

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

In the Matter of the Claim of

EDWIN A. BINDER,  
60 Beaver Street,  
New York 4, New York.

ANN A. UNGER,  
2524 Warring Street,  
Berkeley 4, California.

ROBERT P. ANNINGER,  
44 Cortland Avenue,  
New Rochelle, New York.

VICTOR K. ANNINGER,  
395 Riverside Drive,  
New York, New York.

and

LISE HAAS,  
2328 Rose Street,  
Berkeley 8, California.

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

Counsel for Claimants:

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FINAL DECISION

Thirty days have elapsed since the issuance of the Commission's Proposed Decision in this claim and the claimants have filed objections thereto, with a brief in support thereof, and the Government of Yugoslavia has filed a brief as amicus curiae.

Docket No. Y-1036

Decision No. 1535

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2-29-48*

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At a hearing duly scheduled, counsel for the claimants presented argument in support of the objections, contending that the disallowance of the claims of Edwin A. Binder and Lise Haas is erroneous in that:

- a) it nullifies the understanding of the negotiators of the Yugoslav Agreement that the Binder-Haas claim was to be covered by and included under said Agreement;
- b) it frustrates the intention of Congress that said claim was to be satisfied by the Commission;
- c) the Government is estopped to repudiate its representations to said claimants that said claim was covered by the Agreement and that clarifying legislation was therefore unnecessary.

Additionally, claimants objected to the value placed upon the stock of "Dugaresa" and by reference, adopted the brief, evidence and argument submitted in the Matter of the Claim of Bernard E. Singer, Executor for the Estate of Otto Anninger, Deceased, Docket No. Y-390, Decision No. 1474.

The brief and argument of counsel are essentially the same as presented in the Claimants' Memorandum Respecting Eligibility of Edwin A. Binder -- Lise Haas which was submitted with the claim. They will be considered at some length since they involve a construction of the terms of the Claims Agreement and the intention of its negotiators. It is first asserted that by a "side agreement" or "footnote" to the Yugoslav Claims Agreement of 1948 the parties thereto specifically agreed that the claim of Binder would be allowed in its entirety although it was known that one of the four beneficial owners, Lise Haas, was not a national of the United States. Upon examination, the so-called "side agreement" is found to be a letter of July 19, 1948 addressed to the Yugoslav Ambassador by the United States Secretary of State. While this unilateral document does list the Binder claim as one of a number deemed and understood to have been fully settled and discharged by reason of the Yugoslav Claims Agreement,

the Commission does not view the letter as an agreement, nor as evidence of the intention of the United States and Yugoslav negotiators of the agreement that the claims listed therein be allowed as adjudicated claims. It is noted that the letter here involved prefaces the statement of understanding with the specific proviso:

"Without prejudice to the free exercise of such authority and discretion as may be vested in any agency that may be established or otherwise designated by the Government of the United States to adjudicate claims, . . ."

Despite this reservation to this Commission of the free exercise of authority and discretion, counsel for the claimants takes the position that the Commission would have no jurisdiction other than to grant the claim. (transcript p. 13). The legislative history of the International Claims Settlement Act of 1949, whereby Congress set up the procedures for adjudication of the Yugoslav claims, does not provide support for that position. In reviewing and explaining the Claims Agreement to the members of Congress, Mr. Jack B. Tate, Acting Legal Adviser, Department of State, said (pp. 7 and 13, Hearings before the House Committee on Foreign Affairs, 81st Congress, on H.R. 4406):

"You must realize that those claims have in no way been adjudicated, and it is not anticipated that the claims, when adjudicated will be found valid to the extent of 100% of the amount claimed."

. . . . .

"As to the validity of his claim, I would not like to say here, because that is the purpose of the establishment of the Commission, to get these claims adjudicated, and I would not like to anticipate that adjudication."

Counsel for claimants next asserts that it was the intention of Congress that this claim was to be satisfied or allowed in its entirety. The references to legislative history are not always directly in point, since the Commission is charged with the consideration of claims under an executive agreement, the Yugoslav Claims

Agreement of 1948, while the action of Congress relates to the International Claims Settlement Act of the following year. Be that as it may, Congress, in providing for this Commission and its procedure, was well aware that it could do nothing to modify the Agreement which had already been entered into and was valid without Congressional approval. As Congressman Javits stated (at p. 28 of the House Hearings -- see also the remarks of Chairman Kee and Congressman Rubicoff at pp. 44 and 51):

" . . . here is an agreement in which the House and Senate do nothing whatever. We are completely precluded. I just wanted to make that clear of record."

