

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

In the Matter of the Claim of _____ :
FELIX LEOPOLD AUER : Docket No. 1517
164 West 76 Street :
New York 23, New York : Decision No. 1226
Under the Yugoslav Claims Agreement :
of 1948 and the International Claims :
Settlement Act of 1949 :
_____ :

approved
R.E. P. Raw
12-18-54
affirmed
12-20-54
OK
WJL
12-23-54

Counsel for Claimant:

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New York 7, New York

FINAL DECISION

On September 7, 1954, the Commission issued its Proposed Decision denying this claim on the principal ground that the claimant had not established his claim of ownership to any interest in the Yugoslav corporation named in the Proposed Decision (and referred to hereinafter as "Tvornica") which, as stated therein, had been admittedly taken by the Government of Yugoslavia by confiscation on December 21, 1946.

Objections were duly filed to such Proposed Decision and a hearing was held thereon pursuant to the applicable Commission procedures. At the hearing, the testimony of the claimant was taken, primarily on the question of the alleged transfer to him by his mother of her interest in her mother's estate, a transaction which is more fully discussed in the Proposed Decision. It was established at the hearing that the claimant's mother had died on March 3, 1954; so that her oral testimony was not then available. Testimony, in affidavit form, and other documentary evidence were also received, at the hearing and thereafter on certain questions of law applicable

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to the alleged transfer and on the question of the ownership of the Tvornica stock involved, at the time of confiscation.

In its Proposed Decision, the Commission had emphasized, as a principal ground of denial, the absence of any documentary evidence supporting the claimant's assertion that in 1945, his mother, Helene Brandt, had assigned to him all of her interest in the estate of her mother, Regina Schnabel, who, it is asserted, owned an interest in the enterprise so taken. At the hearing, the claimant introduced the original of such a document, executed October 23, 1945. It appears to have been duly acknowledged before a notary public of New Jersey on October 23, 1945; and authenticated before the Yugoslav Consul in New York, New York, on November 1, 1945. The Commission is satisfied with the authenticity of this document and of the fact of its execution on the date indicated.

The claimant also testified regarding the manner in which and the circumstances under which this document had been delivered to him and undertook to explain why it had not earlier been produced pursuant to the Commission's prior request therefor. Those aspects of the matter had also been considered in the Proposed Decision.

Upon consideration of all of the evidence now before it, the Commission is satisfied that in or around October 1945, the claimant's mother, by written instrument, had transferred to her son, the claimant, as a gift, all of her interest in the estate of her mother, Regina Schnabel; and that this instrument was delivered to and accepted by the claimant shortly thereafter and in any event prior to the date of confiscation indicated above.

The Commission has also considered the additional evidence, received subsequent to its Proposed Decision, relating to the ownership by Regina Schnabel of an interest in Tvornica, particularly, the affidavit, dated November 4, 1954, of one Ante Kuntaric, a Zagreb attorney, who states therein that at the annual stockholders' meeting

of Tvornica held on March 4, 1941 he represented Regina Schnabel as the owner of 12,000 shares of Tvornica stock, and an authenticated copy of the minutes of the same stockholders' meeting which confirm that Dr. Kuntaric did so appear. There was also submitted in this connection a photostatic copy of a general power of attorney, dated January 14, 1941, in favor of Dr. Kuntaric executed jointly by Regina Schnabel and her husband, Emanuel Schnabel. It is indicated in the minutes aforementioned and confirmed by other records of the corporation examined by the Commission's investigators in Yugoslavia that the total outstanding stock of Tvornica was, at all times significant here, 100,000 shares.

It is recited in the court decrees (referred to in the Proposed Decision) by which the deaths of both Regina and Emanuel Schnabel were judicially declared to have occurred as of May 8, 1945, that they had both been deported from Vienna to Theresienstadt in 1942 and had never returned; and it may be presumed from other information in the record that they were both executed in a concentration camp. Under all of the circumstances, and in the absence of any evidence to the contrary, it may reasonably be inferred that the ownership status of the 12,000 shares, as reflected by the minutes above mentioned, remained unchanged from the time of the stockholders' meeting in 1941 until the death of Regina Schnabel.

Various statements made by the claimant in his Statement of Claim and at earlier stages of this proceeding regarding the ownership of these shares were somewhat at variance with his subsequent assertions and with the contention made by him at the hearing that the 12,000 shares were owned, at the time of the taking of Tvornica, not by his grandfather, as originally asserted, but by his grandmother, Regina Schnabel. The Commission has taken into consideration, however, that the claimant's earlier information must neces-

sarily have been based largely upon speculation and derived from inadequate sources.

Upon all of the evidence now before it, the Commission finds that Regina Schnabel died in 1945 and prior to the execution and delivery of the instrument of assignment above described; that, at the time of the execution of such instrument, Helene Brandt, the claimant's mother, possessed, by right of inheritance, a beneficial interest in the estate of her mother, Regina Schnabel; that such estate then included the indicated 12,000 shares of Tvornica stock; and that, by virtue of such assignment, the claimant acquired and, at the time of the taking of Tvornica and thereafter, owned such interest in that stock as his mother, Helene Brandt, may have had.

