that existed in 1920 would not have significant bearing upon the question presented herein. The introduction to her asserted financial interests consists of a statement by her brother, Andrew Hatvany, that "At the outbreak of the war," claimant had an undefined participation in a 39 percent share of the "Hatvany Family Management," a family investment pool. How this interest or participation came about is not made known. As has been indicated, claimant's

participation was not recorded; recognition is said to have consisted of informal and unrecorded adjustments in her favor. It is alleged that no income was remitted to her since the "30's" because of foreign exchange and other restrictions said to have existed. Hence, "At the outbreak of the war" it could hardly be contended seriously that claimant possessed legal ownership rights of defined scope or measure in the 50,000 shares of Union Nasic, of which 34,680 shares were held in an account with Comptoir Financier.

Upon the stated reason that the credit accumulation in favor of claimant in the family fund required recognition, the entire 39 percent interest of the Joseph Hatvany sub-group in one particular asset, the 34,680 shares of Union Nasic held by Comptoir Financier, to the exclusion of the remaining 15,320 shares otherwise placed, were to be and allegedly were transferred to the sole ownership of claimant. It does not appear that this act was to have divested Antonia Hatvany of her interest in the family pool or that she lost whatever interest she may have had in the remaining 15,320 shares of Union Nasic stock or any other asset. It is noted, for example, that the Union Nasic shares are said to have "constituted a small percentage of the total assets held by the Hatvany Management."

Corroboration for this alleged transfer of 18,949 shares of Union Nasic to claimant's ownership rests largely upon an oral instruction to the Swiss firm, Comptoir Financier, file cards said to have been created on December 10, 1942, and pencilled notations. For many years preceding the transactions of December 10, 1942, claimant's brother, Andrew Hatvany, Dr. Albert Hirsch, and others mentioned in these events, had either devoted themselves entirely, or at least in considerable degree,

to the affairs of the Ig. Deutsch & Sohn Bank, Hatvany Family Management, and other financial interests which appear to have been substantial. These interests included not only industrial firms valued at many millions of dollars, but "In addition, there were stock investments in other companies" (affidavit of Andrew Hatvany). Yet, in the allocation of substantial stock interests in an asset appraised, on behalf of claimant, at over \$22 million, it is urged that ownership was transferred through the informal methods described. To those circumstances must be added the facts that during the preceding 22 years claimant apparently had no part in the financial affairs of the family group, and received nothing from the family investments. She was admittedly unaware of the alleged transfer of stock in 1942, she did not then or, as far as appears, at any other time accept the transfer, and she was not informed of the transaction until some years later. The power-of-attorney allegedly given to her brother has not been filed. Without it we cannot conclude that it was broad enough to embrace the kind of transactions which were involved. Although allowances can sometimes be made for the careless methods of the uninformed in the field of finance, we believe that those with a long background of dealing in such matters should be held to more rigid tests of responsibility than those here demonstrated in effecting a transfer of such magnitude.

In the light of the matters of record, the Commission would not be warranted in concluding that claimant has established ownership either in the block of 18,949 shares of Union Nasic stock or in the separate accounts of 13,563 and 5,386 shares, and of equal importance, the exact date on which such ownership was acquired. In view of the importance of establishing whether ownership was acquired before or after the property was taken allegations such as "after the war" are not definite enough

in a situation in which a single day may be decisive. This is fortified by the seemingly extra-ordinary care taken over a period of many years to prevent disclosure of Antonia Hatvany's alleged ownership interests in the stock and the many significant omissions in the record on matters bearing upon the general and largely unsupported assertions made in support of the claim. Thus, the stock was not acquired by any of the Hatvany interests until some years after claimant had arrived in the United States. It does not appear that she was notified of any interest in the purchase of Union Nasic or Nasica stock. There is at least an inference that during the 20 years following claimant's arrival in the United States information on the matter of her ownership interests in the stock was not given because ". . . of foreign exchange and other restrictions in Europe in the 1930's." We are not made aware of the restrictions which prevented the distribution of income to claimant during those many years or even of any accounting of her alleged financial interests. Our own knowledge of historical events, which are matters of public knowledge, likewise fails to aid us in understanding the circumstances which made it "virtually impossible" to give evidence of claimant's participation in the family financial interests.

The entire record is strongly suggestive of a plan on the part of those who had control of a large block of the shares of Union Nasic to keep their ownership in a "fluid" state and have them come to rest eventually at the most favorable time and place. Full disclosure of the dealings of the Ig. Deutsch & Sohn Bank, the Hatvany Family Management, and of others involved in the participation of the members of the Hatvany family in all of their financial affairs over the course of years bearing upon events here of interest might negate that impression. We do not

imply that the failure to make such a presentation has reacted to the prejudice of this claim. Our only holding is that the record does not support the claim and that it must, therefore, be denied.

In view of our finding, it is not necessary to inquire into the several war-time measures which might possibly have made legally ineffective a transfer of the type described even if the infirmities hereinbefore discussed were not present. However, attention is invited to the provisions of Executive Order No. 8389, issued April 10, 1940 (5 Fed. Reg. 1400); as amended by Executive Order No. 8785, issued June 14, 1941 (6 Fed. Reg. 2897); Executive Order No. 8832, issued July 26, 1941 (6 Fed. Reg. 3715); Executive Order No. 8963 issued December 9, 1941 (6 Fed. Reg. 6348); and Executive Order No. 8998, issued December 26, 1941 (6 Fed. Reg. 6785). As provided in Executive Order No. 8389:

"Section 1. All of the following transactions are prohibited, except as specifically authorized by the Secretary of the Treasury by means of regulations, rulings, instructions, licenses, or otherwise, if (i) such transactions are by, or on behalf of, or pursuant to the direction of any foreign country designated in this Order, or any national thereof, or (ii) such transactions involve property in which any foreign country designated in this Order, or any national thereof, has at any time on or since the effective date of this Order had any interest of any nature whatsoever, direct or indirect:

"E. All transfers, withdrawals or exportations of, or dealings in, any evidence of indebtedness or evidences of ownership of property by any person within the United States; and

"F. Any transaction for the purpose or which has the effect of evading or avoiding the foregoing prohibition.

