

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

IN THE MATTER OF THE CLAIM OF

MILAN NOVAKOVICH

Claim No. Y2- 0535

Decision No. Y2- 460

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

Counsel for Claimant:

Urbano & DiMeo  
by Roman A. DiMeo

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Appeal and objections from a Proposed Decision entered April 10, 1968.  
Brief filed. No oral hearing requested,  
Hearing on the Record held on June 26, 1968.

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FINAL DECISION

The Commission issued its Proposed Decision in this claim on April 10, 1968 denying the same for the reason that the evidence indicated that the apartment house, upon which the claim is based, was owned by claimant's mother, Desanka Novakovich, a citizen and resident of Yugoslavia, and not by the claimant. The Commission considered claimant's contentions that in 1927 while claimant was still a minor certain funds owned by him allegedly were used for the construction of the building, but the Commission found that the furnishing of funds for the construction of improvements is not determinative of ownership, and that under the laws of Yugoslavia the right of ownership is presumed to be in the person whose name is entered in the public land books. Here the property was registered in the name of claimant's mother and while claimant might have rebutted the presumption of ownership by presenting documentary evidence conclusively showing that title had passed from the recorded owner to the claimant, he had failed to do so.

In his objections to the Proposed Decision, claimant contends that the Commission should have considered that claimant, as a citizen of the United States, would have been unable to record his ownership interest in the property in his name because the Government of Yugoslavia would have resisted the recordation of any change of title favoring a United States national. Additionally, claimant states that the documentation presented with the claim clearly establishes that claimant had an equitable title in the improvements.

The Commission has given full consideration to claimant's objections and finds that claimant was a citizen of Yugoslavia before he became a naturalized citizen of the United States in 1955. He ceased to be a minor on March 26, 1929 and had ample opportunity from that date until 1955 to record title in his name. Even after 1955 he may have attempted to record his title because the Government of Yugoslavia in many instances considered as Yugoslav citizens those naturalized citizens of the United States who had not been formally released from Yugoslav citizenship. The record shows that in 1961 claimant's mother and claimant himself, pending nationalization proceedings of the property, contended before the Yugoslav authorities that claimant had an interest in the property; but the Yugoslav authorities recognized only claimant's mother as the rightful owner of the building.

The Commission reiterates that in order to rebut the presumption that claimant's mother was the owner of the property, claimant should have presented documentary evidence, such as duly executed deeds, and other documentation in writing executed prior to the nationalization of the property, evidencing that his mother, the record owner of the property, transferred an interest in the real property to him. This, claimant has failed to do.

In view of the foregoing, it is

ORDERED that the Proposed Decision be and the same is hereby affirmed.

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

3 JUL 1968

*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 \$90,170.00 is based on the asserted ownership and loss of certain improved real property in Belgrade, Yugoslavia. Claimant, MILAN NOVAKOVICH, has been a national of the United States since his naturalization on June 7, 1955.

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].)

The evidence submitted by the claimant and the documentation of record before the Commission disclose that the real property at No. 42 First of May Street in Belgrade, upon which the claim is based, was recorded in the name of claimant's mother, Desanka Novakovic, a citizen and resident of Yugoslavia. The record further shows that the Nationalization Commission for Belgrade-Savski Venac on January 19, 1960 by a decision numbered 6460/59 nationalized the property recorded in Liber No. 462 of the cadastral district of Belgrade V, consisting of improved real property at the aforementioned address, and that the property was described as having been an office building owned by Desanka Novakovic. Mrs. Novakovic appealed from the decision of the Nationalization Commission for Belgrade-Savski Venac. She stated in her appeal, among other things, that she owned a one-half interest in the building while her son, the claimant herein, owned the remainder. She requested that the office building be reclassified as an apartment house and that two apartments be exempted from nationalization - one for herself and one for her son. The Nationalization Commission for the City of Belgrade, by decision numbered 2593/59, rejected this appeal and found that Mrs. Novakovic, as sole owner of an office building, had no right to retain an exempted apartment in this type of property. Not only did Mrs. Novakovic appeal from this decision but so also did her son, the claimant herein. The Nationalization Commission attached to the Executive Committee of the Republic of Serbia, by Decision No. 274/1-62 of May 15, 1962, modified the lower Commission's decisions and held that the property

should be classified as an apartment house and not as an office building, even though a foreign embassy was located therein; and that Desanka Novakovic, as the former sole owner, was entitled to retain only one exempted apartment in the building.

Claimant submitted to the Commission, among various documents, a decree of the Probate Court of Kraljevo of December 16, 1927 in which the Court allowed the appointed guardian of claimant, then a minor, to sell certain real property on behalf of the claimant, and ordered that the proceeds of the sale be invested in a building which claimant's mother intended to build in Belgrade, which is now the subject of this claim. Claimant also submitted a sworn statement executed by his mother in which she asserts that funds inherited by her son were, in fact, used for the construction of the building; and that she and her son enjoyed the income of the new building in equal shares. She further states that she was registered as sole owner in the land records because at the time of construction claimant was a minor, and that the records have never been changed since his majority.

The Commission has consistently held that furnishing of funds for the purchase of property or construction of improvements is not in itself determinative of ownership. Moreover, the Commission has held that under the laws of Yugoslavia the right of ownership is presumed to be in the person whose name is entered in the public books kept for that purpose. If a claimant wishes to rebut this presumption, he must present documentary evidence conclusively showing that title had passed from the recorded owner in the land book to another person. Such documentary evidence may consist of duly executed deeds, probated last wills, inheritance decrees, and other documentation in writing evidencing that the record owner transferred an interest in the real property, oral testimony being insufficient for this purpose.

In this claim, claimant has not submitted evidence sufficient to rebut the presumption of ownership shown by the land record. On the contrary, this documentation submitted by him indicates that claimant attempted to

establish before the Yugoslav authorities that he is a "de facto" part owner of the property, but his attempt did not meet with success. The Commission has held on previous occasions that the lex loci rei sitae determines ownership of real property. (See the Claim of Angela Froehlich Lipson, Claim No. CZ-3386, Decision No. CZ-1383-A, 17 FCSC Semiann. Rep. 246 [July-Dec. 1962] and cases cited therein.) It is concluded that under the laws of Yugoslavia claimant has not established that he was the owner of the property in question.

Claimant admits that his mother, Desanka Novakovic, the record owner of the property, was never a national of the United States. The Commission has held that under recognized principles of international law and under Article II of the Yugoslav Claims Agreement of 1964 a claim is compensable only if the property upon which the claim is based was owned by a national of the United States on the date of nationalization or other taking. (See the Claim of Eugenia D. Stupnikov, Claim No. Y2-0071, Decision No. Y2-3.) Consequently, even if the claim had been asserted by claimant's mother or under an assignment from claimant's mother, it would not be compensable under the Agreement.

Accordingly, the Commission concludes that claimant failed to establish that he was the owner of the nationalized property, and the claim must be and it is hereby denied.

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 of 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].)