

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

In the Matter of the Claim of

ALFRED OTON MASSEY
1349 Lexington Avenue
New York 28, New York

Docket No. Y-1528

Decision No. 223-A

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

Counsel for Claimant:

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New York 17, N.Y.

FINAL DECISION

Thirty days having elapsed since the claimant(s) herein and the Government of Yugoslavia were notified of the Commission's Proposed Decision on the above claim, and the claimant(s) having filed no objections thereto, and a brief filed by the Government of Yugoslavia having received due consideration, such Proposed Decision is hereby adopted as the Commission's Final Decision on the claim.

Done at Washington, D. C. NOV 17 1954

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PROPOSED DECISION OF THE COMMISSION

This is a claim for \$37,300 by Alfred Oton Massey, a citizen of the United States since his naturalization on December 27, 1944, and is for the taking by the Government of Yugoslavia of claimant's interest (1) in a bank account; (2) in a house and land located at Kikinda and land located at Sajan, Yugoslavia; and (3) for the nationalization of "Yugoslavenski A. D. for Export of Camomile", a Yugoslav corporation.

The claim for the bank account was heretofore denied (see Decision No. 223).

The Commission finds it established by certified extracts from the Land Register of the County Court of Kikinda (Docket Nos. 3105 and 3494, Cadastral District of Kikinda, and Docket No. 1912, Cadastral District of Sajan), filed by the Government of Yugoslavia, and admissions by that Government that claimant's mother, Ida Messinger, owned a one-half interest in 2 parcels

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of land (Nos. 3215/1 and 3215/a in Docket Nos. 3105 and 3494) with a total area of 412 square fathoms with structures on both parcels, and the entire interest in 2 additional parcels of land (Nos. 1605/1/2 and 1604/a/2 in Docket No. 1912) with a total area of 2 yutars, when they were taken by the Government of Yugoslavia on April 28, 1948, pursuant to the Second Nationalization Act of April 28, 1948 (OFFICIAL GAZETTE No. 35 of April 29, 1948).

By an order of the County Court in Kikinda, Yugoslavia, it was determined that the aforementioned Ida Messinger died intestate on December 31, 1941 and that claimant and his brother inherited her interests in and to the above property.

Claimant has filed no corroborating evidence of value.

A three-party committee designated by local Yugoslav authorities appraised the claimant's interest in the land and structures at 42,127 dinars. An investigator for this Commission appraised claimant's interest in the land and structures at 84,185 dinars. Both appraisals were made on the basis of 1938 values.

Regarding the "Yugoslavenski A. D. for Export of Camomile" (hereinafter referred to as "Corporation"), claimant originally stated that his parent (presumably his mother) owned 50% of the stock of that Corporation; that when the Germans occupied Yugoslavia, they seized the machines and all assets of the "Corporation". He filed a certified extract from the Land Register of the County Court of Kikinda (Docket No. 311, Cadastral District of Sajan) covering the "Drying Plant" which shows ownership in the following sequence:

1. Josef Messinger & Sons, Velkikinda Booking Firm.
2. Yugoslavenski A. D. for Export of Camomile, Protocoled Firm from Belgrade.
3. Firm "Herba" Banater Vegetabilien A. G. from Vel. Kikinda.
4. Government of Federated People's Republic of Yugoslavia.

Claimant did not file any stock certificates of the "Corporation" nor did he account for their whereabouts, except that the records of the "Corporation", registered in Belgrade, were, he stated, in that city.

In response to this Commission's inquiry with respect to the stock, claimant by his attorney informed this Commission that he does not know whether any stock was issued; that one-half interest in the "drying plant" (evidently the property recorded in Docket No. 311, Cadastral District of Sajan) was owned by Ida Messinger, deceased, claimant's mother, and the other half interest by Hugo Messinger. Ida Messinger and Hugo Messinger are alleged to have been the joint owners of the firm "Joseph Messinger and Sons", and the "Corporation" was the lessee-managing agent for the owners. In corroboration of this arrangement, claimant filed an affidavit of a former employee of the firm of Joseph Messinger and Sons. This employee left the drying company in 1933, but assertedly maintained contact with Ida Messinger until 1941.