The remaining question on this phase of the claim, therefore, is the extent of the interest which Helene Brandt so acquired by inheritance and then assigned to her son, the claimant.

In the instrument of assignment referred to above, Helene Brandt stated that there were then, at the time of its execution in October 1945, "only three heirs", including herself, to the estate of her mother, Regina Schnabel.

In his testimony at the hearing before the Commission, the claimant stated that his grandparents, Regina and Emanuel Schnabel, had had four children, including his mother, Helene Brandt; that one of such children had died during the first World War, leaving neither widow nor children; and that the other three children (including his mother) had also died, each leaving a child or children. No evidence was provided as to the present whereabouts of such other possible heirs or of their inheritance rights.

Subsequent to the hearing, the claimant submitted a certified copy of a decree, dated November 25, 1954, of the District Court of Vienna, Inner City, entered "in the matter of the estate of

Regine Schnabel who was officially declared dead as of May 8, 1945". Such decree recites that, by virtue of a "waiver of inheritance by Helene Brandt nee Schnabel, daughter of the decedent, in favor of her son, Felix L. Auer", the claimant was thereby recognized as an heir to the extent of one-half of the estate of Regina Schnabel.

Whatever the validity of the Vienna court decree may be in establishing the claimant's right to share in his grandmother's estate, it does not purport to do any more than establish such right as of the date of its issuance in 1954. It makes no findings with respect to, nor does it purport to establish any such rights as of the date of the taking of Tvoronica in 1946. It is the latter date which is controlling on the question of the claimant's right to an award as an eligible claimant before this Commission.

The Commission is of the opinion that the most reliable evidence on this question is that represented by the statement included in the instrument of assignment executed by the claimant's mother which speaks as of October 1945 and is to the effect that the claimant's mother was then one of three heirs to the estate of her mother, Regina Schnabel.

Upon the basis of all of the evidence before it, the Commission finds that, at the time of the delivery of the instrument of assignment, the claimant's mother possessed a one-third interest in the estate of her mother; that such estate included 12,000 shares of Tvoronica stock; and that the effect of the assignment in favor of the claimant was to vest in him at the time of the assignment and continuously thereafter until the taking of Tvoronica, a beneficial interest in such shares, to the extent of one-third thereof, or 4,000 shares. The Commission has therefore concluded that the claimant is entitled to an award herein by reference to the value of such 4,000 shares; and that its Proposed Decision should be modified accordingly.

The claimant has submitted no evidence of value of the shares in question. Nor has the Government of Yugoslavia submitted any report in that regard. The Commission's investigators have made a physical inspection and appraisal of the assets of the corporation and have examined all available pertinent books, records and financial data. Upon the basis of all evidence and data before it, the Commission is of the opinion that the fair and reasonable value of Tvornica as of the date of its taking, in terms of 1938* values, was 12 million dinars or 120 dinars per share. The latter amount, converted into dollars at the rate of 44 dinars to one dollar, the rate adopted by the Commission in making awards based upon 1938 valuations*, equals \$2.73 per share.

It having been determined that an award should be made herein upon the basis of claimant's ownership of 4,000 shares of such stock, this claim is allowed and an award is hereby made to Felix Leopold Auer, claimant, in the amount of \$10,920 with interest thereon at the rate of 6% per annum from December 21, 1946, the date of taking, to August 21, 1948, the date of payment by the Government of Yugoslavia, in the amount of \$1,091.40.

Dated at Washington, D. C. DEC 30 1954

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

FOREIGN CLAIMS SETTLEMENT COMMISSION
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Washington, D. C.

In the Matter of the Claim of

FELIX LEOPOLD AUER
164 West 76th Street,
New York, New York

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

Docket No. Y-1517

Decision No. 1226

Counsel for Claimant:

OTTO MULLER, Esq.
84 William Street,
New York 7, New York

PROPOSED DECISION OF THE COMMISSION

This is a claim for \$72,000 by Felix Leopold Auer, a citizen of the United States since his naturalization on May 8, 1943, for the asserted value of certain shares of stock allegedly owned by him in the Tvormica Tanina d.d. U Sisku (also known as Gerbstoffwerke A. G. Sisak), a corporation whose assets were allegedly taken by the Government of Yugoslavia in 1946.

At the time of the filing of the claim, these shares were said to represent 21% of all of the corporation's outstanding stock and were said to have a value, at the time of taking, of \$180,000. Thereafter, the claimant advised the Commission that, upon the basis of more accurate information obtained since the filing of the claim, he desired to reduce it to \$72,000, representing the alleged value of an 8.4% interest in the corporation.

The property involved was admittedly taken by the Government of Yugoslavia pursuant to a court decree of confiscation on December 21, 1946.

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The claimant asserts ownership through his mother, Helene Brandt, who, it is said, being entitled, by inheritance from her deceased father or mother, to an interest in the business involved, transferred this interest to the claimant. Helene Brandt became a United States citizen by naturalization on April 12, 1948.

