

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

IN THE MATTER OF THE CLAIM OF

ERNA KONIG

Claim No. Y2-1681

Decision No. Y2-0972

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.  
Samuel Herman, Esq.

---

Appeal and objections from a Proposed Decision entered on August 14, 1968.

---

Oral argument on December 2, 1968 by Samuel Herman, Esq. for claimant.

---

FINAL DECISION

By Proposed Decision issued August 14, 1968 the Commission found that claimant and the subject property were all identical to the matter which was the subject of a prior claim under the Yugoslav Claims Agreement of 1948. Under that prior claim the Commission had issued an award to claimant for her 1/4 interest in the subject property which had been taken by the Government of Yugoslavia on December 31, 1944. The Commission denied the alleged, additional fractional interest claimant now sought since the claim in question was settled and discharged under the Yugoslav Claims Agreement of 1948 and claimant had not established that she owned property or an interest in property which was nationalized or otherwise taken during the period covered by the Yugoslav Claims Agreement of 1964. The Commission concluded that the claim was outside the scope of the present Agreement.

Claimant objected to the Proposed Decision and contended that with respect to the taking of December 31, 1947, a constructive trust existed for the benefit of claimant to the extent of the interest owned by her sister, Sanda Rechnitzer, and that this interest is to be deemed as having been taken on December 26, 1958. In support of this contention, counsel relies on Claim of Lotte Weissman, Claim No. Y2-1210, Decision No. Y2-426

Claimant did not appear at the oral hearing. Counsel argued that some member of claimant's family remained in possession of the subject property and, accordingly, counsel urged the Commission to find that the subject claim was controlled by the Claim of Joseph Maurin, Claim No. Y2-1770, Decision No. Y2-0244. Counsel was granted additional time to submit further evidence in support of the issue of possession. Claimant's affidavit has since been submitted and is part of the record.

Full consideration has been given to the entire record including the affidavit of Dr. ERNA KONIG, the claimant herein and the owner of one-fourth of the subject property; and the arguments presented by counsel.

In the first instance, counsel had suggested the theory of "constructive trust". Where confiscation was involved, this theory was predicated upon the fact that the proposed taking date was erroneous since the facts upon which the decree of nationalization was based were false. It was averred that claimant was not an enemy of the people; could not freely return to Yugoslavia; had not freely renounced his Yugoslav citizenship for another, etc. Counsel urged the Commission to declare that any nationalization decree based on erroneous facts was a nullity and not binding and that the confiscated property was held in constructive trust by the Yugoslav authorities and constructively taken on December 26, 1958, pursuant to the Law on Nationalization of Buildings for Rent and of Building Lots, to which the claimed property was subject.

The Commission has had the theory of constructive trust presented to it on several prior hearings but has not accepted or applied it. (Claim of Elena Gojich, Claim No. Y2-1415, Dec. No. Y2-537 and Claim of Lotte Weissman, (supra).)

In a further argument counsel has urged the Commission to find that the subject claim is controlled by the Claim of Joseph Maurin, (supra).

In the Maurin claim the Commission in its Proposed Decision denied the portion of the claim based on farmland, forestland and improvements which survived destruction during World War II on the ground that this

property was confiscated by the Government of Yugoslavia on February 6, 1945 pursuant to the Enemy Property Law of November 21, 1944, which is prior to the period covered by the 1964 Agreement.

In its Amended Proposed Decision in the Maurin case, the Commission stated:

"Upon review of the entire record in this claim, the Commission finds that there is contradictory information as to the date of taking of the property. Evidence has been submitted showing a taking of the subject property in 1946 under the Enemy Property Law of November 21, 1944. There is conflicting evidence that this entry may have been made in 1954, referring back to 1946, because in 1950 claimant's agent in possession inquired from the authorities as to the status of the title of his land and was advised that it belonged to claimant and that taxes on the land for the years 1948, 1949 and 1950 were unpaid. Claimant's agent in possession paid these taxes and remained in possession and paid taxes until 1954. In 1954 a consolidation of the properties in the area where this property was located was undertaken by the Government for administrative purposes. In connection with this consolidation, a record was then made showing a title to this property in the claimant and referring same back to the 1946 date.

In passing certain types of enemy lands into State ownership, the Enemy Property Law of November 21, 1944, which became effective as of February 6, 1945, did not in fact result in the taking over of all properties of the type described in said decree, per se. The reason for this is that a factual determination as to the status of the persons owning property in Yugoslavia had to be made before the decree became operative. The decree itself, as revised in 1946, made certain exemptions more definite, thus even more clearly demonstrating that the decree would not become automatically effective.

In these circumstances, it is the finding of the Commission that claimant had effective title to the property until January 28, 1954, at which time he was a citizen of the United States and that the taking, therefore, comes within the purview of the Yugoslav Claims Agreement of 1964."

Thus, it is seen that in the Maurin claim the agent of claimant was in possession of the subject property for almost nine years after the property had been "taken", coupled with an attornment by the Government of Yugoslavia to claimant as owner during this period. Claimant continued to pay taxes as owner for some six years upon orders of the Yugoslav Government.

In her affidavit claimant attests that her niece, who with claimant was one of the former fractional owners of the property, and a minor, was

allowed to collect the entire rent from the property to be used for the cost of living and education of the said minor; the minor's guardian had possession of the property until 1957 when the minor, then 16 years old, emigrated to Israel and on that date the Yugoslav authorities took over the property.

