

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

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In the Matter of the Claim of :

RICHARD D. FRANKENBUSH, :  
112 Central Park South, :  
New York 19, New York. :

Docket No. Y-1190

Decision No. 1218

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

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Counsel for Claimant:

LANDIS, COHEN, RUBIN, :  
SCHWARTZ, and GEWIRTZ, :  
1832 Jefferson Place, N. W., :  
Washington 6, D. C. :

FINAL DECISION

Thirty days, or such extended time as may have been granted by the Commission, having elapsed since the Claimant(s) herein and the Government of Yugoslavia were notified of the Proposed Decision of the Commission on the above Claim, and no objections thereto or notice of intention to file brief or request for hearing having been filed, or, if filed, no further evidence or other representations having been offered pursuant to the opportunity duly afforded therefor, such Proposed Decision is hereby adopted as the Commission's final decision on this Claim.

Done at Washington, D. C. **NOV 4 1954**

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PROPOSED DECISION OF THE COMMISSION

This is a claim for \$215,000 by Richard D. Frankenbush, a citizen of the United States since his naturalization on July 25, 1944, and is for the taking by the Government of Yugoslavia of the property of the Beograd Oil Factory, Inc. (hereinafter referred to as "Beograd"), a Yugoslav corporation, in which claimant owned 1,500 shares out of a total of 4,000 shares outstanding.

According to the allegations of the claimant, in 1938 he loaned Mr. Alexander Sajovic the amount of \$20,800. Because of the tense conditions prevailing in Eastern and Central Europe, the parties agreed on a security worth substantially more than the amount of the loan and accordingly Sajovic pledged as collateral 1,500 shares of stock in the Beograd corporation, which was engaged in the extraction of vegetable oils. The claimant further alleges that "it was expressly provided that this stock was to become the claimant's property in case repayment of the loan was not made pursuant to the agreement."

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As evidence of the loan, claimant has filed a photocopy of a notice of March 3, 1938, from the banking house of Gebrueder Kanitz, Vienna, debiting his account \$20,800 "for remittance of inland dinars, made upon your order to Dr. Alexander Sajovic." In further support of his allegations, claimant has filed a photocopy of a letter from Sajovic addressed to him and dated February 14, 1938.

This document reads as follows:

"This is to confirm the agreement made with you, under which I pledge as collateral security for the loan in the amount of \$20,800.--, to be made by you to me, my 1,500 shares of stock of the Oil Factory "Beograd", representing 37-1/2% of the total stock of this company; said stock shall become your property in case the repayment of the loan is not made pursuant to the agreement.

"It has been agreed upon between us that you will release 375 shares, that is, 25% of the stock owned by me, as soon as I have repaid to you the first 25% of my debt, i.e., \$5,200.-- plus interest, an additional 25% of the stock against my second installment payment of \$5,200.-- plus interest, and so on. Besides, you agreed, since it otherwise might prove embarrassing in the eyes of my partners and would impair my right to share the control of the factory, that - with respect to outsiders - I continue to be the holder of the stock and that I, therefore, exercise the voting right on this stock as long as I am not in default with regard to the amounts due and the title, and hence the voting rights, have to be transferred to you.

"In witness of our mutual agreement, I am signing the original of this agreement, and will you be good enough to sign the copy and return it to me."

Claimant has also filed a photocopy of a Credit Advice of May 10, 1940, from the Yugoslav Credit bank addressed to Sajovic acknowledging receipt of 2,000 shares of Beograd which it credited to his account.

In further support of his allegations respecting the agreement with Sajovic, claimant has filed a photocopy of a letter from Sajovic dated July 25, 1941, reciting as follows:

"For good order's sake, I repeat in writing our agreement as follows:

"1) Because of the present situation in Europe, I am not in a position to repay the amount of \$20,800.-- plus 8% interest, due to you from me since the year 1938.

"2) In my letter of February 14, 1938, I pledged to you as collateral security of this indebtedness 1,500 shares of stock of the Oil Factory 'Beograd' with the express stipulation that I will transfer title in this stock to you if I do not comply with my obligations to repay the loan. We have, therefore, agreed upon transferring these 1,500 shares of the Oil Factory 'Beograd' to you as your free and unencumbered property against a full release of my indebtedness to you.

"3) The share certificates described in 2) are deposited with the Yugoslav Creditbank and are subject to a syndicate agreement known to you. As soon as it is feasible for me to do so, I shall notify the depository as well as my partners in the syndicate of the transfer of the stock to you.

"4) As known to you, in view of the threatening political situation, I have formally transferred the said stock to my wife, Josepha Matejka. It is now deposited in her name with the Yugoslav Creditbank, and I enclose with this letter the original deposit certificate, against which - as you will see from the text - any person presenting the certificate is authorized to receive the stock. My wife is Gentile, and I hope that I have thus done everything to prevent a seizure on the part of the Germans."