Irrespective of the power of Congress with regard to the terms of the Agreement, it is conceded that some indication as to the intention of the United States negotiators may be found in an examination of the legislative history of the International Claims Settlement Act.

With respect to the meaning of the term "juridical person," as found in the Agreement, the House Hearings provide the following statement by Mr. Samuel Herman, Office of the Legal Adviser, Department of State, in answer to a question by Congressman Javits in which he "assumed" that the term "means corporations or trustees": (p. 30)

"If you go into Article 2 of the Agreement itself, you will see that 'juridical persons' in (B), for example, are referred to as those 'organized under the laws of the United States or other political entity thereof' . . . . We also, accept the proposition that in the absence of an American juridical person organized under American laws, only the individual rights of American beneficial owners are covered." (Emphasis supplied)

In this claim the Commission finds no "juridical person" organized under the laws of the United States or other political entity thereof. Instead, we find only a mere agency, for it is admitted that the owners of Etexco stock requested Binder to serve as apparent owner to preserve their property from Nazi seizure.

It is correct, as counsel for claimants cited in his memorandum and brief, that Congressman Javits persisted in his questions on the assumption that there could be a "juridical" trustee under the definition of the Agreement. However, counsel has not quoted the complete

answer of Mr. Herman, which apparently was in reference to the claim herein. In its entirety his answer was (p. 31):

"That, I think, is the fact in at least one claim of which we are aware, of which we have knowledge in the State Department. I do not want to state my personal view on this in any way that would bind the Commission in adjudicating a claim, should a claim containing that feature come up before the Commission, but my general feeling has been that the legal title, if it is held by an American national, covers the beneficial interest under the trustee, if the beneficial interests are substantially American." (Emphasis supplied)

The Commission does not view such a qualified, personal expression of opinion by one member of the State Department as conclusive as to the intent of the negotiators of the Agreement, nor such a representation by an official of the United States Government as to work an estoppel. The International Claims Settlement Act of 1949 itself reserves to this Commission the sole responsibility for adjudication of these claims:

"The action of the Commission in allowing or denying any claim under this Act shall be final and conclusive on all questions of law and fact and not subject to review by the Secretary of State or any other official, department, agency, or establishment of the United States, or by any court by mandamus or otherwise."

The Commission is directed, by that Act, to apply the terms of the applicable agreement, utilizing such portions of the negotiating history of the Agreement as it deems legally significant in the ascertainment of intent and meaning, and thereafter, if necessary to decision, to apply, in order, the applicable provisions of international law, justice, and equity. The Commission utilized all of the foregoing criteria in its Proposed Decision on this claim and found no ground for departure from the traditional policy of our government with respect to the espousal of the claims of non-nationals. Upon careful consideration of the arguments of claimants' counsel, and review of all the record in this claim, the Commission reasserts the position taken in such Proposed Decision with respect to the claims

of Edwin A. Binder and Lise Haas. As stated in the House Hearings (supra) by a representative of the State Department:

"This is an Agreement that covers a large category of claims over a certain period for American nationals who were American nationals at the time the wrong occurred, because that is the principle of international law. We can only espouse claims American in origin . . . They are American in origin if the man was an American at the time the property was (1) nationalized, or (2) otherwise taken."

Accordingly, the Commission hereby adopts its Proposed Decision as its Final Decision herein, with the following exception:

For the reasons set forth In the Matter of the Claim of Bernard E. Singer, Executor for the Estate of Otto Anninger, Deceased, Docket No. Y-390, Decision No. 1474, the fair and reasonable value of the stock of "Dugaresa" at the time of taking is found to be \$105 per share rather than the lesser amount set forth in the Proposed Decision.

Therefore, in full and final disposition of the claim, awards are hereby made to Ann Unger, Robert P. Anninger, and Victor K. Anninger, claimants, each in the amount of \$196,875, with interest to each in the amount of \$31,521.46.

Dated at Washington, D. C.

