

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

IN THE MATTER OF THE CLAIM OF

ERMENEGILDA AMOROSO

Under the International Claims Settlement
Act of 1949, as amended

Claim No. IT-2-024

Decision No. 147

Counsel for claimant:

Samuel Herman, Esq.

PROPOSED DECISION

This claim for an amended amount of \$37,091.00 against the Government of Italy, under Section 304(b), Title III, of the International Claims Settlement Act of 1949, as amended, is based upon the asserted loss of personal property consisting of dry goods and notions held as inventory of a business enterprise located in Sibenik, Yugoslavia. Claimant, ERMENEGILDA AMOROSA, has been a national of the United States since her naturalization on December 24, 1937.

Under Section 304(b), Title III, of the International Claims Settlement Act of 1949 (69 Stat. 570 (1955)); 22 U.S.C. §§1641-1641q (1964)), as amended by Section II of Public Law 90-421, approved on July 24, 1968 (82 Stat. 420 (1968)), the Commission is given jurisdiction as follows:

The Commission shall receive and determine, or redetermine, as the case may be, in accordance with applicable substantive law, including international law, the validity and amounts of claims owned by persons who were eligible to file claims under the first sentence of subsection (a) of this section on the date of enactment of this title, but failed to file such claims or, if they filed such claims, failed to file such claims within the limit of time required therefor: Provided, That no awards shall be made to persons who have received compensation in any amount pursuant to the treaty of peace with Italy, subsection (a) of this section, or section 202 of the War Claims Act of 1948, as amended.

The first sentence of Section 304(a) of the Act, supra, reads as follows:

The Commission shall receive and determine, in accordance with the Memorandum of Understanding and applicable substantive law, including international law, the validity and amount of claims of nationals of the United States against the government of Italy arising out of the war in which Italy was engaged from June 10, 1940, to September 15, 1947, and with respect to which provision was not made in the treaty of peace with Italy.

Claimant asserted under the Yugoslav Claims Agreement of 1948 and Title I of the International Claims Settlement Act of 1949 (a claim against the Government of Yugoslavia (Claim No. Y-427)) based in part upon the same property claimed for herein. In its decision on that claim, the Commission found that the loss of some of the property (inventory) for which the claim was made was attributable to a taking by the Yugoslav Government, and an award was granted to the claimant for her share thereof. A second portion of the claim based upon the property loss claimed for herein was denied for the reason that the property was found to have been requisitioned by Italian occupation forces and such losses were not covered by the claims agreement. Subsequently, claimant filed a claim (No. W-10571) for the same loss under Title II of the War Claims Act of 1948, as amended by Public Law 87-846. This claim was also denied for the reason that losses attributable to Italian action were not covered under Public Law 87-846. The records in the above-mentioned claims have been associated with this claim for reference.

On the basis of the record established, the Commission finds that claimant's father and predecessor in interest was the sole owner of a small store and the inventory contained therein located in Sibenik, Yugoslavia and that he was the owner thereof until his intestate death on July 30, 1940. On that date pursuant to Yugoslav laws of intestacy, claimant inherited a three-sixteenths interest in the subject property, the

remaining interests being distributed as follows: one-fourth (1/4) to claimant's mother, Maria Cappelli, and three-sixteenths (3/16) each to claimant's brothers, Ante and Petar Capelli and sister Emma Capelli. The Commission further finds the inventory and personal property in the store was lost as a result of Italian action on or about April 23, 1943.

The evidence of record further shows that of the heirs referred to above, only claimant was a national of the United States on the date of loss. Accordingly, the other interests which were not owned by nationals of the United States may not be favorably considered under the provisions of the Act.

Claimant asserts that the value of her share of the inventory confiscated by Italian military forces amounted to \$37,091.00. In support of this amount she relies upon the record established in the above-mentioned Claim No. Y-427 in which she asserted a one-half interest. It must be noted that this sum included an amount for the loss of goodwill associated with the business enterprise. Loss of goodwill is not an item which may be the basis of compensation in this war damage claim.

The record indicates, however, that the inventory was the subject of an appraisal made by the Yugoslav authorities and the value of the property was stated to have been 500,000 Dinars in terms of 1938 values.

After consideration of the evidence of record, the Commission finds that the total value of the inventory on the date of loss was \$11,400.00 and concludes that claimant is entitled under the terms of Section 304(a) of the Act, to compensation in the amount of \$2,137.50 based upon her three-sixteenths (3/16) interest therein.

The Commission concludes that in granting awards on claims under Section 304(b) of the Act interest shall be allowed at the rate of 6% per annum from the date of loss, April 23, 1943, to April 23, 1948, the date of payment by the Government of Italy of \$5,000,000 pursuant to the

Memorandum of Understanding dated August 14, 1947. (See Claim of Marie Verderber, Claim No. IT-10,488; FCSC Dec. & Ann. 275 (1968).)

A W A R D

An award is made to ERMENEGILDA AMOROSO in the principal amount of Two Thousand One Hundred Thirty-Seven Dollars and Fifty Cents (\$2,137.50), with interest thereon at the rate of 6% per annum from April 23, 1943 to April 23, 1948, in the sum of Six Hundred Forty-One Dollars and Twenty-Five Cents (\$641.25).

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

MAR 24 1971

CERTIFICATION
This is a true and correct copy of the decision
of the Commission which was entered as the final
decision on **MAY 6 1971**
Francis Thautman
Clerk of the Commission

Lyle S. Garlock
Lyle S. Garlock, 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.)