"Section 2. A. All of the following transactions are prohibited, except as specifically authorized by the Secretary of the Treasury by means of regulations, rulings, instructions, licenses, or otherwise:

"(2) The acquisition by, or transfer to, any person within the United States of any interest in any security or evidence thereof if the attendant circumstances disclose or indicate that the security or evidence thereof is not physically situated within the United States.

"Section 5. A. As used in the first paragraph of section 1 of this Order 'transactions [which] involve property in which any foreign country designated in this Order, or any national thereof, has *** any interest of any nature whatsoever, direct or indirect' shall include . . . (iii) any transfer of credit, or payment of an obligation, expressed in terms of the currency of such foreign country."

The Executive Order designates, as a "foreign country," each of the following, among others: Yugoslavia (March 24, 1941), Hungary (March 13, 1941) and Switzerland (June 14, 1941). See also Trading with the Enemy Act, 50 U.S.C. App. Sec. 1, et seq.; Zittman v. McGrath, 341 U.S. 446, 448; and State of the Netherlands v. Federal Reserve Board, 201 F. 2d 455, 457, 459 (C.A. 2). As stated in Trading With The Enemy In World War II, Domke:

"Among the most important legal consequences of the regulations issued under the Trading with the Enemy Act, as amended, was their extraterritorial operation. Thus the acquisition by any person in the United States of any interest in any security is prohibited, if circumstances indicate that the security was located outside the United States." (p. 324).

It is not deemed necessary or appropriate to expand the discussion with respect to the instant claim.

For the foregoing reasons, the claim is denied.

Dated at Washington, D. C.

JUN 14 1954

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

In the Matter of the Claim of

ANTONIA HATVANY
41 West 54th Street
New York, New York

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

Docket No. Y-1063

Decision No. 910

*affirmed
12-28-54*

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AMENDED FINAL DECISION

On November 17, 1954, the Commission issued its Final Decision herein which, for the reasons therein stated, modified its Proposed Decision of June 14, 1954 by allowing this claim, to the extent indicated in the Final Decision, and making an award to this claimant in the principal amount of \$91,312.50 together with interest as indicated.

The award was based upon a finding that, at the time of the taking of the Yugoslav corporation involved, referred to in the Final Decision as Nasica, the claimant was the beneficial owner of an interest in a Swiss corporation, referred to in the Final Decision as Union Nasic, which, it was established, was then the sole owner of the Yugoslav corporation. The claimant's interest was found to be the equivalent of ownership by her of 2435 shares of Union Nasic stock; and the amount of the award was based upon an evaluation by the Commission of each such share of Union Nasic stock at 1650 dinars per share, or, converted to dollars at the rate adopted by the Commission in making such awards, \$37.50 per share.

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Such evaluation was based upon an appraisal by the Commission of the assets of Nasica, at the time of its taking, in terms of 1938 values, at 300,000,000 dinars, or the approximate equivalent of 1650 dinars for each share of Union Nasic.

Simultaneously with the issuance of such Final Decision, the Commission also issued Proposed Decisions making awards on two other claims filed with it involving ownership by such other claimants of varying amounts of other shares of Union Nasic stock (claims of William J. Fellner, Docket No. Y-1061, and Mrs. Edward Sundstrom, Docket No. Y-1062). The valuation of the Union Nasic stock stated above was applied in making the awards in both of such Proposed Decisions.

Thereafter, pursuant to applicable Commission procedures, objections were filed to both of such Proposed Decisions, and a hearing requested thereon. Simultaneously, a motion was filed for reconsideration of the Final Decision herein. Such objections and such motion were directed solely to the Commission's evaluation of Nasica.

With respect to the motion for reconsideration, counsel for the claimant herein was advised that should any change be made in the Commission's evaluation as a result of the proceedings on the objections to the two Proposed Decisions on the aforementioned claims of William J. Fellner and Mrs. Edward Sundstrom, appropriate modification would be made in the Final Decision herein by way of an amended Final Decision.

All of the above-mentioned claimants being represented by the same counsel, a consolidated hearing was held on the objections. The claimants were not present but were represented by counsel who filed a brief and made oral argument in support of the objections.

The Commission has considered such brief and argument and has reviewed, in the light thereof, the records in each of the three

matters aforementioned, including this one. It has concluded, upon such reconsideration, that the fair and reasonable value of all Nasica assets, at the time of their taking, in terms of 1938 values, was 350,000,000 dinars, or the approximate equivalent of 1,925 dinars for each share of Union Nasic; and that its earlier determinations aforementioned should be modified accordingly. The last mentioned amount of 1,925 dinars, converted to dollars at the rate of 44 dinars to one dollar, the rate adopted by the Commission in making such awards, is \$43.75.

The contention of the Government of Yugoslavia that Nasica should be valued at 140,000,000 dinars, reasserted in its brief filed in connection with the above-mentioned claims of William J. Fellner and Mrs. Edward Sundstrom, was fully considered in the Final Decision herein.

AMENDED AWARD

For the foregoing reasons, the Final Decision herein, issued November 17, 1954, is hereby modified to the extent above indicated and, as the Commission's Amended Final Decision herein, this claim is allowed and an award is hereby made to Antonia Hatvany, claimant, in the amount of \$106,531.25 with interest thereon at 6% per annum from February 18, 1946, the date of taking, to August 21, 1948, the date of payment by the Government of Yugoslavia, in the amount of \$16,005.89.

As was stated in the Final Decision of November 17, 1954, the Commission has made another award to this claimant on account of another and independent claim filed by her under Docket No. Y-1469.