To confirm the transfer of the shares of stock to Sajovic's wife, Josepha Matejka, claimant has filed a photocopy of a Credit Advice of June 24, 1940, from the Yugoslav Creditbank addressed to Mrs. Josefa Matejka acknowledging receipt from her of 2,000 shares of Beograd which it credited to her account.

An affidavit of March 21, 1951, executed by Sajovic, filed by claimant corroborates generally the loan transaction as described above. In addition, the claimant has filed a letter dated August 24, 1950, from V. Pavlovitch, the pre-war legal adviser of the Yugoslav Creditbank and a member of the Board, Vice President from the end of the war until the liquidation of the bank, and a member

of Beograd's Board of Directors from its formation until the German occupation. Pavlovitch states that Sajovic owned 50% of the shares or 2,000 shares, selling 500 to Mr. Slavko Singer, and retaining 1,500 shares, and that all shares were deposited with the Yugoslav Creditbank, Belgrade. He further states that the political situation in Yugoslavia prior to the war prompted the hiding of Jewish assets and for this reason Sajovic, with the consent of the Yugoslav Creditbank, deposited his 1,500 shares of the oil factory in a custody account with the Yugoslav Creditbank under the name of Mrs. Josefa Matejka, who was a Gentile.

In connection with this letter it is observed that actually 2,000 shares, not 1,500 as stated therein, were deposited in the Yugoslav Creditbank in the name of Mrs. Josefa Matejka.

Finally, the claimant has filed the affidavit of Mrs. Josepha Sajovic nee Matejka regarding the transaction. The affidavit states:

"My husband, Dr. Alexander Sajovic, had a substantial interest in the stock of the Oil Factory 'Beograd' and was one of the founders of the corporation. He frequently spoke to me about it in the years before the outbreak of the war. He also informed me that he had received from his friend Richard Frankenbush a considerable loan, the exact amount of which I cannot recall, and that he had pledged as collateral therefor his Oil Factory Beograd shares. These shares were later on transferred to Mr. Richard Frankenbush, approximately in the year 1941, as I was informed by my husband at that time, as repayment of the loan.

"Until the year 1940, the Oil Factory Beograd stocks of my husband were deposited in his account with the Yugoslav Creditbank. Because of the political situation in Yugoslavia and the danger of German occupation, the Oil Factory Beograd shares of my husband were deposited in an account in my own name, to be more precise in my former name 'Josepha Matejka'. The deposit in my name remained unchanged when the stock was transferred from my husband to Richard Frankenbush; my husband informed me that Richard Frankenbush was also Jewish, and that the unchanged deposit in my name was an attempt to prevent the seizure of his property in the event of anti-semitic legislation."

Although claimant now claims to have acquired the stock through default on repayment of the loan, he has made prior inconsistent statements in this regard. By letters of June 3, 1948 and May 27, 1948, addressed to the Department of State and Department of the Treasury, respectively, and written by claimant's then attorney, it is stated that the claimant "has a claim of about \$40,000 including accrued interest, for money had and received against a corporation in Yugoslavia, the Beograd Oil Manufacturing Corporation in Beograd, and against its former shareholder and director, Dr. Alexander Sajovic." Furthermore, claimant was requested to furnish a statement and explanation as to whether the transfer of the pledged stock was authorized or licensed by the Treasury Department pursuant to Section 2A (2) of Executive Order No. 8389, as amended, (5 F.R. 1400), and whether he reported the 1,500 shares as his property on form TFR-500, Treasury Census of 1943, pursuant to Special Regulation No. 1 (8 F.R. 7438), under Executive Order No. 8389, as amended, and Executive Order No. 9193 (7 F.R. 5205). In response thereto, claimant, through his attorney, takes two entirely irreconcilable positions. First, he says the transaction wasn't licensed by the Treasury Department because he felt that though the stock was actually transferred in 1941 it was in effect transferred in 1938, the date of the loan. Next, claimant admits that he reported the transaction as a loan on form TFR-500 because he thought the stock was worthless "and it might be possible to present the argument to his debtor that the stock had been transferred only in partial payment, in an amount equal to its worth, of the original debt." Even were claimant sincerely depending upon an extraordinary degree of naivete on the part of Sajovic, we fail to see how that can possibly justify a misstatement of fact in the form TFR-500.

