

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

IN THE MATTER OF THE CLAIM OF

JOSEPHINE BIHALY

Under the International Claims Settlement  
Act of 1949, as amended

Claim No. HUNG-2-510

Decision No. HUNG-2-0674

Counsel for Claimant:

Nicholas R. Doman, Esquire

Appeal and objections from a Proposed Decision entered on April 7, 1976. Oral Hearing held on September 8, 1976.

FINAL DECISION

This claim in the asserted amount of \$9,000.00 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 real property in Erd, Hungary. Claimant, JOSEPHINE BIHALY, acquired United States nationality on August 27, 1956, by naturalization.

In its Proposed Decision dated April 7, 1976, the Commission found that the claimant has not met the burden of proof in that she had 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, while owned by a national of the United States as required for compensation under subsection 303(5) of the Act supra. Accordingly, the claim was denied.

By letter dated April 19, 1976, the claimant, JOSEPHINE BIHALY, through counsel, objected to the Proposed Decision and requested that the Commission grant additional time in which to submit evidence, and that an oral hearing be held after that period. Accordingly, the claimant was granted 90 days to submit additional evidence, and an oral hearing in this matter was subsequently scheduled for September 8, 1976.

At the oral hearing, claimant submitted a letter from Dr. Gyula Gayer of the No. 16 Lawyers' Cooperative of Budapest in Budapest, which stated that the properties recorded in Liber No. 14603, Lot Nos. 3722/342 and 3722/343 "had been leased for an economic year by virtue of forced use" to a resident of Erd, Hungary. No evidence was submitted to establish an actual nationalization of the subject property.

However, a review of Hungarian laws and statutes shows that on October 5, 1971, the Government of Hungary issued Decree 31/1971 (X.5.) Korm. limiting the ownership of unimproved building parcels to one residential and one recreational land parcel. Land parcels owned in excess of such limit had to be alienated prior to December 31, 1972. After that date the right to dispose of such land parcels shifted upon the local council and the owner lost his right to dispose and alienate such excess land parcels.

Inasmuch as the claimant, JOSEPHINE BIHALY, did not alienate her excess land parcel, the Commission finds that her excess land parcel, recorded in Liber No. 14603, as Lot No. 3722/343 approximately 158 square öl in area was taken by the Government of Hungary as of December 31, 1972.

Claimant asserted a total loss of \$9,000.00 for both properties, which were of equal size. No evidence was submitted. On the basis of evidence available to the Commission, including evidence of value of comparable property in the vicinity of Budapest where Erd is situated, the Commission finds that on December 31, 1972, the date of loss, the subject land parcel had the value of \$2,700.00, and concludes that the claimant, JOSEPHINE BIHALY, is entitled to compensation under the provisions of subsection 303(5) of the Act, supra, in such amount.

The claimant stated that she acquired nationality of the United States on August 27, 1956, by naturalization. The record does not contain any action by the Government of Hungary following that date, which could be construed as a "nationalization, compulsory liquidation, or other taking" of the claimant's right to receive rent. Moreover, even if such an action were shown, it would not

establish a compensable loss under subsection 303(5) of the Act, supra, since the Commission has consistently held in similar circumstances that any obligations of the Government of Hungary to pay rent, if a rental agreement existed, would be contractual obligations not covered by the statutory language "nationalization, compulsory liquidation, or other taking . . . of property." (See Claim of John Toth, HUNG-21,362; FCSC Dec. & Ann. 264 (1968)). Accordingly, the claim for rent must be, and it is hereby denied.

The Commission has concluded that in granting awards on claims under subsection 303(5) of the Act for the nationalization or other taking of property interest shall be allowed at the rate of 6% per annum from the date of loss to March 6, 1973, the effective date of the Hungarian Claims Agreement. (See Claim of John Hedio Proach, Claim No. PO-3197; FCSC Dec & Ann 549 (1968)).

A W A R D

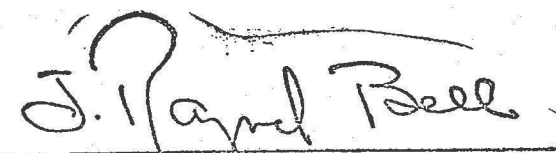
An award is hereby made to JOSEPHINE BIHALY in the principal amount of Two Thousand Seven Hundred Dollars (\$2,700.00), with interest thereon at the rate of 6% per annum from December 31, 1972, the date when the claim arose, to March 6, 1973, the date when the Hungarian Claims Agreement entered into force, in the sum of Twenty-Nine Dollars and Seventy Cents (\$29.70).

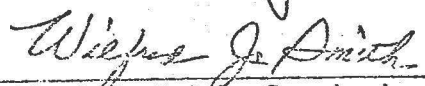
Dated at Washington, D.C.  
and entered as the Final  
Decision of the Commission.

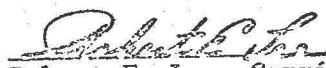
15 APR 1977

This is a true and correct copy of the decision  
of the Commission which was entered as the final  
decision on 15 APR 1977

  
Executive Director

  
J. Raymond Bell, Chairman

  
Wilfred J. Smith, Commissioner

  
Robert E. Lee, Commissioner

HUNG-2-510

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Counsel for Claimant:

Nicholas R. Doman, Esquire

PROPOSED DECISION

This claim in the asserted amount of \$9,000.00 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 real property in Erd, Hungary.

Claimant, JOSEPHINE BIHALY, states that she acquired United States nationality on August 27, 1956, by naturalization.

Under section 303, Title III of the International Claims Settlement Act of 1949, (69 Stat. 570 (1955)); 22 U.S.C. §§1641-1641q (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, JOSEPHINE BIHALY, did not indicate at the time of filing the date on which the property which is the subject of this claim was assertedly nationalized or otherwise taken by the Government of Hungary.

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. §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 through counsel as to the type of evidence proper for submission to establish this claim and the sources of such evidence by letter dated November 18, 1975.

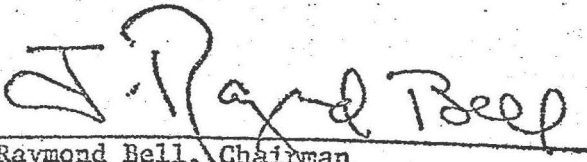
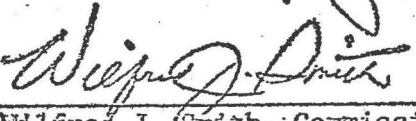
In a letter dated December 2, 1975, claimant's counsel advised the Commission that materials in support of the claim had been requested from Hungary, and inquired whether affidavits executed by himself could be submitted in support of the claim. In reply, the Commission indicated that no action would be taken in regard to this matter until March 1, 1976, to enable claimant to obtain additional evidence, and advised claimant's counsel that any evidence including the above described affidavits, which he wished the Commission to consider, could be submitted. However, no such evidence has been received, to date.

Therefore, in view of the foregoing, the Commission finds that the claimant, who asserts a loss of certain property in Hungary has not met the burden of proof in that she 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 asserted 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.

7 APR 1976

  
J. Raymond Bell, Chairman  
  
Wilfred J. Smith, Commissioner

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.)