Dated at Washington, D. C. DEC 30 1954

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

In the Matter of the Claim of

ANTONIA HATVANY
41 West 54th Street
New York, New York

Docket No. Y-1063

Under the Yugoslav Claims Agreement
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Settlement Act of 1949

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ok.
11-15-54

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8275
Nov 15, 1954

FINAL DECISION

This is a claim for \$2,346,454.67 by Antonia Hatvany, a citizen of the United States since her naturalization on November 18, 1935, and allegedly derives from the taking by the Government of Yugoslavia of the assets of Nasic Tvornica Tanina y Paropila, d.d. (hereinafter referred to as "Nasica"), a Yugoslav corporation, admittedly taken on February 18, 1946. The claim is based upon the claimant's alleged ownership at that time of 18,949 shares of the stock of a Swiss corporation, Union des Usines et des Exploitations Forestieres de Nasic, S.A. (hereinafter referred to as "Union Nasic") which assertedly then owned, directly or indirectly, all of the 600,000 outstanding shares of Nasica.

On June 14, 1954, the Commission issued a Proposed Decision denying this claim in its entirety on the sole ground that the asserted claim of ownership of the 18,949 shares of the stock in question had not been established. Thereafter, pursuant to applicable procedures, oral argument was held on the issue of ownership alone. Subsequently, additional material bearing both on that question and on the question of the evaluation of the assets of Nasica has been submitted.

In support of her assertions regarding the capitalization of Union

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Nasic and of Nasica and of their relationship to each other, as of the time of taking, the claimant has submitted, among other proofs, affidavits of Gerhard Noetzlin, dated June 2, 1951, and of Severin de Charmant, dated June 14, 1951, the chief accountant and one of the managing directors, respectively, of Union Nasic; and various exhibits attached to such affidavits. The Commission has also considered, in respect of such matters, various official governmental certifications and the pertinent report of the Government of Yugoslavia. The Commission is satisfied that, at the time of the taking of Nasica, it had 600,000 shares outstanding, that they were all then owned, directly or indirectly, by Union Nasic and that the latter then had outstanding 182,500 shares.

Upon the basis of all of the evidence and data now before it, the Commission has concluded, for the reasons hereinafter stated, that the claimant has established that she had an indirect interest, as hereinafter described, in Nasica at the time it was taken; that such interest was the approximate equivalent of an interest which would be represented by ownership of 2,435 shares of Union Nasic, rather than the 18,949 shares upon which the claim is based; and that an award should be made to her on that basis, by reference to the valuation of Nasica's assets as hereinafter discussed.

The claimant's alleged ownership of the 18,949 shares of Union Nasic stock is said to derive from certain transfers of this stock made to her in November or December 1942. It is asserted, generally, that such transfers were made to her in recognition, at least to some extent, of an undivided fractional interest which, for many years, she had held in a family fund or "syndicate", identified as the "Hatvany Family Management". The latter (fully described in the Proposed Decision) is not a partnership or other form of legal entity but rather an investment fund handled for members of the Hatvany family, including the claimant,

by Ignatz Deutsch & Sons, a private bank in Budapest, owned and directed for many years by several members of the Hatvany family.

The affidavit of Andrew Hatvany, dated June 17, 1949, undertakes to describe the organization and ownership of Ignatz Deutsch & Sons and the relationship of the latter to the Hatvany family and particularly to the so-called "Hatvany Family Management". The affidavit of Dr. Gabriel Pap, the attorney for the Hatvany interests, dated September 3, 1954, corroborates and amplifies Mr. Hatvany's statement in that regard. This material and other related data in the record satisfy the Commission that, as asserted, Ignatz Deutsch & Sons had acquired, some years prior to 1942, and continued to hold, at least until December 1942, a large block of Union Nasic stock for the account of this family fund; and that the true ownership of these shares was, during such period, vested in various members of the Hatvany family, in proportion to their respective interests, from time to time, in the family management fund.

In various statements submitted on behalf of the claimant, particularly the affidavit, dated June 17, 1949, of Andrew Hatvany, a brother of the claimant, one of the managing partners and apparently the dominant partner in Ignatz Deutsch & Sons, and the affidavit, dated June 9, 1953, of Severin de Charmant, a brother-in-law of the claimant and also one of the managing partners of Ignatz Deutsch & Sons, it is asserted that the number of Union Nasic shares so held by Ignatz Deutsch & Sons was "approximately" 50,000 shares, of which, in 1942, 34,680 shares were on deposit in a Geneva bank and the balance in Hungary.

These assertions are documented as follows:

(1) It appears from a certification, dated May 30, 1951 from Comptoir Financier, a securities management firm in Geneva, and from the affidavit dated June 1, 1953, of the two "managing clerks" of that firm, that in 1937, Comptoir Financier acquired for deposit with it

a total of 34,680 shares of Union Nasic stock, for the account of Ignatz Deutsch & Sons of Budapest "and their associates Dr. Albert Deutsch and Baron Andreas Hatvany, having power to sign separately". (It is also stated in that certification that on December 10, 1942, 18,949 of these shares were put "at the disposal of Baroness Antonia Hatvany"; this aspect of the matter will be considered at length hereafter.)

(2) It further appears from a similar certification by the First National Savings Bank Corporation of Pest, Budapest, that in February 1945, it had on deposit to the account of Ignatz Deutsch & Sons, 11,827 shares of Union Nasic stock which had previously been on deposit with it and which were lost "as a result of war events at the siege of Budapest, in the beginning of February 1945". It appears from the evidence considered by the Commission in its determination of the claim of Mrs. Edward Sundstrom, another claimant before the Commission (Docket No. Y-1062), and it is acknowledged by counsel for the claimant, that included in that block of 11,827 shares were 474 shares owned by Mrs. Sundstrom; and an award to Mrs. Sundstrom on account of her ownership of such shares is being made simultaneously herewith.

