

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

In the Matter of the Claim of :
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 MARIA HUDOLIN, :
 408 Linden Street, : Docket No. Y-1376
 Brooklyn, New York. :
 :
 : Decision No. 1179
 Under the Yugoslav Claims Agreement :
 of 1948 and the International Claims :
 Settlement Act of 1949. :
 :

Counsel for Claimant:

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PROPOSED DECISION OF THE COMMISSION

This is a claim for \$10,000 by Maria Hudolin, a citizen of the United States since her naturalization on April 3, 1928, and is for the taking by the Government of Yugoslavia of a house, farm buildings and lands in Koce, Yugoslavia.

The Commission finds it established by certified extracts from the Land Register of the County Court of Kocevje (Docket Nos. 16 and 271, Cadastral District of Koce), filed by the Government of Yugoslavia, that claimant was the record owner of 80 parcels of land with a total area of 17.6726 hectares, and that the land was 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).

The Government of Yugoslavia is of the view that the claim should be denied on the grounds that (1) claimant "declared" for German citizenship at the beginning of the occupation, her declaration having been recorded in the "book of declarants"; and (2) claimant, during the war, sold all of the property for which she is claiming

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compensation to the enterprise "Emona".

Under applicable law, a national of the United States loses his nationality by taking an oath or other formal declaration of allegiance to a foreign state (Section 401 (b) of the 1940 Nationality Act, 54 Stat. 1168; 8 U.S.C. 1481). For loss of nationality to result from taking such an oath of allegiance, the oath must be one which is prescribed by law or regulation having the force of law and must be taken before a competent official of the Government concerned. (See Hackworth Digest of International Law, Vol. 3, p. 218; Gillars v. United States, 182 Fed. 2nd 962.)

The fact that claimant's name may be listed in a "book of declarants" does not appear to have significant relation to his nationality status. Nowhere in "Verzeichnis der Volks - und Reichsdeutschen Umsiedler, die auf Grund des Abkommens vom 31. August 1941 aus der Provinz Laibach umgesiedelt wurden", which is apparently the "book of declarants" referred to by the Government of Yugoslavia, can any statement or reference be found which would indicate that the names of persons listed therein took an oath or made an affirmation or other formal declaration of allegiance to a foreign state. The record fails to support the allegation of the Government of Yugoslavia that claimant's status as a national of the United States was affected by any asserted "declaration".

We come then to the contention of the Government of Yugoslavia that the claim should be denied because the claimant sold her property, above described, to "Emona".

"Emona" was formed by the Italian authorities under the circumstances and for the purpose hereinafter set forth.

Following the invasion of Yugoslavia by German and Italian forces, the Province of Slovenia was divided between Italy and Germany in accordance with an Agreement signed by those two Governments in

Berlin on July 8, 1941. Under that Agreement, Germany annexed the larger northern portion and Italy annexed the smaller southern portion of that province, then inhabited mainly by Slovenians, and the southern portion then became known as the Italian Province of Lubiana.

On August 31, 1941, another Agreement was entered into between Germany and Italy. Under this latter Agreement, an opportunity was afforded to the citizens of the German Reich and members of the German ethnic minority, then residing in the newly created Italian Province of Lubiana, to resettle in the German newly annexed northern portion of the Province of Slovenia. Under this latter Agreement, "Emona", S.A. (Societa Anonima) Istituto Agricolo Immobiliare di Lubiana, was organized to facilitate all transactions in connection with such resettlement and "Emona" was authorized to take over the properties of the Germans and those of German ethnic origin, residing in the newly created Italian Province of Lubiana. Thereafter, some such land owners, not including claimant, in pursuance of this Agreement, conveyed their real property to "Emona" and resettled in the northern portion of the Province of Slovenia, from which area the local residents had theretofore been expelled by the Germans. So far as is known, these land owners (resettlers) did not receive any money from "Emona" for the conveyance of their property but were credited with the value thereof by "Emona"; and they did not pay any money for the new property in the northern portion of the Province of Slovenia where they were resettled. The consideration for this new resettled property was to be paid for by "Emona" to the German Military Government.

