

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

In the Matter of the Claim of

THE UNITED STATES NATIONAL BANK  
OF PORTLAND, OREGON, As Executor  
of the Estate and Trustee u/w of  
STEPHEN G. TALIA, Deceased,  
Portland 8, Oregon.

Docket No. Y-1627

Decision No. 1348

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

Counsel for Claimant:

HAAS & SCHWABE,  
210 Pacific Building,  
Portland, Oregon.

*ed.*  
*10/2/54*

*OTW*  
*82W8*  
*Oct 6, 1954*

PROPOSED DECISION OF THE COMMISSION

This is a claim for an unspecified amount by the United States National Bank of Portland, Oregon, as Executor of the Estate and Trustee under the will of Stephen G. Talia, deceased. The decedent, Stephen G. Talia, became a citizen of the United States by naturalization on April 4, 1900, and died on February 25, 1946. The claim is for the taking by the Government of Yugoslavia of real property registered under Docket Nos. 90, 192 and 266, Lopud, Yugoslavia.

Certified extracts from the Land Register of the County Court of Dubrovnik (Docket Nos. 90, 192 and 266, Cadastral District of Lopud) dated December 3, 1953, and filed by the Government of Yugoslavia, show that the decedent is still the record owner of 16 parcels of land with a structure on one of the parcels and the owner of a one-fifth interest in 32 parcels of land with structures on 3 of the parcels.

The Government of Yugoslavia has also filed a certified copy of a decree of inheritance dated November 23, 1951, issued by the County Court of Dubrovnik, awarding the above property to the

*RS*

Shriners' Hospital for Crippled Children of Portland, Oregon, in accordance with the last will and testament of Stephen G. Talia, deceased. The decision states that he died on February 25, 1946, and, accordingly, the devisee became the owner of interests in the property on that date.

By Article 3 of the Nationalization Law of April 28, 1948 (Official Gazette No. 35 of April 29, 1948) on that date "all real property owned by foreign citizens, foreign institutions and foreign private or public persons is nationalized and passes into State ownership." The only exceptions set out are:

- "1) Real property of peasant farmers who, themselves, are cultivating the land;
- 2) Dwelling houses, used by their owners principally as their living quarters;
- 3) Real property of foreign States which serves for official purposes."

It may be added that that Article also provided that a Yugoslav citizen who becomes a foreign citizen loses his right of ownership of real property which passes into State ownership and only the Minister of Justice could make exceptions. The latter did make exceptions in instructions issued on June 23, 1948 (Official Gazette No. 53 of June 23, 1948), which have no application, of course, here.

It is clear that the Shriners' Hospital for Crippled Children of Portland, Oregon, could fall under no exception to the Nationalization Law of April 28, 1948, and its property was not exempt from nationalization by that law. We conclude, therefore, that notwithstanding the fact that the decedent is still recorded as the owner, the real property was nationalized by the Government of Yugoslavia on April 28, 1948, since on such date the ownership interests in the real property were in a foreign institution or public person under Yugoslav law.

The claimant has filed no evidence as to value. An investigator for this Commission has appraised the property as follows:

Docket No. 90, Lopud:	103,990 dinars
Docket No. 266, Lopud:	125,350 "
Docket No. 192, Lopud:	<u>143,559</u> "
Total	372,899 dinars ✓

Since the Shriners' Hospital for Crippled Children owned the entire interest in the property registered under Docket Nos. 90 and 266 and a one-fifth interest in the property registered under Docket No. 192, Lopud, the total value of such interests would be 258,052 dinars.

Under the laws of Yugoslavia, those who succeed to real property by inheritance are ordinarily 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 of November 20, 1945). The Peoples 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 of 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 ordinarily must be made for inheritance taxes.

However, Article 6 of the Decree on Inheritance and Gift Taxes of March 18, 1947 (Official Gazette No. 25 of March 25, 1947) provides in paragraph 2:

"Domestic foundations established for scientific, artistic, educational, medical, social, cultural, or physical cultural purposes and equally companies and associations which work for such purposes are exempt from inheritance taxes."