It would thus appear that claimant has abandoned his original position wherein he sought payment for the value of the shares of stock in the "Corporation", which he alleges he inherited from his mother, and, instead, claims the value of his

interest in the "drying plant" of Joseph Messinger and Sons, which interest he alleges he inherited from his mother.

The Government of Yugoslavia has also submitted a certified extract from the Land Registry, Docket No. 311, Cadastral District of Sajan, which discloses that 2 parcels of land (Nos. 941-942 and 940) with a total land area of 1 yutar, 254 square fathoms, with structures on both parcels, were owned according to the chain of title:

1. By Josef Messinger and Sons on the basis of a purchase and sales contract dated December 15, 1904; then
2. By Yugoslavenski, Inc. for Exporting Camomile on the basis of a purchase and sales contract dated August 12, 1939; then
3. By sequestration for the Chief Commisar for Economy in Serbia, by instrument recorded August 22, 1942; then
4. By "Herba" Banater Vegetabilian, Inc. on the basis of purchase and sales contract dated November 17, 1942; then
5. By "People's Common Property" on basis of a decision of the District Commission for Confiscation, by instrument recorded March 13, 1946.

The Government of Yugoslavia, in its report dated April 24, 1954, admits that this property was taken on February 6, 1945, under the Enemy Property Law of November 21, 1944.

Claimant has not filed proof of ownership of any of the shares of stock of the "Corporation", by inheritance or otherwise. Neither has it been established that claimant's mother had ownership interests in the drying enterprise at the time of taking.

It may be noted that, although it is alleged on claimant's behalf that the "Corporation" did not own, in any degree, the drying enterprise, the land register extract (Docket No. 311, Sajan) shows a transfer of ownership, entered on March 11, 1940, based upon a contract of sale dated August 12, 1939, in favor of the "Corporation". The seller presumably was Joseph Messinger and Sons, the prior owner of record. Claimant, therefore, appears to be in the position of claiming interests in a company (the drying enterprise) which, apparently, had sold its real property to the "Corporation", as to which claimant does not assert ownership rights. In any event, claimant has failed to sustain his burden of proof as to this portion of the claim.

Under the laws of Yugoslavia, a person who succeeds to real property by inheritance, such as claimant herein, is obligated to pay inheritance taxes on the value of the property (See Law Concerning Direct Taxation, effective January 1, 1946, Article 24, OFFICIAL GAZETTE No. 854, November 20, 1945). The People's Court is prohibited from transferring title to the heirs unless and until such inheritance taxes are paid (Revised Law Concerning Direct Taxation of August 14, 1946, Article 64, OFFICIAL GAZETTE No. 67, August 20, 1946). Thus, the value under local law of an heir's interest in real property must be regarded as being the value of the property less the inheritance taxes charged against it and which must be paid before the transfer of title can be accomplished. As awards may be made only for the value of the property taken or, as is the case here, for the value of an interest in property, a deduction must be made for inheritance taxes.

Under the applicable tax law (Inheritance and Gift Tax Law of March 18, 1947, OFFICIAL GAZETTE No. 25, March 26,

1947), the tax on property valued at 84,185 dinars is 7% or 5,893 dinars. That amount, deducted from the value of the property, leaves 78,292 dinars as the value of claimant's interest in the property which, converted into United States dollars at the rate of 44 dinars to \$1, the rate adopted by the Commission in making awards based upon evaluations as of the year 1938, equals \$1,779.36.*

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 \$1,779.36 as of the year 1938.*

AWARD

On the above evidence and grounds, this claim is allowed and an award is hereby made to claimant, Alfred Oton Massey, in the amount of \$1,779.36, with interest thereon at 6% per annum from April 28, 1948, the date of taking, to August 21, 1948, the date of payment by the Government of Yugoslavia, in the amount of \$33.64.*

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.