DEC 3 0 1954

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

In the Matter of the Claim of

EDWIN A. BINDER  
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Counsel for Claimants:

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DOCKET NO. Y-1036

DECISION NO. 1535

ok  
11-24-54

RC  
9/28/54  
Nov 24, 1954

PROPOSED DECISION OF THE COMMISSION

This is a claim for \$4,012,500 by "Edwin A. Binder and/or Ann A. Unger, Robert P. Anninger, Victor K. Anninger and Lise Haas," and is for the taking by the Government of Yugoslavia of the National Cotton Spinning and Manufacturing Company, Ltd., in which the claimant, Edwin A. Binder, or the other claimants, indirectly owned a total interest represented by 7500 shares of stock out of a

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total of 22,500 shares outstanding. Claimants Ann Unger, Robert P. and Victor K. Anninger have also filed individual claims with the Commission for direct ownership of other stock holdings in the National Cotton Spinning and Manufacturing Company, Ltd., hereinafter called "Dugaresa."

It is established that Edwin A. Binder has been a citizen of the United States since his naturalization on August 4, 1917; Ann A. Unger since her naturalization on August 21, 1944; Robert P. Anninger since his naturalization on May 18, 1944; and Victor K. Anninger since his naturalization on March 19, 1945. It is admitted that claimant Lise Haas was not a citizen of the United States when the claim was filed.

It has been established upon investigation and inquiry by the Commission's staff, and by admission of the Yugoslav Government, that Dugaresa was confiscated by that Government by Decision of the District Court in Karlovac, No. K.Z. 479/45, of November 20, 1945, pursuant to the Confiscation Act of June 9, 1945 (Official Gazette No. 40 of June 12, 1945). The confiscation was affirmed by the Superior Court of Croatia on December 20, 1945, Decision No. K 728/45. On the basis thereof, the Commission finds that the property was taken on the latter date.

It is asserted by claimants:

- (1) That before World War II, one-third of the capital stock of "Dugaresa" was held by a Swiss corporation, Etexco A.G., which as a holding company held shares of various other corporations located in German-occupied countries;
- (2) That all of the Etexco shares in turn were held by an American company, European Textile Corporation, whose stock was owned in equal quarter blocks by claimants Ann Unger, Robert and Victor Anninger and Lise Haas;
- (3) That, to avoid confiscation by the German Government which had decreed that corporations whose stock was held in a pyramid which included more than one corporation would be considered non-Aryan, European Textile Corporation in 1940 distributed all shares of Etexco to its four stockholders as a dividend in kind;

- (4) That, being persons of Jewish faith, the four stockholders then transferred their Etextco stock to Binder, an Aryan, who agreed to serve as apparent owner thereof in behalf of the beneficial owners, to preserve the property from Nazi seizure; and
- (5) That Binder remained as the sole owner of record of the Etextco stock (except for 15 qualifying shares nominally held by three directors) from 1940 to 1950 when Etextco was dissolved for tax reasons, with all the assets, subject to all liabilities, to be transferred to Binder.

Documents have been filed evidencing the deposit of 7500 shares of "Dugaresa" stock by Etextco in a Yugoslav bank. Claimants allege that the shares were registered in 1946 with the Yugoslav Consulate General in Zurich, Switzerland, as required by Yugoslav law. The Yugoslav Government has confirmed the deposit and registration in the name of Etextco with Binder as the owner. Additionally, there has been filed a certified statement from the Swiss Trust Company to the effect that during all of the year 1946 it held 485 shares of Etextco stock for Binder as owner with 15 additional shares in the names of director-nominees. Certified balance sheets of Etextco for 1944, 1945 and 1946 from the Swiss Trust Company also evidence ownership of 7500 shares of Dugaresa stock. As evidence of the relationship between claimants Ann Unger, Robert and Victor Anninger, Lise Haas and Edwin Binder, with respect to the Etextco stock, there have been filed photostatic copies of letters dated February 17 and 19, 1941 addressed to Binder by the other four claimants in which they set forth the terms of their transfer to him of the Etextco shares to hold, not as owner in fact, but as ostensible owner. These letters bear the signature of Edwin Binder in confirmation of the understanding which included an agreement that Binder would return the shares to the four owners upon demand.

On the basis of the foregoing, the Commission concludes that Etextco owned 7500 shares of Dugaresa stock at the time the latter was taken by the Government of Yugoslavia in 1945, and that Etextco in turn was then owned by Ann Unger, Robert and Victor Anninger and Lise Haas, in equal shares.