It is our opinion that this provision exempts from the levying of inheritance taxes all companies and associations which work for these

purposes regardless of whether they are domestic or foreign, while the exemption for foundations exists only in the case of domestic foundations. We conclude, therefore, that no deduction should be made here for inheritance taxes, since the Shriners' Hospital for Crippled Children of Portland, Oregon, is not a foundation.

The land extract for the property registered under Docket No. 192, Lopud, records a life estate in favor of one Fortunic Miho on 16/40 of the property. No evidence or information is available as to the date of birth of this person or the date of death, if deceased, and in view of the small amount involved this encumbrance will be disregarded under the rule de minimis non curat lex.

In addition the land extract for the property recorded under Docket No. 90, Lopud, shows a mortgage in the face amount of 8,617 dinars with 5% interest in favor of one Ivan Gale plus expenses of 1306 dinars and the property recorded under Docket No. 192, Lopud, shows a mortgage in the face amount of 1,900 dinars plus 118 dinars expenses in favor of Fortunic Miho. No evidence has been filed indicating that the mortgages have been satisfied.

In the circumstances, we are of the opinion that a deduction for the mortgages must be made. In arriving at this decision we have not failed to consider that the claimant may be obligated to satisfy the debt for which the mortgages were given as security. However, the likelihood that the claimant herein, or that any claimant whose Yugoslav property was mortgaged, will be called upon to do so seems sufficiently remote as to be practically non-existent. A suit on the mortgage may be barred by time limitations; the mortgagee, if a Yugoslav financial institution, has either been nationalized or liquidated; the mortgagor and the mortgagee may not know the whereabouts of each other; the mortgagor and mortgagee may reside in different countries with the result that suit or payment may be impracticable; any recovery by the mortgagee from the mortgagor may be limited to 10% of the

debt because the pre-war debt devaluation law of October 27, 1945 (Law on Settlement of Pre-War Obligations, as amended, Official Gazette No. 88, November 13, 1945; Official Gazette No. 66, August 16, 1946); or, finally, the mortgagee, if a citizen of the United States, may look to this Commission for compensation for the loss of his security.

The Commission, in its determination of claims against Yugoslavia, is directed by the International Claims Settlement Act to apply (1) the terms of the Agreement with that country and (2) the applicable principles of international law, justice and equity, in that order. The Agreement contains no specific provision regarding mortgages. We have found no applicable decisions of arbitral tribunals, international or domestic, having responsibility for the determination of claims which were satisfied by the payment of a lump-sum. (Because of the comparatively recent acceptance of lump-sums in settlement of large blocks of international claims, it is doubted that there are reported decisions directly in point.)

It is our view that justice and equity to all claimants require a deduction for mortgages under the circumstances involved in the claims before us, whether the property was taken before or after the above-mentioned Yugoslav debt settlement law became effective. The lump-sum of \$17,000,000 has been provided for the satisfaction of all claims. As the claims filed aggregate many times that amount, the fund may be insufficient to pay all claims allowed in full. In these circumstances we believe we are obligated to limit our awards to actual proven losses and not to make awards for contingent losses which may never materialize. We also believe that when many claimants have to share in a fund which may prove inadequate, one claimant should not receive a windfall or be enriched at the expense of other claimants. That would be the case if a claimant who was awarded the full value of his property made no payment on the mortgage, or satisfied the mortgage debt by payment

of only 10% of the mortgage pursuant to the Yugoslavia debt settlement law. Accordingly, we hold that, in the absence of evidence that a mortgage of record has been satisfied, a deduction for the mortgage must be made in order to reflect the actual amount of claimant's loss. We find that the proper amount to deduct for the mortgages, including interest, in this claim is 13,234 dinars and that amount will, therefore, be deducted from the value of the property.

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 the Shriners' Hospital for Crippled Children of Portland, Oregon, which was taken by the Government of Yugoslavia, was 244,818 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 \$5,564.05.\*

AWARD

On the above evidence and grounds, this claim is allowed and an award is hereby made to The United States National Bank of Portland, Oregon, as Executor of the Estate and Trustee u/w of Stephen G. Talia, deceased, claimant, in the amount of \$5,564.05 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 \$105.18.\*

Dated at Washington, D. C.

OCT 12 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.

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*appeal  
to  
12-20-54*

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. DEC 21 1954

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