When it became apparent that the German and Italian occupiers would be driven out of Slovenia, many of the resettlers fled from their newly resettled land. Those that remained were required to vacate after Slovenia was reoccupied by Yugoslavian forces. On

February 3, 1945, the Government of Yugoslavia enacted a Decree (Official Gazette No. 4 of February 13, 1945), which declared, in effect, that all laws, decrees, instructions, regulations and the like which were enacted by the enemy authorities (Germany and Italy) during their occupation of Slovenia were null and void. This Decree, as interpreted by a decision of the District Confiscation Committee in Kocevje dated September 3, 1945 (Official Document No. 2927), in effect voided all "Emona" transactions, as will be seen from the following quotations from that decision:

"By the Secret Agreement entered into between the German and Italian Governments regarding the migration (removal) of German citizens and persons of German nationality from the Ljubljana district, of August the 31st, 1941, all the property of the optant for the German State with the intercession of both the Governments was to be converted to cash and transferred to Germany.

"The incorporated enterprise "EMONA", S.A. Istituto Agricolo Immobiliare di Lubiana, with its main office in Ljubljana was set up (organized) with the purpose of making possible, that is for facilitating the liquidation of the German property in Slovenia.

"The cited Agreement of the German and Italian Governments and all the executive regulations, then the official administrative document sanctioning the organization of the enterprise "EMONA", and also the decision of September the 3rd, 1942 - Official Gazette, No. 72 - giving "EMONA" authority to buy and sell real estate properties of the German migrants, fall within the rules and regulations which the decision of the Presidium of AVNOY had in mind, in annulling and abrogating all the ordinances issued during the occupation by the occupators and their collaborators.

"All these ordinances, i.e., acts (regulations) by this decision are cast away and pronounced null and void.

"Therefore, the above mentioned Agreement for Emigration and the executive rules and administrative regulations by which permission was given for the setting-up of "EMONA" could not lawfully take into its ownership the property of the German optants.

"In just the same way all legal acts (transactions) of the German Emigration (Removal) Commission, which was set-up in the same manner by the German occupator, are null and void.

"Since the enterprise "EMONA" had not in a lawful manner acquired ownership to the properties of the German optants, it

could not, therefore, have sold the property in the future to third parties.

"Null and void legal acts cannot take property to which that decision applies, of German character, that is, enemy property, which on basis of Art. 1, par. 1 of the I and II decision of AVNOY, of November the 21st, 1944 was transferred to the ownership of the State."

Therefore, under Yugoslav law any purported conveyance of real property to "Emona" and the registering of title in its name in the Land Registry books in Yugoslavia was null and void, and, consequently, of no force and effect. Moreover, no proof has been filed, in the instant case, other than the statement by the Government of Yugoslavia, that the claimant sold her property to "Emona". On the contrary, as above stated, it appears from certified copies of extracts from the appropriate Land Registry that claimant was the record owner of the property heretofore described when it was taken by the Government of Yugoslavia, pursuant to the Enemy Property Law of November 21, 1944. It thus appears that claimant did not transfer her title to "Emona" or otherwise divest herself of ownership.

Claimant has filed no corroborating evidence as to value. In Note No. 428,793 of December 7, 1949, from the Yugoslav Ministry of Foreign Affairs, the property was appraised at 51,400 dinars. An investigator for this Commission appraised the property at 91,498.70 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 claimant which was taken by the Government of Yugoslavia was 91,498.70 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 \$2,079.52.*

AWARD

On the above evidence and grounds, this claim is allowed and an

award is hereby made to Maria Hudolin, claimant, in the amount of \$2,079.52 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 \$441.65.*

Dated at Washington, D. C.

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* 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.