

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

IN THE MATTER OF THE CLAIM OF

JUDIT HRCEK

Claim No. Y2- 0099

Decision No. Y2- 442

Under the Yugoslav Claims Agreement of 1964
and Title I of the International Claims
Settlement Act of 1949, as amended

Counsel for claimant:

Lebamoff & Ver Wiebe
By Ivan A. Lebamoff

Objections filed May 2, 1968. No Oral Hearing requested

Hearing on the record held on June 3, 1969.

FINAL DECISION

The Commission, in its Proposed Decision issued April 10, 1968, denied this claim since claimant had failed to establish that the real and personal property claimed was nationalized or otherwise taken from her by the Government of Yugoslavia between May 15, 1957, the date of her naturalization, and January 20, 1965, the effective date of the Agreement. Other elements of the claim were not considered.

Claimant, through counsel, objected to the Proposed Decision and submitted new evidence. Full consideration has been given to the objections and the entire record has been reviewed.

The Commission now finds that claimant, JUDIT HRCEK, was the owner of 9,071m² of land improved with a dwelling in Pivnica, docket no. 7055, land parcel nos. 1497, 1500, 4238/2 and 4238/5 and said property was taken by the Government of Yugoslavia on December 3, 1962 by decree no. 03-5400/1-62 of the People's Council of the Community of Baeka Planka.

The Commission has considered the economic conditions which existed in Yugoslavia after World War II including the fluctuations in the value of the currency and the distorted prices of all commodities, goods and real estate. In the Claim of Alexis G. Bacic, Claim No. Y2-0522, 1967 FCSC ANN. REP. 75, the Commission concluded that the prewar (1938-39) values reflect a better basis for the appraisal of property and would be considered as the point of reference for valuation purposes; and that prewar dinars shall be converted into United States dollars at the official rate of exchange of 44 dinars for \$1.00.

On the basis of all evidence of record, including evidence of value of similar property in Yugoslavia, the Commission finds that on the date of loss, the improved property had a value of \$2,800.00 and concludes that claimant is entitled, under the terms of the Yugoslav Claims Agreement of 1964, to an award in that amount.

The Commission further finds that claimant was the owner of 10,556m² of vineyard and fields in Pivnica, docket no. 3777, land parcel nos. 2775, 2776 and 2771, and said property was taken on December 31, 1946 by the Government of Yugoslavia pursuant to the Agrarian Reform Law of 1946. The Commission has held that claims of nationals of the United States based on nationalizations, confiscations, and other takings by the Government of Yugoslavia during the period between September 1, 1939 and July 19, 1948 were settled and discharged by the Yugoslav Claims Agreement of July 19, 1948. (See the Claim of the Estate of Anton Schenborn, Deceased, Claim No. Y2-0474.) In this connection it is noted that the Commission has heretofore held that claims which arose prior to July 19, 1948 are expressly excluded under Article I(a) of the Yugoslav Claims Agreement of 1964. (See Claim of Eugenia D. Stupnikov, Claim No. Y2-0071, 1967 FCSC ANN. REP. 79, and Claim of Mary Tscherne, Claim No. Y2-0865, 1967 FCSC ANN. REP. 85.)

In view of the foregoing, the Commission finds that claimant has not established that her interest in said property was nationalized or otherwise taken by the Government of Yugoslavia between July 19, 1948 and January 20, 1965, the period covered by the Agreement. Accordingly, the Commission concludes that a claim based thereon is outside the scope of the Agreement and it is hereby denied.

As to the interest of claimant in the property designated as docket No. 3137, parcel no. 4238/3 the Commission finds claimant was the owner of a 1/2 interest in said land measuring 155m²; that said land is still registered in claimant's name and was not taken by the Government of Yugoslavia. Accordingly, this part of the claim must be denied.

Claimant has asserted a claim in the amount of \$500.00 for personal property located in the aforementioned improvements in Docket no. 1005. The Commission finds that no probative evidence has been submitted to establish an identification of said personalty, its existence and its taking by the Government of Yugoslavia. The burden of proof has not been met. Accordingly, this part of the claim is denied.

The Commission has decided that in granting awards on claims under the Yugoslav Claims Agreement of 1964, interest shall be allowed at the rate of 6% per annum from the date of loss to January 20, 1965, the date on which the Agreement entered into force and effect. (See Claim of Alexis G. Bacic, (supra).) Accordingly, the amount of the award will be increased to that extent in the instant claim. It is,

ORDERED that the Proposed Decision as amended herein be and the same is entered as the Final Decision on this claim.

A W A R D

An award is hereby made to JUDIT HRCEK in the principal amount of Two Thousand Eight Hundred Dollars (\$2,800.00) with interest in the sum of Three Hundred Fifty-Seven Dollars and Ninety-Two Cents (\$357.92), which interest is at the rate of 6% per annum from December 3, 1962, the date the claim arose, to January 20, 1965, the date on which the Yugoslav Claims Agreement entered into force.

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

JUN 18 1969

Leonard v. B. Sutton

Leonard v. B. Sutton, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

Sidney Freidberg

Sidney Freidberg, Commissioner

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PROPOSED DECISION

This claim, in the amount of \$5,000.00, is based upon the asserted ownership and loss of improved real property and personal property located in Yugoslavia. Claimant, JUDIT HRCEK, has been a national of the United States since her naturalization on May 15, 1957.