The Yugoslav Government has filed a certified copy of a Decision of May 27, 1946 of the Municipal Commission for Confiscation of German Property acting pursuant to the Enemy Property Law of November 21, 1944 (Official Gazette No. 2, February 6, 1945). It appears from the Decision that Beograd was confiscated on March 7, 1946, and by this Decision the shares of stock were confiscated also. The Decision recites that Beograd was organized with a share capital of 1,000,000 dinars which was increased to 4,000,000 dinars on December 31, 1939 and to 10,000,000 dinars in May 1944, divided into 10,000 bearer shares of a nominal value of 1,000 dinars each. Of these 10,000 shares, Josepha Matejka owned 1,500. Regarding her ownership, the Decision states:

"The ownership of Josepha Matejka to a block of 1,500 stock shares was proved by the fact that even on June the 24th, 1940, she had in her custody of the Yugoslav Credit Institute, Inc., in Belgrade, 2,000 shares of the 'Oil Factory' 'Belgrade,' Inc., which she withdrew September the 16th, 1940 and again, the same day, placed in custody 1,500 shares of the same stock, which remained in the custody of the Institute (bank) until January 28, 1943, when they were transferred to the custody of the Banking Co., Inc., Belgrade, remaining there until June the 22nd, 1944, when they were given to the First Oil Factory of Banat, by order of the General Commissioner for Industry (Economy) in Serbia. This fact was proved by the report of the Yugoslav Credit Institute, Inc., Belgrade, of April the 12th, 1946, by the receipt of the Banking Co., Inc., Belgrade, of January the 28th, 1943, acknowledging receipt of the stock shares and by the official record of the Management of April the 12th, 1946, anent the inspection (check-up) of the files of deposited stock shares of the Oil Factory with the banking company."

In addition to the statements made prior to filing this claim which are inconsistent with his present position that he acquired the stock in 1941, claimant has filed documentary evidence with his claim which also negates this position. The affidavit of Alexander Sajovic of March 21, 1951, clearly repudiates claimant's assertion of such ownership. We quote from this affidavit as follows:

"At the time of the occupation of Yugoslavia by the Germans, the occupying power seized the factory and the shares deposited with the Yugoslav Creditbank. I wish to emphasize, however, that I never signed a legal document, and the same holds true for my wife. Also, neither my wife nor I ever received any payment whatsoever, not even a pro forma payment, and until August 24, 1950, we were in total ignorance of the fact that our shares had been confiscated by the Germans. [Emphasis supplied] We were not even notified by the bank of this fact, and I only then received news of this . . . from the lawyer Dr. Pavlovitch in Belgrade.

"In 1944, the Germans fled Yugoslavia. Under the pretext that it would be in the national interest to continue undisturbed the operations, the Yugoslavs immediately took over the factory and kept it running. Since I was unable to receive any answer to my repeated letters to the factory during the years 1944 and 1945, I sent my son Stevan Sajovic there."

These are not the words or actions of one who was divested of all right, title and interest in the Beograd shares in 1941 by their transfer to claimant. They are the words and actions of one who still considered himself the owner of the stock. In fact, the claimant has also submitted a declaration of war damage dated June 25, 1948, by Stevan Sajovic as the "heir" of his father, Alexander Sajovic, listing the latter's war damages. Included in the list of damaged property belonging to the latter are the Beograd shares claimant asserts he acquired in 1941. Claimant explains this inconsistency as follows:

"The reason for this action was the fact that the claim for war damage had to be filed as of April 5, 1941, and that the letter declaring the transfer of the stock to claimant was dated July 25, 1941."

This is hardly a credible statement and can in no degree explain why a declaration was made in 1948 solemnly asserting damage to property of Sajovic which had not been owned by him, according to the claimant, since 1941.

A claim of beneficial ownership of personal property, the legal title to which is in some other person, should be supported by proof as clear, consistent and convincing as might reasonably be expected under all of the circumstances. We do not consider that claimant has met that test here.

Further, under the law of the situs the facts presented here could not give rise either to a pledge of stock or subsequent transfer of title. Neither the claimant nor his agent ever received possession of the stock, although Sajovic, in his letter of July 25, 1941, states that anyone presenting the deposit certificate was authorized to receive it. It is also noted that when this letter was written referring to an agreement to transfer the shares to claimant, the shares were no longer deposited in Sajovic's name. Section 307 of the Serbian Civil Code of 1844, the law in effect when the transaction took place, provides:

"Moveable property becomes pledged at the time it is delivered, immovable property at the time it is recorded in the court books in the same manner as an ownership right."

Section 308 states:

"Moveable property which cannot be delivered from hand to hand, can also be delivered by appropriate or customary signs in the same manner as in transferring ownership rights."

In addition, it may be observed that destruction, renunciation, or return of pledged property extinguishes the pledge under Section 323 of the Code.

Here, there was neither actual nor symbolic delivery of the stock to claimant or an agent of claimant, and we hold that claimant had no rights or interests in the stock at the time of the confiscation of Beograd. It follows, of course, that he could not thereafter

acquire title on default of the loan as a pledgee. It may also be remarked that under the law of the situs even if the pledge were established, title could not pass to the pledgee by simple default of payment but judicial proceedings must be had authorizing transfer of title to the pledged stock.

We hold that claimant has not proved that he owned property or a right or interest in and with respect to property which was nationalized or taken by the Government of Yugoslavia, and the claim is denied.

Dated at Washington, D. C.

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