In this regard, it is stated in a cablegram, dated November 5, 1954, from Union Nasic to counsel for the claimant, which cablegram has been submitted to the Commission, that in October 1949, pursuant to a decree of a Geneva court in proceedings brought for the reissuance of such lost shares, 11,353 shares of Union Nasic stock were reissued to various members of the Hatvany family, not including the claimant. Authenticated excerpts from the minutes of such proceedings, which confirm this statement, have been submitted.

Upon consideration of the above and other related material in the record, the Commission finds that, at least as of December 1942, when the transfer of Union Nasic stock to the claimant is said to have occurred, Ignatz Deutsch & Sons held a total of 46,033 shares of Union Nasic stock for the benefit of the Hatvany Family Management Fund;

that ownership of such shares was then vested collectively in the various members of the Hatvany family who were then entitled to participate in that fund; and that each such person then had an undivided fractional interest in all of the shares in the fund, including the 46,033 shares of Union Nasic stock.

As indicated, the alleged 1942 stock transfer to the claimant is said to have represented a partial distribution of some of the assets then held in the management fund, in recognition, to some extent, of the claimant's then fractional interest in the fund. It thus becomes essential to consider the proofs relating to the ownership of such an interest by the claimant and, if it is established that such interest existed, the amount thereof. If this interest were found then to have existed and to have continued until the date of the taking of Nasica, and if the Ignatz Deutsch & Sons holdings of the Union Nasic stock had also continued until that date, the claimant would be entitled to an award reflecting the amount of her interest in the Union Nasic shares. And if such interest were found to have existed in 1942 the only remaining question would be whether, as a result of the alleged stock transfer to her in December 1942, that interest had been affected in any way, by way of increase or otherwise.

In regard to the existence of such an undivided interest in claimant, in 1942, the Commission has before it a number of items of proof, of which some of the more significant are as follows:

1. The affidavit of the claimant, dated August 13, 1945, and the affidavit of her brother, Andrew Hatvany, dated June 17, 1949. The latter affidavit, submitted primarily in support of the validity of the 1942 transfer, simply states that the claimant at that time had an interest in the fund, without specifying the amount of the interest. The former affidavit, that of the claimant, states only that her interest in the fund had increased "substantially" since it had been set up after her father's death and that "in 1938, when I last communicated with that firm" (Ignatz

Deutsch & Sons) it "equalled in excess of seven percent".

2. Two affidavits by Dr. Gabriel Pap, the family attorney, one dated August 1, 1954 and another September 3, 1954.

With one of Dr. Pap's affidavits, there were submitted copies of the writ of distribution and related material pertaining to the administration of the estate of Joseph Hatvany, the claimant's father, who died in 1913. These papers indicate that the claimant then became the owner of a substantial interest in various assets left by her father, including a large block of shares of Nasica (then valued at 787,500 Crowns). These shares, it is stated, (and it appears to be the fact) were thereafter exchanged for Union Nasic stock and became part, among other securities, of the management fund.

In his affidavits, Dr. Pap describes the organization of the Hatvany family management fund and the claimant's participation in it and he concludes that, while the claimant's interest in the fund varied from time to time in the course of years, because of adjustments periodically made among the members of the family, the claimant had, at all times since the organization of the fund in or around 1913, and still has a participating interest therein. He states specifically that his "clear recollection" of the claimant's participating interest "from 1939 to the end of the war" was that it was 5.29%. Dr. Pap purports to speak on the basis of his close familiarity with all of these matters as counsel for the interested parties.

Dr. Pap also confirms statements made by other affiants in this proceeding that, in 1938, distribution had been made of some of the assets in the fund to the different members of the Hatvany family then entitled to participate in it, including the claimant; and the Commission is satisfied from this and other pertinent evidence that at that time, there were delivered to the claimant, who was then in the United States, various securities and other assets having substantial value. There

is nothing in the record, however, as to the percentage interest in the fund which was then owned by the claimant, except for her own statement that in 1938 her interest "equalled in excess of seven percent". It thus appears from all of the relevant evidence that in 1938 the claimant did have a substantial interest of some size in the family fund.

3. With the affidavit of Severin de Charmant, dated August 9, 1954, there were submitted apparently authentic copies of various documents purportedly prepared in 1944 and then delivered by employees of Ignatz Deutsch & Sons (the partners having then already fled Hungary) to the Hungarian authorities, pursuant to a Hungarian regulation (Decree no. 1600/1944 M.E.) requiring the reporting of all Jewish-owned properties in Hungary. These documents, apparently prepared by reference to Ignatz Deutsch & Sons' records, indicate that, at that time, 10 members of the Hatvany family, including the claimant, were entitled to participate, in varying amounts specified therein, in the "Ig. Deutsch & Sohn Family Fortune Management", and that the claimant's interest at that time was 5.2901%. These documents set forth in great detail all of the various securities and other assets then apparently owned by the Hatvany family fund, as reflected by the then records of Ignatz Deutsch & Sons.

4. In connection with the Commission's consideration of another claim by this claimant, relating to other assets allegedly owned by her through her interest in the same management fund, and also taken by the Government of Yugoslavia, namely, her interest in Bacska Sugar Factory Ltd. (Docket No. Y-1469), the Government of Yugoslavia has reported that among the papers of Bacska were found various records, speaking as of 1944, which indicate that "Ten members of the Hatvany family are participating in the ownership of these stock shares, but with unequal parts"; and further, that it appears from an unsigned

list (of shareholders, presumably) found among such records that "Mrs. Antonia Hatvany is participating in this community of stock shares with 5.2901%".