The Commission notes that there is no allegation that said minor ever resided on the property. No documentation was submitted in support of the sworn statements. Affiant states conclusions without setting forth the facts upon which her conclusions are based. The affidavit is insufficiently detailed to afford the Commission a basis upon which to make findings of fact and conclusions of law necessary to the determination of the objections. In this claim, the best evidence could have been obtained from the minor and her guardian. Statements of claimant are self-serving.

From the foregoing it is clear that the subject claim is not within the purview of the Maurin decision. The Commission concludes that the probative value of the evidence submitted in support of the objections does not warrant findings other than those determined in the Proposed Decision. Accordingly, 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

**MAR 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

ERNA KONIG

Claim No. Y2-1681

Decision No. Y2-

0972

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 for \$2,932.00 is based upon the asserted ownership and loss of an interest in real property in Zagreb, Yugoslavia, and vicinity. Claimant, ERNA KONIG, has been a national of the United States since her naturalization on May 26, 1947.

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 the 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 the 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].)

The Commission was also authorized under Section 4(a) of Title I of the International Claims Settlement Act of 1949, supra, to receive, examine, adjudicate, and render final decisions with respect to claims of the Government of the United States and of nationals of the United States included within the terms of the Yugoslav Claims Agreement of 1948. The Yugoslav Claims Agreement of July 19, 1948 settled and discharged claims for nationalization or other takings of property owned by nationals of the United States by the Government of Yugoslavia between September 1, 1939 and July 19, 1948, the date of the Agreement.

With reference to the claims program covered by the 1948 Agreement, Section 6 of Title I of the Act, as amended by Public Law 83-242, provided as follows:

The Commission shall complete its affairs in connection with settlement of the United States - Yugoslav Claims arising under the Yugoslav Claims Agreement of 1948 not later than December 31, 1954.

Therefore, the Commission's jurisdiction to determine claims under the 1948 Agreement terminated on December 31, 1954.

The record before the Commission discloses that claimant filed a claim, Docket No. Y-1639, under the above-mentioned Yugoslav Claims Agreement of 1948, asserting a loss resulting from the nationalization or taking by the Government of Yugoslavia on December 31, 1947 and May 15, 1948, respectively, of real property in which she had an ownership interest. By Proposed Decision No. 1192 of August 26, 1954, an award was granted to the claimant in

the amount of \$11,546.68 plus accrued interest for a one-fifth (1/5) interest inherited by the claimant from her mother, who died in 1942. Upon objections filed by the claimant, the Commission issued a Final Decision No. 1192 on December 29, 1954, increasing the award to \$13,406.16 plus accrued interest, because in the meantime claimant had established that she inherited a one-fourth (1/4) interest in the property of her mother, and not a one-fifth (1/5) interest as stated in the proposed decision. Claimant's request to increase the award to include an additional interest inherited from her sister Sanda Rechnitzer was denied because the Commission found that this fact had not been established by competent proof. The award as granted in the final decision was certified for payment to the Secretary of the Treasury and payment was made to the claimant from the Yugoslav Claims Fund established by the Agreement of July 19, 1948 under the pertinent provisions of Title I of the International Claims Settlement Act of 1949, as amended.

In the instant claim, No. Y2-1681, filed pursuant to the Yugoslav Claims Agreement of 1964, claimant does not allege any property losses from the nationalization or other taking on or after July 19, 1948 by the Government of Yugoslavia of any property in which she had an ownership interest. She states that the claim arose from the conclusion in the final decision by the Foreign Claims Settlement Commission, dated December 29, 1954, in which the Commission stated that claimant had not established that she inherited a share in the property from her sister Sanda Rechnitzer. Claimant submits that by a decree of inheritance, No. O-211/57/3, subsequently issued by the County Court No. I of Zagreb, dated March 15, 1957, the court declared that claimant inherited a one-third (1/3) interest in property owned by Sanda Rechnitzer, who died on July 31, 1942. On the basis of this decision, claimant requests the Commission to grant her an additional award

of \$2,932.00 which represents the value of the interest inherited by the claimant from Sanda Rechnitzer in the property which was the subject matter of the claim, Docket Y-1639.

Upon examination of the record comprising this matter, the Commission finds that the claimant in the previous claim, Docket Y-1639, and the property, date of loss and value are all identical in that claim and in the present claim; and that a final decision on the merits has been rendered in the prior claim.

As indicated, the record clearly establishes that the claim was fully considered under the 1948 Agreement on the basis of the evidence then before the Commission and the Commission's jurisdiction with respect to claims found to be within the purview of that Agreement terminated on December 31, 1954 pursuant to an express statutory mandate. Further, Title I of the International Claims Settlement Act of 1949, as amended, does not give, directly or by implication, the Commission jurisdiction to review or change its findings rendered on claims filed and decided under the Yugoslav Claims Agreement of 1948, under or pursuant to any subsequent agreement that may be concluded with the Government of Yugoslavia, nor does the Yugoslav Claims Agreement of 1964 so provide.

The Commission has 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; Claim of Mary Tscherne, Claim No. Y2-0865, 1967 FCSC ANN. REP. 85; and Claim of George F. Roth, Claim No. Y2-1536.)

In view of the foregoing, the Commission finds that the claim in question was settled and discharged under the Yugoslav Claims Agreement of 1948 and that claimant has not established that she owned property or an interest in property which was nationalized or otherwise taken during the



period covered by the Yugoslav Claims Agreement of 1964. Accordingly, the Commission concludes that this claim is outside the scope of the Yugoslav Claims Agreement of 1964 and it is hereby denied.

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

AUG 14 1968

*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].)