Under Section 4(a) of the International Claims Settlement Act of 1949, as amended (64 Stat. 13 (1950), 22 U.S.C. §1623(a) (1958)), the Commission is given jurisdiction over claims of nationals of the United States included within the terms of the Yugoslav Claims Agreement of November 5, 1964 and the Commission is directed to apply the following in the following order:

(1) The provisions of the applicable claims agreement as provided in this subsection; and (2) the applicable principles of international law, justice and equity.

Among other things, the Agreement provides as follows:

Article I. (a) The Government of Yugoslavia agrees to pay, and the Government of the United States agrees to accept, the sum of \$3,500,000 United States currency in full settlement and discharge of all pecuniary claims of nationals of the United States, whether natural or juridical persons, against the Government of Yugoslavia, on account of the nationalization and other taking of property and of rights and interests in and with respect to property which occurred between July 19, 1948 and the date of this Agreement.

Article II. The claims of nationals of the United States to which reference is made in Article I of this Agreement refer to claims which were owned by nationals of the United States on the date on which the property and rights and interests in and with respect to property on which they are based was nationalized or taken by the Government of Yugoslavia and on the date of this Agreement. (Agreement between the Government of the United States and the Government of the Socialist Federal Republic of Yugoslavia Regarding Claims of United States Nationals, November 5, 1964, which entered into force on January 20, 1965, 16 U.S.T. & O.I.A. 1965, T.I.A.S. No. 5750 (1964).)

Thus, where property was owned by a natural person at the time of its nationalization or other taking, a claim based upon such loss of property is not compensable under the Agreement unless such person was a national of the United States at the time of nationalization or other taking which must also have occurred between July 19, 1948 and the date of the Agreement.

For a definition of the term "nationals of the United States," reference is made to Section 2(c), Title I, of the International Claims Settlement Act of 1949, as amended (supra), which provides that:

The term "nationals of the United States" includes
(1) persons who are citizens of the United States, and
(2) persons who, though not citizens of the United States, owe permanent allegiance to the United States. It does not include aliens.

As to item (1), the term citizen of the United States includes all persons born or naturalized in the United States, and subject to the jurisdiction thereof (U.S. Const. Amend. XIV, §1). Also, a person does not become a citizen of the United States by way of naturalization until the procedure of naturalization is fully complied with and the order divesting the person of his former nationality and making him a citizen is signed by the judge of the court having jurisdiction (Petition of Sproule, D.C. Cal. 1937, 19 F. Supp. 995).

As to item (2), the Commission has held that persons who though not citizens of the United States owe permanent allegiance to the United States are those who were born in certain outlying insular possessions of the United States or born elsewhere of parents already possessing that status and does not include an alien who resides in the United States, who is an employee of

the United States Government and has sworn allegiance thereto. (See the Claim of Edward Krukowski, Claim No. PO-9532, Decision No. PO-927, 21 FCSC Semiann. Rep. 27 [July-Dec. 31, 1964].) Neither does it include a person who in the course of applying for his United States citizenship filed a declaration of intention and a petition of naturalization and took certain oaths. (See the Final Decision in the Claim of Walter Ludwig Koerber, Claim No. W-3917, Decision No. W-1322.)

In the matter of the Claim of Jacob Meisler, Claim No. PO-4436, Decision No. PO-286, 16 FCSC Semiann. Rep. 30 [Jan.-June 1962], and the Claim of Vlad Metchik, Claim No. PO-1907, Decision No. PO-314, 17 FCSC Semiann. Rep. 45 [July-Dec. 31, 1962], the Commission held that the principle of international law regarding the nationality of a claimant seeking espousal by one state of his claim against another state, which has been expressed as requiring that the aggrieved person be a national of the espousing state at the time the claim or loss accrued or arose, applies to claims authorized under Section 4(a) of Title I of the International Claims Settlement Act, as amended (supra).

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), as amended, 32 Fed. Reg. 412-13 (1967).)

The issues involved in claims before the Commission include the nationality of claimant and of all predecessors from whom claimant's interest in the claim is derived from the date of loss to the date of filing of the claim, claimant's ownership of the subject property or the extent of such ownership interest therein, the dates and circumstances of the asserted loss, and the value of the property at the time of loss. To sustain the burden of proof, claimant is required to submit evidence upon which the Commission can base findings of fact and conclusions of law with respect to each of the elements discussed above.

By Commission letters dated July 20, 1967 and December 14, 1967, claimant was advised of the scope of the Agreement. Also, suggestions were made as to the type of evidence necessary to establish a compensable claim and the sources from which it may be obtained. This evidence has not been received to date.

In view of the foregoing, the Commission finds that claimant has failed to establish that the property on which this claim is based was nationalized or otherwise taken from her by the Government of Yugoslavia between May 15, 1957, the date of her naturalization, and January 20, 1965, the effective date of the Agreement. Therefore, this claim is not a claim of a national of the United States as defined by Articles I and II of the Yugoslav Claims Agreement of November 5, 1964 and it is, accordingly, denied.

The Commission deems it unnecessary to consider other elements of this claim.

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

APR 10 1968

Leonard v. B. Sutton

Leonard v. B. Sutton, Chairman

Theodore Jaffe

Theodore Jaffe, 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, 32 Fed. Reg. 412-13 (1967).)

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