5. There is also in the record a document signed in the name of Ignatz Deutsch & Sons by Andrew Hatvany in 1946, which purports to list the various "assets in stocks", as they then existed, of the "Ig. Deutsch & Sons Property Management" and which states that "Antonia Hatvany's share in the Property Management is 16.7368%." This document forms the basis for the claimant's other claim aforementioned, respecting the Bacska property, in which she asserts an interest in Bacska to the extent of 18.7368% of all of the Bacska shares then owned by the management fund. The apparent discrepancy between 18.7368 and 5.2901 is explained in the brief filed by counsel in this claim (claimant is represented by other counsel in the Bacska claim) as follows:

"Counsel here have been informed by counsel for Antonia Hatvany in Docket No. Y-1469 before this Commission that the claimed interest there of Antonia Hatvany in the amount of 18.7368 percent arises from the fact that, after the siege of Budapest and its occupation by the Russians, the interest in the Hatvany Family Management of Fanny Hatvany, Antonia Hatvany's mother, then held in trust in the name of Andrew Hatvany, was transferred by Andrew Hatvany to Antonia Hatvany. This interest when added to the pre-existing 5.29 percent interest of Antonia Hatvany, aggregates 18.7368 percent."

(Upon consideration of all of the evidence and data before it, the Commission finds that, as of December 1942, the claimant had an undivided interest, to the extent of 5.29%, in all of the assets of the Hatvany management fund; that this fund then included 46,033 shares of Union Nasic stock; that, had this situation continued to obtain until the time of taking of the Nasic assets in 1946, she would be entitled to an award, reflecting her indirect interest in Nasic, to the extent of 5.29% of such 46,033 shares of Union Nasic or 2435 shares.

The Commission has also concluded, for the reasons hereinafter stated, that, at least for the purposes of this proceeding, the

alleged stock transfer of 1942 did not alter this situation and the rights of the parties as they existed in 1942; that they in fact continued to obtain until the time of the taking of Nasica; and that an award here should be limited to one of the extent last above indicated.

The 1942 transfer and related transactions are described in the affidavits of Andrew Hatvany, dated June 17, 1949, of Severin de Charmant, dated June 9, 1953, and of Samuel Cuendet and Henri Carraz (a joint affidavit), dated June 10, 1953, the latter two persons being described as "the managing clerks" of Comptoir Financier, the Geneva firm mentioned above.

Mr. Hatvany states, preliminarily, that he and Dr. Albert Hirsch, his brother-in-law, were the managing partners of Ignatz Deutsch & Sons. He states that he "had a general power of attorney from his sister (the claimant) and was fully empowered to act in Hungary on her behalf". (It may be noted at this point that no written power of attorney authorizing Andrew Hatvany to act for the claimant, in Hungary or elsewhere, has ever been submitted; and the Commission cannot find that any such document was ever executed.)

He states that at a "family council" held in Hungary about November 1942, he proposed that a portion of the Union Nasic shares in Switzerland be transferred to the claimant. The claimant was then in the United States, where she had resided for many years; and, as already indicated, she had been a United States citizen since 1935. Evidently, also, she was the only member of the Hatvany family in the United States who was, in 1942, entitled to participate in the family fund. Mr. Hatvany states that he made this proposal "because of the impossibility of remitting any funds to her and because he and the members of his family group had been drawing upon the balances accruing in favor of his sister and she had become a substantial creditor vis-a-vis the other members of the family group". The Union Nasic stock

then in Switzerland, 34,680 shares, were, it appears, the only substantial assets of the family fund located outside of Hungary.

"It was also agreed", he states, "that the distribution should be made unconditionally without attempting to place a present value on the shares to be distributed and that the matter of valuation and the adjustment of interests in the remaining assets of the family pool should await the end of the war".

He concludes by stating that appropriate instructions were then communicated by him and Dr. Hirsch in December 1942 to Comptoir Financier, which then held the 34,680 Union Nasic shares (for the account of Ignatz Deutsch & Sons) "ordering the unconditional transfer of the shares of Union Nasic held in Switzerland as follows: 18,949 shares to Antonia Hatvany; 8,504 shares to Jean Hatvany; 7,227 shares to Peter and Mary de Charmant, grandchildren of Irene and Albert Hirsch."

Mr. de Charmant, in his affidavit, states that he learned of these transactions from his father-in-law, Dr. Hirsch, now deceased. The hearsay account he relates is substantially the same as that told by Mr. Hatvany except that Mr. de Charmant adds that the Union Nasic "shares in Hungary were to be distributed among Jean Hatvany and Peter and Mary de Charmant". It may be noted that the distribution of the shares in Hungary was never affected; for the letter of April 24, 1947 from the First National Savings Bank Corporation of Pest, Budapest, referred to above, indicates that in 1945 that bank still had all of the 11,827 shares on deposit with it to the credit of Ignatz Deutsch & Sons.

Mr. de Charmant's account also differs somewhat from that of Mr. Hatvany's in that he says that with respect to 5,386 of the total of 18,984 shares, the smaller number was not to represent an "unconditional" transfer, but was subject to the approval of "Jean Hatvany who was in France".

Mr. de Charmant concludes as follows:

"No effort was made to inform Antonia Hatvany of the transfer of the 18,949 Union Nasic shares to her in December 1942 as it was well known in Switzerland that all mail from Switzerland to foreign countries had to pass through territory under German or Italian control and that all such mail was censored by them. After the cessation of hostilities Antonia Hatvany was informed of the transfer of shares by members of her family".

The affidavit of the above-named representatives of Comptoir Financier recites that "in the early part of December 1942, Dr. Albert Hirsch who had full power to dispose of the above-described (34,680) shares of Union Nasic held for Bank Ignatz Deutsch & Sons in Comptoir Financier's accounts No. 246 and 688" directed that those accounts be closed out and that there be set up two other accounts in favor of Antonia Hatvany, one to "contain 13,563 shares and the second 5,386 shares"; and that it was further directed that the latter account containing 5,386 shares was to be closed out upon receipt of appropriate notice from Mr. de Charmant or a Mr. Edouard Vidoudez, whereupon such shares were to be transferred to the other account of Antonia Hatvany including the 13,563 shares.