The extent, if any, to which an interest in the corporation was owned by either of Helene Brandt's parents, Emanuel and Regine Schnabel, at the time of their death, is itself subject to considerable doubt. The same may also be said regarding Helene Brandt's interest in her parents' estates. However, it is unnecessary to resolve either of these questions; for the Commission has concluded that, whatever such interests may have been, there is an insufficiency of proof that the claimant himself had acquired any such interest at the time of the taking by the Government of Yugoslavia.

In the Statement of Claim, the transfer of interest from Helene Brandt to her son, the claimant, is said to have been effected by a "renunciation" by the mother in favor of her son of the mother's right of inheritance to her parents' estate; and "claimant, therefore, is claiming the rights and interests described . . . as heir of Emanuel and/or Regine Schnabel, the former owners".

The theory now advanced by the claimant in support of his claim is somewhat different from that advanced in some of his communications with the Department of State before the enactment of the International Claims Settlement Act. In a letter to the Department, dated January 9, 1946, the claimant stated that on October 23, 1945, he "received a deed from my mother to her property in Yugoslavia left by her mother, Regine Schnabel, from Vienna, who died in a German concentration camp"; and it is further stated that Regine Schnabel acquired her interest in

the corporation from her husband, Emanuel Schnabel, in 1935.

This claim was reasserted, in substantially the same terms, in claimant's subsequent letter of May 12, 1946, to the United States Embassy in Belgrade.

While, as indicated above, there is some evidence that Emanuel Schnabel owned an interest in the corporation at the time of his death, there is no evidence at all that his wife, Regine Schnabel, ever owned any interest therein. Such evidence as exists indicates that she never acquired any. The assertion that Regine Schnabel acquired such interest from her husband was, in fact, withdrawn in subsequent proceedings before the Commission.

Nor is there any proof that either Regine or Emanuel Schnabel died in a concentration camp; or that either the claimant or his mother knew or had any reason to believe that either of the grandparents was actually dead, at the time of the alleged execution, in 1945, of the "deed" above referred to.

There is, in fact, no proof of the death of either of the grandparents under any circumstances. The only reference in the record in this respect is evidence that, in appropriate proceedings corresponding to missing persons proceedings in United States courts, the Superior Court for Civil Matters of Vienna made, by decree, official declarations of death with respect to both Emanuel and Regine Schnabel. These decrees, entered March 7, 1951, provide that the date of death, as to each such person, shall be deemed to be May 8, 1945. The proceedings, initiated on motion of a nephew of Emanuel Schnabel, were instituted, presumably, for the purpose of laying a foundation for the administration of Emanuel Schnabel's estate.

The alleged deed of October 23, 1945, was not offered in evidence before the Commission. In response to the Commission's request there-

for, the claimant's attorney stated that "I am not able to submit a copy of the transfer or assignment of the shares" — without further explanation. This document obviously is the heart of the claimant's case. In the absence of a satisfactory explanation of its unavailability, the Commission cannot find that any such document was ever executed. In any event, since it purported to transfer to the claimant only such interest as his mother had acquired from Regine Schnabel, it would be of no significance, because Regine Schnabel had apparently never had any interest in the corporation which could be transferred.

In the Statement of Claim and in subsequent papers filed with the Commission, it was asserted that in the inheritance proceedings relating to the intestate estate of Emanuel Schnabel instituted in 1951 after the decree adjudicating his death, Helene Brandt filed a "waiver of inheritance" in favor of the claimant. And there was filed with the Commission a certified copy of a decree, dated August 8, 1951, of the District Court of Vienna City, which recited that "the waiver of inheritance by the daughter and heir, Helen Brandt, nee Schnabel, in favor of her son, Felix L. Auer, is accepted by the court", and decreed, on the basis of such waiver, that the claimant was entitled to a one-half interest in Emanuel Schnabel's estate. (There is no evidence that any proceedings were instituted with respect to the estate of Regine Schnabel.)

The waiver document itself has not been filed with the Commission; nor is its date otherwise indicated. It must be presumed, however, that it was not executed until some time in 1951, after the estate proceedings had been instituted. The affidavit of Helene Brandt, dated January 31, 1954, filed with the Commission, states that "about July, 1951, the District Court of Vienna was informed that I had

renounced all my rights to the estate of my father in favor of my son and I repeated the waiver for the Austrian court. The waiver effecting the transfer actually took already place on October 23, 1945, as to be seen from my son's letter of May 12, 1946." The latter statement refers, apparently, to the alleged deed above discussed.

While the Commission may assume the efficacy of the decree last mentioned as a determination of the claimant's indicated interest in the estate of his grandfather, the decisive question before the Commission is whether that interest had been acquired before the date of taking in 1946. As already indicated, the Commission cannot find it established that an effective transfer of any kind occurred on October 23, 1945. The only other basis of claim available to the claimant would be that derived from the "waiver of inheritance" by Helene Brandt. This, however, was apparently not executed until 1951, subsequent to the date of taking. There is thus no basis for a conclusion that the claimant possessed any interest in the confiscated property on the date of its taking.

For the foregoing reasons, this claim is denied.

Dated at Washington, D. C.

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