Claimants assert that under applicable Swiss law, Binder is sole owner of the shares, that is of the Dugaresa shares through his ownership of the Etexco shares, and that as a United States citizen he has standing to maintain this claim. Under American law, it is argued, Binder is a constructive trustee for predominantly American beneficiaries (one of the four, Lise Haas, not being a citizen), and that the legislative history of the International Claims Settlement Act of 1949 shows an intent to recognize in their entirety claims by "juridical trustees." Additionally, it is also contended that there was a specific understanding by the negotiators of the Agreement of July 19, 1948 between the United States Government and the Government of Yugoslavia that the "Binder-Haas" claim was to be recognized as part of a claim asserted by Binder on behalf of all four beneficial owners.

As the claimants themselves have stated in their memorandum concerning the eligibility of the Binder-Haas claim, the important point is to ascertain the real intention of the parties (to the Yugoslav Claim Agreement of 1948). It is our view that the claims encompassed by the Agreement are solely and exclusively claims of nationals of the United States on account of their direct and indirect interests in "property and rights and interests in and with respect to property" in Yugoslavia which were taken by the Government of Yugoslavia. Claimants eligible to participate in the fund are defined in Article 2 of the International Claims Settlement Act of 1949, sub-paragraph (c) of which provides that there are included claims of nationals of the United States respecting property, and rights and interests in and with respect to property, which at the time of nationalization or other taking were --

"Indirectly owned by an individual within category (A) above, or by a juridical person within category (B) above, through interests direct or indirect in one or more juridical persons not within category (B) above, or otherwise."

It cannot be accepted that the ostensible owner of the Etexco shares, Binder, was a "juridical trustee," for clearly the relationship between Binder and the true owners of Etexco did not create a juridical person "organized under the laws of the United States, or a constituent state or other political entity thereof" as contemplated by the Act. We also understand that he could not be considered as a "juridical person" under the laws of Switzerland. It follows that those American nationals who at the time of the taking of Dugaresa indirectly owned an interest therein through Etexco, a juridical person not within category (B) because it was a Swiss corporation, are eligible claimants but non-nationals are not. The Commission, therefore, views this claim as one by the real or beneficial owners of the Etexco shares and not as a claim by Binder on his own behalf.

Were the intent of the legislation and the definitions set forth therein such as to leave the question in doubt, the Commission finds ample support for its conclusion by reference to the policy of the United States in its espousal of claims and international precedent. The following is quoted from Moore's Arbitrations, p. 1353:

"The person who had 'the right to the award' must, it was further held, be considered as the real claimant by the Commission and whoever he might be, must 'prove himself to be a citizen' of the government by which the claim was presented." Alvarez (U.S.) v. Mexico, July 4, 1868." See also Wilt (U.S.) v. Venezuela, December 5, 1885, *ibid* 2246.

Borchard in The Diplomatic Protection of Citizens Abroad, p. 634, states:

"It has been observed that the Commission will look behind the administrator or person acting in a representative capacity to determine the nationality of the real claimant or beneficiary although in some cases the investigation was limited to the citizenship of the person upon whom the injury was originally inflicted."

and at pp. 642-43:

"That the Department of State in its diplomatic support of claims looks to the citizenship of the real or equitable owner of the claim as distinguished from the nominal or ostensible owner appears from sections on corporations, administrators and assignees."

The Commission, therefore, concludes that the claim of Lise Haas was not a claim of a national of the United States at the time of the taking of Dugaresa and was not settled by the Agreement of July 19, 1948, or within the jurisdiction of this Commission.

For the foregoing reasons, the claims of Edwin Binder, individually, and of Lise Haas are denied.

For the reasons stated in the Proposed Decision on the claim of Bernard E. Singer, Executor for the Estate of Otto Anninger, deceased, a copy of which is annexed, the Commission finds the value of the Dugaresa stock to be \$95 per share. Accordingly, the value of the individual indirect interests of Ann Unger, Robert and Victor Anninger in Dugaresa are found to have a value of \$178,125 each.

AWARD

On the above evidence and grounds, this claim is denied in part and allowed in part, awards being hereby made to Ann Unger, Robert P. Anninger and Victor K. Anninger, claimants, in the amount of \$178,125 each, with interest thereon at 6% from December 20, 1945, the date of taking, to August 21, 1948, the date of payment by the Government of Yugoslavia, in the amount of \$28,519.42\* to each.

Awards have previously been made to claimants Ann Unger, Robert P. Anninger and Victor K. Anninger in Decision Nos. 1481, 1482 and 1483. †

Dated at Washington, D. C.

NOV 2 6 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 the attached copy of its decision in the claim of Joseph Senser.