This affidavit goes on to say that "Dr. Albert Hirsch indicated that Baron Andrew Hatvany held a general power of attorney from his sister Antonia Hatvany. This fact was taken into consideration on preparing the corresponding file-card". As already indicated, there is no evidence of the existence of any written power of attorney which might so have been "held" by Andrew Hatvany; nor does it appear that Comptoir Financier ever had any evidence of the existence of any such power, other than the "indication" to it by Dr. Hirsch, upon which, evidently, it relied completely.

Pursuant to these instructions, it is stated in this affidavit, and in December 1942, two account cards in the name of the claimant were prepared by Comptoir Financier; and it is added that in 1944, after what were regarded as appropriate instructions from Messrs. de Charmant and Vidoudez the second account of 5,386 shares was transferred

to the other and larger account (No. C-2007). It is noted that the card for this latter account, the only one still open, now bears and apparently always bore the notation: "Power of attorney post mortem in favour of Baron Andrew Hatvany". Evidently, Comptoir Financier has proceeded throughout on the assumption that Andrew Hatvany had complete power of attorney over this account.

This affidavit further goes on to say:

"As shown by the foregoing, 18,949 shares of Union Nasic stock have been held by Comptoir Financier as the property of Antonia Hatvany since December 10th 1942, the transfer of the ownership of said shares to her having been effected on that day, pursuant to the instructions of Dr. Albert Hirsch who had full authority to dispose of such shares".

This statement which, in any event, is a legal conclusion not binding upon the Commission, is somewhat inconsistent with other portions of the affidavit in that, with respect to the 5,386 shares held in the smaller account, the transfer to the claimant was, at least until 1944, subject to directions by Messrs. de Charmant and Vidoudez.

And this affidavit concludes:

"Antonia Hatvany signed after the last war the usual deposit-account form which she had not been able to do at the date of transfer on December 10th 1942, covering her account No. C. 2007. Annexed hereto as Exhibit J is a duly authenticated photostatic copy of the original of said form".

Although this "deposit-account form" is dated December 10, 1942, it is admitted that it was not executed before some time between July and September 1946, when the claimant visited Switzerland for the first time since the end of World War II. It is also acknowledged that the claimant herself knew nothing of any of these transactions until after the termination of the war in 1945.

The foregoing statement does not purport to represent an exhaustive summary of the facts in respect to this phase of the matter. Many other facts are discussed in the Commission's Proposed Decision; and the Commission has carefully considered the entire record now before it. It has assumed, for the purposes of this decision, the authenticity of the bank entries and other documentary evidences of the 1942 transactions. It is with the interpretation and effect of these facts, however, that the Commission is concerned.

The privilege traditionally enjoyed by United States nationals

to have their claims against foreign governments espoused by the United States Government is one that must be carefully circumscribed and guarded. In their relations with other governments and in the area of foreign investment by United States capital, the interests of both the United States and of its nationals will best be served if espousal of such claims is restricted to those which clearly represent the bona fide interest of United States nationals in the property for which claim is made.

The technical, legal form in which title to property is held, the claimant's legal capacity to sue, if legal action were otherwise available against a foreign government, so-called "indicia of title", and other such considerations which may be pertinent to and often vital in private litigation, must be considered as of secondary importance to the question whether the interest for which espousal is sought is truly the interest of a United States national. If it appears that notwithstanding the existence of such "indicia of title", true and beneficial ownership of the property involved is vested in someone other than the claimant, such "legal title" would not establish the qualification of the claimant in proceedings before this Commission.

The Commission has frequently been called upon to disregard evidences of formal title in persons who would not, because of lack of United States nationality or otherwise, be qualified claimants before it, and to make awards in favor of other persons as the true or beneficial owners; and, in appropriate cases, the Commission has made such awards. The Commission is of the opinion, for reasons already indicated, that it must, even on its own initiative, make appropriate inquiry into whether a claimant who is apparently the "legal title" owner is in fact also the true and beneficial owner. And the burden of establishing the existence of such a bona fide interest, as with all other pertinent issues in proceedings of this kind, must be upon the claimant.

The tests of ownership to be considered on this phase of the claim, therefore, are not only such common tests of title as whether, with the making of the various record entries in Comptoir Financier, the claimant would have been able, if the need arose, to sustain a law suit against the bank for the recovery of the shares, or whether the claimant would have had the technical right to exercise stockholders' rights against Union Nasic, or similar questions which frequently arise in private litigation. The overriding and decisive question is whether the real intent of Messrs. Hatvany, Hirsch and de Charmant, and the other parties to the transactions described above, and purportedly implemented by those record entries, was to vest in the claimant, in 1942 or at any time prior to the taking of Nasic, complete, irrevocable and unqualified ownership of the Union Nasic shares under consideration.

That question, the Commission has concluded, upon consideration of all of the evidence and surrounding circumstances, must be answered in the negative.

The purpose of the alleged 1942 transfer, it is said, was to make those shares available to the claimant; yet it is also said that, because of wartime restrictions in communication, no attempt was then made to transmit to the claimant either the certificates or the income therefrom or any advice regarding the transfer. Whatever validity there may be to the explanation that Ignatz Deutsch & Sons, or Messrs. Hatvany or Deutsch were afraid to disclose such transfers by correspondence, there would seem to be no reason why Comptoir Financier could not have been directed to communicate this advice to the claimant. Evidently, Messrs. Hatvany and Deutsch knew, at the time these transactions were had, that the bank entries would be of no practical significance to the claimant; and that the shares would not and could not, at least at that time, yield any real benefit to her.

Another avowed purpose of this transfer was to compensate the

claimant for ~~the~~ disproportionateness of her prior withdrawals from the family fund as against those of other members of the family; yet there is nothing in the record to indicate that any real accounting in that regard was then had, or that any real consideration was given to the figures or other records which would have been pertinent in that regard.

And, evidently underlying the whole matter and in the minds of all of the parties, and particularly that of Andrew Hatvany, was the thought and purpose, as expressed in that portion of his affidavit which is quoted above, that after the war appropriate adjustments would be made.

