

FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
WASHINGTON, D.C. 20579

IN THE MATTER OF THE CLAIM OF

ANDREW KISS

Under the International Claims Settlement
Act of 1949, as amended

Claim No. HUNG-2-1218

Decision No. HUNG-2-0825

PROPOSED DECISION

This claim in the asserted amount of \$18,000.00 against the Government of Hungary, under subsection 303(5), Title III of the International Claims Settlement Act of 1949, as amended, is based upon the loss of improved real property and personal property in Budapest, Hungary.

Claimant states that he acquired United States nationality on July 9, 1962, by naturalization.

Under section 303, Title III of the International Claims Settlement Act of 1949, (69 Stat. 570 (1955)); 22 U.S.C. subsections 1641-1641g (1971), as amended by section (3) of Public Law 93-460, approved on October 20, 1974 (88 Stat. 1386 (1974)), and which implements certain provisions of the Hungarian Claims Agreement of March 6, 1973, (TIAS 7569), the Commission is given jurisdiction as follows:

The Commission shall receive and determine in accordance with applicable substantive law, including international law, the validity and amounts of claims of nationals of the United States against the . . . [Government of Hungary] . . . arising out of the failure to ---

(5) pay effective compensation for the nationalization, compulsory liquidation or other taking of property of nationals of the United States in Hungary, between August 9, 1955, and the date the United States-Hungarian Claims Agreement of March 6, 1973, enters into force.

Therefore, this new section of the Act does not confer jurisdiction upon the Commission to consider all claims which were settled and discharged under the Hungarian Claims Agreement of 1973, but rather, provides for a limited class only, namely, those which arose between August 9, 1955, and March 6, 1973, as a result of the nationalization, compulsory liquidation or other taking of property.

It is important to note that other classes of claims settled and discharged by the Agreement which arose prior to August 9, 1955, were provided for pursuant to subsections (1), (2) and (3) of section 303 of the Act, supra. The Commission's authority with respect to claims arising before August 9, 1955, under Public Law 84-285, expired, by law, on August 9, 1959.

Moreover, under well established principles of international law, applicable to this claim under section 303 of the Act, in order for a claim to be compensable, the property upon which the claim is based must have been owned by a national of the United States at the time the nationalization or other taking occurred and the claim which arose therefrom must have been continuously owned thereafter by a United States national until its filing with the Commission.

Claimant, ANDREW KISS, stated at the time of filing that the date on which the property which is the subject of this claim was nationalized or otherwise taken by the Government of Hungary was unknown.

The Regulations of the Commission provide:

The claimant shall be the moving party and shall have the burden of proof on all issues involved in the determination of his claim. (FCSC Reg., 45 C.F.R., subsection 531.6(d) (1974)).

No documentation with respect to the date and manner of the asserted taking was submitted at the time of filing the claim. Therefore, the claimant was advised as to the type of evidence proper for submission to establish this claim and the sources of such evidence by letter dated November 7, 1975.

No response to this letter or evidence having been received, the Commission again requested, by letter dated April 7, 1976, that documentation be submitted to establish the loss asserted. Claimant was

also advised that it may become necessary for the Commission to reach a determination on the claim based upon the record available 60 days after April 7, 1976.

No response or evidence having been received to date, the Commission finds that the claimant, who asserts a loss of certain property in Hungary, has not met the burden of proof in that he has failed to establish that the subject property was nationalized or otherwise taken by the Government of Hungary during the period August 9, 1955, to March 6, 1973, as required for compensation under subsection 303(5) of the Act, supra, or that the property was owned by a national of the United States on the date of taking as also required for compensation. Accordingly, this claim must be and it is hereby denied.

The Commission finds it unnecessary to make determinations with respect to other elements of this claim.

Dated at Washington, D.C.
and entered as the Proposed
Decision of the Commission.

23 JUN 1976

J. Raymond Bell

J. Raymond Bell, Chairman

Wilfred J. Smith

Wilfred J. Smith, Commissioner

This is a true and correct copy of the decision of the Commission which was entered as the final decision on 28 JUL 1976

Robert E. Lee
Robert E. Lee, Commissioner

Francis T. Weston

Executive Director

NOTICE: Pursuant to the Regulations of the Commission, if no objections are filed within 15 days after service or receipt of notice of this Proposed Decision, the decision will be entered as the Final Decision of the Commission upon the expiration of 30 days after such service or receipt of notice, unless the Commission otherwise orders. (FCSC Reg., 45 C.F.R. 531.5 (e) and (g), as amended.)

The regulations also provide that after a Final Decision is entered denying a claim in whole or in part, the claimant may petition to have his claim reopened for further consideration if new and compelling evidence becomes available. Such petition must be filed at least 60 days prior to May 15, 1977, the statutory deadline for the completion of the Hungarian Claims Program. (FCSC Reg., 45 C.F.R. 531.5(1), as amended.)