

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

IN THE MATTER OF THE CLAIM OF

IRENE KABILJO

Claim No. Y2- 0294

Decision No. Y2- 1551

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

Counsel for claimant:

Paul Neuberger, Esq.

Appeal and objections from a Proposed Decision entered February 26, 1969. Oral hearing requested, but subsequently cancelled at the request of counsel. No brief filed. Hearing on the record held on June 18, 1969.

FINAL DECISION

The Commission issued its Proposed Decision in this claim on February 26, 1969, denying a portion thereof based upon the loss of real property in Sarajevo, and granting claimant an award in the principal amount of \$2,000.00 plus interest for another portion of the claim based upon the loss of real property in Belgrade.

Claimant, through counsel, filed objections to the Proposed Decision and requested an oral hearing. Subsequently, claimant withdrew the request for a hearing and requested an extension of time for the submission of additional evidence. This request was granted and the time for the filing of evidence extended until May 29, 1969.

In his objections, counsel for claimant stated concerning the real property in Sarajevo that he expects a decree to be issued by the appropriate local court which will show that the property was not confiscated on December 23, 1947, as set forth in the Proposed Decision, but at a later date. No such evidence, however, has been presented to the Commission thus far.

With respect to the real property in Belgrade, claimant's counsel submitted documentation showing that on August 2, 1940 claimant purchased

an apartment for 257,250 dinars and on February 2, 1941 another apartment for 200,000 dinars; the documentation indicates that these apartments are identical with the apartments for which an award of \$2,000.00 was made in the Proposed Decision.

The evidence establishes the reasonableness of the price paid for the apartments. Due to the fact, however, that the contracts of sale were made on August 2, 1940 and February 2, 1941, respectively, at the time of mounting inflation of dinar values in Yugoslavia, the Commission finds that the equitable exchange rate to be used here should be 50 : 1 instead of 44 : 1 as used in certain other cases. It is, therefore, concluded that at the time of nationalization the value of this property expressed in United States currency was \$9,145.00 and that claimant is entitled to an award in that principal amount.

In view of the foregoing, it is

ORDERED that the Proposed Decision be amended to reflect the above findings; that the remainder of the Proposed Decision, as amended herein, be affirmed; and that the award section be restated as follows:

A W A R D

An award is hereby made to IRENE KABILJO in the principal amount of Nine Thousand One Hundred Forty-Five Dollars (\$9,145.00) together with interest thereon in the sum of Nine Hundred Sixty-Six Dollars and Thirty-Five Cents (\$966.35) which interest is at the rate of 6% per annum from April 16, 1963, 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 26 1969

Leonard v. B. Sutton

Leonard v. B. Sutton, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

Sidney Freidberg

Sidney Freidberg, Commissioner

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

IN THE MATTER OF THE CLAIM OF

IRENE KABILJO

Claim No. Y2-0294

Decision No. Y2-

1551

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

Counsel for Claimant:

Paul Neuberger, Esq.

PROPOSED DECISION

This claim, in the amount of \$17,045.00, is based upon the asserted ownership and loss of claimant's interests in real property in Sarajevo and Belgrade, Yugoslavia. Claimant, IRENE KABILJO, has been a national of the United States since her naturalization on July 12, 1951.

Under Section 4(a) of Title I of the International Claims Settlement Act of 1949, as amended (64 Stat. 13 [1950], 22 U.S.C. §1623(a) [1964]), 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, [1965] 16 U.S.T. 1, T.I.A.S. No. 5750 [effective January 20, 1965].)

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.

Real Property in Sarajevo

The record shows that prior to World War II claimant's late husband, Sadik Cezar Kabiljo, who died intestate on March 30, 1940, was the owner of real property in Sarajevo, recorded in Liber No. XCVII/46 of the land books of that city, consisting of land with a house erected thereon, situated at No. 16 Mlini Street. Claimant states that she inherited this property from her deceased husband.

The record further shows and the Commission finds that this real property was confiscated and transferred to the Government of Yugoslavia by a decision of the First County Court for the City of Belgrade, No. O-286/46, dated December 23, 1947.

The Commission has held that claims based on property nationalized or otherwise taken prior to July 19, 1948 are expressly excluded from 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.) Moreover, the record shows that on the date of taking claimant was not a national of the United States and it is, therefore, concluded that at the time of

confiscation, the property was not owned by a national of the United States.

In the matter of the Claim of Jacob Meisler, Claim No. PO-4436, 16 FCSC Semiann. Rep. 30 [Jan.-June 1962], the Claim of Vlad Metchik, Claim No. PO-1907, 17 FCSC Semiann. Rep. 45 [July-Dec. 1962], and the Claim of Reli Almuly, Claim No. Y2-1297, Final Decision No. Y2-853, 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, 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 of 1948, as amended, (supra).

In view of the foregoing and in light of the provisions of the Yugoslav Claims Agreement of 1964 (supra), the Commission finds that the claim relating to the real property in Sarajevo is not compensable under that Agreement and this portion of the claim is, therefore, denied.

Real Property in Belgrade

The Commission finds that claimant was the record owner of two apartments located on the third floor of an apartment building at No. 23 Brankova Street in Belgrade, registered in Liber No. 63 of the cadastral district of Belgrade 1.

The Commission further finds that these two apartments were nationalized by virtue of a decision No. 04-1501/63 issued by the Finance Division of the People's Committee for the Community Belgrade-Savski Venac, dated April 16, 1963.

Claimant failed to submit any convincing evidence concerning the value of the nationalized apartments. The Government of Yugoslavia, however, appointed an expert who appraised the apartments which together have 111 square meters of usable living space, as follows:

At 1938 prices	94,350 dinars
At present prices	8,880,000 dinars.

This valuation refers to so-called free apartments - that is, to apartments not occupied by tenants designated by the local authorities but by the owner himself.

The record shows that claimant is a resident of the United States and it is obvious that she was unable to use the apartments for herself or her immediate family. The income from the rent was negligible and the value of the apartments can be evaluated only at a fraction of the value which the apartments would be worth, if the owner had the right to use them.

The Commission, therefore, finds that the value of the two apartments at the time of nationalization was approximately twenty-five per cent (25%) of the value of free apartments, or \$2,000.00.

The Commission, therefore, concludes that claimant is entitled, under the Yugoslav Claims Agreement of 1964, to an award in the principal amount of \$2,000.00.

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 the Claim of Alexis G. Bacic, Claim No. Y2-0522, 1967 FCSC ANN. REP. 75.) Accordingly, the amount of the award will be increased to that extent in the instant claim.

A W A R D

An award is hereby made to IRENE KABILJO in the principal amount of Two Thousand Dollars (\$2,000.00) together with interest thereon in the sum of Two Hundred Eleven Dollars and Thirty-Four Cents (\$211.34) which interest is at the rate of 6% per annum from April 16, 1963, 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 Proposed
Decision of the Commission

FEB 26 1969

Leonard v. B. Sutton

Leonard v. B. Sutton, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

Sidney Freidberg

Sidney Freidberg, 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].)