The facility with which the various entries and transfers of record were made is attributable to the ability of Andrew Hatvany and Dr. Hirsch and other associates of Ignatz Deutsch & Sons to do pretty much as they pleased with the assets of the Hatvany management fund. In respect, particularly, to Mr. Hatvany's activities regarding the claimant's own interest, it is said that he functioned pursuant to a general power of attorney. As already indicated, there is no written evidence of such authority. The Commission does not wish to be understood as holding, in this regard, that an oral power of attorney, if there were such, would be any less effectual than a written one. But the absence of any such document, not only in reference to the claimant's interest, but apparently in reference to those of the other members of the family, indicates, in the opinion of the Commission, that what Andrew Hatvany and Dr. Hirsch enjoyed and exercised--as heads of the family and principal guardians of its collective interests--was not the usual power of an attorney-in-fact to act as the agent for each member of the family in respect to their several and defined interests, and subject to the usual duty of the attorney-in-fact to safeguard his particular principals' interest, but rather the general power, tacitly acknowledged by

all members of the family, to do with all assets in the family fund whatever they and their associates in Ignatz Deutsch & Sons thought advisable, from time to time, in the interest of the entire fund.

It is clear, also, that Comptoir Financier, with which the shares in question were deposited and which apparently conducted much other business with Ignatz Deutsch & Sons or the principal members of the Hatvany family, was also satisfied that Messrs. Hatvany, Deutsch and de Charmant could not or at least would not be questioned by the other members of the family. This is amply attested, we believe, by the facility with which the various record entries were made--and remade--, all at the simple request of any of such named members of the family, and all without question or request for particular evidence of authority of the kind which banks normally require. Comptoir Financier seems to have leaned quite heavily upon its apparently unsubstantiated and undocumented understanding, still recorded on the account card in the name of the claimant, that Andrew Hatvany had a general "power of attorney post mortem" over her affairs and assets.

There seems, in sum, to be little doubt that what Mr. Hatvany (or Dr. Hirsch) had done, so informally and easily, with the Union Nasic shares in Geneva could always have been undone by him just as informally and easily; and the Commission is not satisfied, upon the whole record, that the transactions described above were undertaken for the bona fide purpose of divesting the family fund of the shares in question and transferring them absolutely to the claimant. The Commission is left, rather, with the impression, tentatively expressed in its Proposed Decision, that the various record entries were designed to cloak the shares of stock in question with the appearance of ownership by a national of the United States, a device which was then considered best calculated to safeguard the interests of the family in those assets.

Upon consideration of all of the evidence, the Commission has concluded that it cannot find that, as of the date of the taking of Nasica, the claimant was the owner, at least for the purposes of this proceeding, of the 18,949 shares of Union Nasic upon which her claim is based. It finds, on the other hand, that, at that time, all of the above-indicated 46,033 shares of Union Nasic were still beneficially owned by the participants in the Hatvany Family Management Fund, under control of Ignatz Deutsch & Sons or their principals; and that the claimant was then beneficially entitled only to her 5.29% interest in the family fund above-described, including the total number of Union Nasic shares then in that fund. For all of the reasons above-indicated, therefore, an award will be made to the claimant on the basis of an ownership in her of 2,435 shares of Union Nasic stock, by reference to the valuation of Nasica now to be considered.

The record in this regard reflects asserted valuations, reached in different ways, which vary widely from 140,000,000 dinars, as asserted by the Government of Yugoslavia, to 971,713,660 dinars, as asserted by the claimant.

1. Valuation of 140,000,000 dinars.

The claimant acknowledges that in 1948, as a result of negotiations undertaken directly between Union Nasic and the Government of Yugoslavia, pursuant to arrangement between the Governments of Switzerland and Yugoslavia, a settlement was reached whereby compensation was to be paid on account of 41% of the Nasica stock held by Union Nasic (which represented, in those negotiations, only its Swiss stockholders); and that such compensation was based upon a valuation of Nasica at 140,000,000 dinars. The claimant contends, however, that this represented only a fraction of true value and that Union Nasic was induced to accept this figure as a basis for valuation by representations that Yugoslavia was not then in a position to pay an award based upon any higher valua-

tion and that, unless such figure was agreed to, the negotiations would have to be suspended indefinitely. The circumstances surrounding this settlement suggest some merit in this contention; and, in any event, the Commission cannot consider that the figure apparently agreed upon would be binding upon the claimant.

2. Valuation of 581,462,000 dinars.

The taking of the Nasica assets was effected by a series of separate confiscation proceedings by various courts in Yugoslavia, which were concluded at different times during 1946 and 1947. Pursuant to such proceedings, and under the supervision of the respective courts, appraisals were made of the various facilities and other assets involved. Such appraisals purported to take into consideration various accounts receivable and accounts payable items. They resulted in a net valuation, in the aggregate, of 374,826,924 dinars for all of Nasica's assets.

It appears from the records of these proceedings, however, that in some cases substantial assets were not taken into account. Subsequently, Gerhard Noetzlin, the Chief Accountant for Union Nasic, was permitted to visit Yugoslavia and to examine the books, records, inventories and other assets of Nasica, the various court appraisals and other relevant material. Upon the basis of his inquiry, Mr. Noetzlin submitted a report to the effect that the inclusion of the value of the various items so omitted would result in an increase of the aggregate court appraisals by 191,449,604 dinars for additional inventory, and 15,185,505 dinars for additional trackage, thus making an asserted adjusted total of 581,462,033 dinars. And it is asserted by the claimant that even this total is below a fair and reasonable level. It will be noted in this connection that the valuations applied by Mr. Noetzlin in making his adjustments, as well as those originally applied by the courts, were apparently all based upon post-war prices.

