

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

IN THE MATTER OF THE CLAIM OF

DAN SPADIER  
HELEN RAFAELOVICH

Claim No. Y2-1634  
Claim No. Y2-1639

Decision No. Y2-1319-A

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

Counsel for Claimants:

Paul Neuberger, Esq.

AMENDED PROPOSED DECISION

The Commission issued its Proposed Decision on the above-numbered claims of DAN SPADIER and HELEN RAFAELOVICH on December 11, 1968 denying the same for the reason that claimants failed to establish that their property was nationalized or otherwise taken by the Government of Yugoslavia between July 19, 1948 and January 20, 1965.

Claimants filed objections and requested an oral hearing which was scheduled for March 4, 1969.

Subsequently, counsel for claimants withdrew the request for an oral hearing and submitted newly procured documentation which shows that the real property of claimant DAN SPADIER, located in Cetinje and consisting of building lots Nos. 545/47/2, 545/45/2, 545/44/2, 545/48/2, 545/48/3, 526/2, 541, 545/46 and 545/43, altogether measuring 8,941 square meters, was nationalized and became public property pursuant to a decision of the Department of Finance of the People's Committee of Cetinje, No. 03-2782/2-59, dated November 27, 1959.

Taking due consideration of the new evidence, the Commission now finds that the above-described property of the claimant DAN SPADIER was nationalized on November 27, 1959, and that the value of the building lots was \$1.00 per square meter or \$8,941.00 for the entire nationalized property.

Accordingly, claimant DAN SPADIER is entitled, under the Agreement, to an award in that amount.

In view of the foregoing, it is

ORDERED that the Proposed Decision be amended to include an award in favor of claimant DAN SPADIER as stated below, and that in all other respects the Proposed Decision be affirmed.

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 DAN SPADIER in the principal amount of Eight Thousand Nine Hundred Forty-One Dollars (\$8,941.00) together with interest thereon in the sum of Two Thousand Seven Hundred Sixty-One Dollars and Twenty-Five Cents (\$2,761.25) which interest is at the rate of 6% per annum from November 27, 1959, 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 Amended  
Proposed Decision of the  
Commission

MAR 5 1969

*Leonard v. B. Sutton*  
Leonard v. B. Sutton, Chairman

*Theodore Jaffe*  
Theodore Jaffe, Commissioner

*Sidney Freidberg*  
Sidney Freidberg, Clerk

NOTICE: Pursuant to the Regulations of the Commission, if no objections are filed within 15 days after service or receipt of notice of this Amended 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].)

Y2-1634  
Y2-1639

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

IN THE MATTER OF THE CLAIM OF

DAN SPADIER  
HELEN RAFAELOVICH

Claim No. Y2- 1634

Claim No. Y2-1639

Decision No. Y2-

1319

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

Counsel for claimants:

Paul Neuberger, Esq.

PROPOSED DECISION

These claims, each in the amount of \$5,000.00, are based upon the asserted ownership and loss of certain farmland in the vicinity of Cetinje, Yugoslavia. Claimants, DAN SPADIER and HELEN RAFAELOVICH, have been nationals of the United States since their naturalization on March 1, 1935.

Claimants also filed a claim under the Yugoslav Claims Agreement of 1948 (Docket No. Y-1433) based upon the identical property claimed herein which was denied for claimants' failure to establish a nationalization or other taking of the property by the Government of Yugoslavia. That file has been associated with these claims for reference.

Under Section 4(a) 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.

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 this claim before the Commission include 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.

Evidence of record shows that each of the claimants, DAN SPADIER and HELEN RAFAELOVICH, owned a one-half interest in certain land with improvements in Donji Kraj near Cetinje, Yugoslavia, but no evidence has been

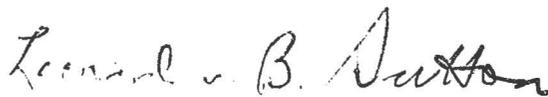
submitted to establish that this property was nationalized or otherwise taken by the Government of Yugoslavia. By Commission letters of May 1 and September 30, 1968 claimants were advised of the scope of the Agreement. Also suggestions were made as to the type of evidence necessary to establish a compensable claim and the sources from which it may be obtained. In the letter of latter date claimants were also informed that unless evidence were submitted within 30 days it would become necessary to determine the claim on the basis of the record then available. However, no evidence has been received to date.

In view of the foregoing, the Commission finds that claimants have not met the burden of proof in that they failed to establish that their property in Yugoslavia was nationalized or otherwise taken by the Government of Yugoslavia between July 19, 1948 and January 20, 1965, the period covered by the Agreement, as required for compensation under the terms of the Agreement discussed above. Accordingly, these claims must be and are, hereby, denied.

The Commission deems it unnecessary to consider other elements of these claims.

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

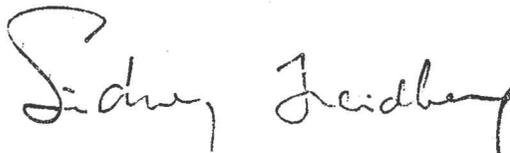
DEC 11 1968



Leonard v. E. Sutton, Chairman



Theodore Jaffe, Commissioner



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).)

Y2-1634

Y2-1639