3. Valuation of 971,713,600 dinars.

This valuation is predicated upon an appraisal report, apparently completed in 1951, by Professor Charles Gonet, who was employed by the claimant for that purpose. Professor Gonet is identified as a professor of forestry science at the Swiss Federal Institute of Technology in Zurich.

An exhaustive discussion of this report would not here be feasible. However, by way of illustration, several significant respects in which it may be regarded as deficient may be noted.

For the most part, the figures used in this report are based upon the highly inflated post-war values "used in Europe". As the Commission has held, awards in these proceedings have generally been made on the basis of 1938 values*.

The extremely high value for standing timber included in the Gonet report, which valuation is based upon a projected increase in timber growth from 1926, the time of original acquisition, is not, in the opinion of the Commission, justified on the basis of the various authoritative sources consulted by it in that regard.

In several significant respects, also, Professor Gonet's appraisal is based upon many generalities and upon subjective and other considerations which, though some resort to them may be understandable under the circumstances, nevertheless diminish the weight of his report in those respects.

For example, the evaluation of the plant at Djurdjenovac, appraised at 2,400,000 Swiss francs, is based, without any further specification or attribution of sources, upon:

"a) the durable and easy means of supply of raw materials by other industries at Gjurgjenovac and the other plants of Nasic Ltd. Zagreb, in Yugoslavia;

b) the technical knowledge of the skilled personnel employed in this industry at the time of confiscation, of the maintenance and constant perfecting of the industrial machinery;

c) the quantities of tanin produced by this industry from 1935 to 1940;

d) the opinion of competent industrialists in the chemical industry;"

By way of further illustration, the appraisal of the "Head Office at Zagreb" is fixed at 1,000,000 Swiss francs or (at the rate of 10.72 dinars to 1 franc) 10,720,000 dinars. This building is apparently the same as that appraised in the confiscation proceeding in Yugoslavia at 3,500,000 dinars. Without inventory or other specification, the Gonet appraisal, as to this building, states only:

"Taking into account its position, its importance, the size, the furniture and sundry materials which it contained, further all the different installations fitted there, the expert values this building at ----- Fr. 1,000,000".

The company's balance sheet for 1938, reflecting its last pre-war condition, indicates a total book value of 164,722,000 dinars. The following comparison between this balance sheet and the two earlier mentioned valuations, by reference to major asset and liability items, is of interest:

	<u>Balance Sheet</u> <u>at Oct. 31, 1938</u>	<u>Prof. Gonet's</u> <u>Valuation</u>	<u>Noetzlin</u> <u>Adjusted</u> <u>Yugoslav</u> <u>Valuation</u>
	(Figures in millions)		
Land and forests	67,306	255,627	72,982
Buildings	17,427	171,630	83,546
Machinery and installations	8,602		38,152
Industrial railways	26,082	110,915	60,513
Railway rolling stock	1,966	18,500	7,603
Inventory	126,806	456,715	363,240
Securities	6,397		
Prepaid Items	4,680		
Cash	9,470	8,713	9,341
Accounts receivable	118,400	75,804	81,262
Accounts payable	114,071	126,191	135,277
Bonds - 6 $\frac{1}{2}$ %	108,343		

(It is noted that neither the Gonet valuation or the "adjusted Yugoslav valuation" takes into account such of the 6 $\frac{1}{2}$ % bonds reflected by the 1938 balance sheet as were still outstanding.)

Records made available to the Commission's investigators and as disclosed by Compass (the recognized European financial handbook) disclose the following information relating to the company's book value, earnings and dividend payments during the following significant years:

	<u>1936</u>	<u>1937</u>	<u>1938</u>	<u>1939</u>
Book net worth	195,074	161,956	186,532	137,833
Earnings	(loss)-1,218	(loss)-776	3,719	(loss)-330
Dividends	0	0	0	0

(Figures in millions)

Market quotations for the stock of Union Nasic, the parent company, on the Zagreb Stock Exchange, were, on average: for 1936--400 dinars; for 1937--700 dinars; and for 1938--500 dinars. During those years, there were 228,000 shares of Union Nasic outstanding; so that the quoted market value in 1938 for all of its stock would have been approximately 114,000,000 dinars. Since all but a very small percentage of Union Nasic's worth was represented by its ownership of Nasica, this figure must be regarded as of substantial significance in determining the then value of Nasica.

Information from a variety of official government sources indicates that, as a result of the war, many lumber facilities, including those of Nasica, were heavily damaged, that draft herds and other means of transportation were lost, that forest lands near roads had been exhausted (to a large extent by cutting by military forces) and that, in general, as a result, it became necessary to tap many remote areas under much more difficult physical conditions than had theretofore obtained.

An investigator for the Commission has personally inspected and appraised most of the major assets involved; and has consulted with employees of the company and other persons familiar with all pertinent matters relating to valuation.

Upon consideration of the foregoing and all other evidence and

data before it, the Commission has concluded that the fair and reasonable value of all Nasica assets, on the basis of 1938 values, was 300,000,000 dinars, or the approximate equivalent of 1650 dinars for each share of Union Nasic. The latter amount, converted into dollars at the rate of 44 dinars to \$1, the rate adopted by the Commission in making such awards,* equals \$37.50 per each share of Union Nasic stock.

AWARD

It having been determined that the claimant should be compensated herein upon the basis of ownership of 2,435 shares of Union Nasic stock, this claim is allowed and an award is hereby made to Antonia Hatvany, claimant, in the amount of \$91,312.50 with interest thereon at 6% per annum from February 18, 1946, the date of taking, to August 21, 1948, the date of payment by the Government of Yugoslavia, in the amount of \$13,719.34.

The Commission has made another award to this claimant on account of another and independent claim filed by her under Docket No. Y-1469.

Dated at Washington, D. C. NOV 17 1954

* For the Commission's reasons for use of 1938 valuations, use of exchange rate of 44 dinars to \$1, and the allowance of interest, see the attached copy of its decision in the claim of Joseph Senser