

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

IN THE MATTER OF THE CLAIM OF

JACOB GABRIEL MICHAEL

Claim No. CZ-2-0285

Decision No. CZ-2-1130

Counsel for Claimant:

Williams & Connolly
By Howard W. Gutman

Oral Hearing held on Thursday, December 13, 1984 at 9:30 a.m.

FINAL DECISION

This claim in the amount of \$200,000.00 against the Government of Czechoslovakia under subsection 5(a) of the Czechoslovakian Claims Settlement Act of 1981 (Public Law 97-127, 95 Stat. 1675) is based upon the loss of a house and land in Rimavska Sobota.

The evidence of record indicates that claimant became a citizen of the United States by naturalization on June 19, 1962.

Under subsection 5(a) of the Czechoslovakian Claims Settlement Act of 1981, the Commission is given the following jurisdiction:

"The Commission shall receive and determine, in accordance with applicable substantive law, including international law, the validity and amount of claims by nationals of the United States against the Government of the Czechoslovak Socialist Republic for losses resulting from the nationalization or other taking of property owned at the time by nationals of the United States, which nationalization or other taking occurred between August 8, 1958, and [February 2, 1982]."

Accordingly, under the law the Commission can grant awards only for property which was taken after August 8, 1958, at a time when it was owned by a United States national.

By Proposed Decision dated February 21, 1984, the Commission denied this claim on the ground that claimant had not established that property in which he had an ownership interest was nationalized or otherwise taken by the Government of Czechoslovakia after the date he became a United States citizen in 1962.

Counsel for claimant filed objection to the Proposed Decision and requested an oral hearing which was conducted on December 13, 1984 at which time claimant appeared and testified.

In addition, claimant has submitted additional documentation some of which was recently obtained on a trip claimant took to Europe.

After reviewing the entire record, including the new documentation submitted, as well as the extensive testimony given by claimant, the Commission finds that claimant's father, Stefan Furchtgott was, prior to 1956, the owner of a lot and house in Rimavska Sobota. In 1956, claimant's father delivered to him a document purporting to make a gift of the property to claimant. This transfer was never recorded or registered in appropriate land records in Czechoslovakia. In considering whether an attempted transfer of real property in Czechoslovakia will be considered to be an effective transfer despite the fact that it is not recorded, the Commission has held that four conditions must be met. The transfer must be in writing, the language of the transferring document and all surrounding circumstances must establish a clear intent in the transferor to make an inter vivos transfer and to relinquish all right, title and interest in the property, there must be a delivery of the document, and there must be a reasonable explanation as to why the transfer was not recorded. The Commission finds that these four criteria have been met in the present claim.

Based upon the additional documentation submitted by claimant, the Commission finds that the house and 352 square meters of land were effectively taken by the Government of

Czechoslovakia on December 16, 1968, although a small adjoining garden of some 92 square meters apparently remains recorded in the name of claimant's father.

Claimant has submitted the purchase agreement by which his father purchased the land in September of 1935 for Kcs. 24,000 and a construction contract whereby the total construction cost of the house in 1936 was in the amount of Kcs. 83,500. At the exchange rates applicable in 1935 and 1936 when the land was purchased and the house built, the value of the land in dollars was approximately \$1,000.00 and the construction cost of the house was approximately \$3,350.00.

Between 1936 and 1968 the replacement cost of such property would have increased and thus the value of this property would have increased, which increase, would partially be offset by 30 years depreciation. It is impossible to precisely quantify price levels in a controlled communist economy such as Czechoslovakia. The Commission has sought guidance by referring to the increase in replacement cost applicable to West Germany, although undoubtedly reconstruction price increases would be greater in the free economy of West Germany. The West German figures establish that reconstruction cost increased 320%. During the same period the house would have depreciated between 20 and 25 percent and taking these West German figures as a guide, the Commission determines that claimant's property had a value of \$15,000.00 on the date of loss. In addition, claimant is entitled to an award for interest at the rate of 6% simple interest per annum from the date of loss until February 2, 1982, the effective date of the claims settlement agreement between the United States and Czechoslovakia.

The Commission, therefore, makes the following award as its final determination of this claim.

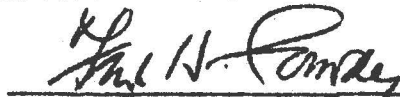
A W A R D

Claimant, JACOB GABRIEL MICHAEL, is therefore entitled to an award in the principal amount of Fifteen Thousand Dollars (\$15,000.00), plus interest at the rate of 6% simple interest per annum from December 16, 1968 to February 2, 1982 in the amount of Eleven Thousand Eight Hundred and Sixteen Dollars (\$11,816.00), for a total award of Twenty-Six Thousand Eight Hundred and Sixteen Dollars (\$26,816.00).

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

JAN 23 1985


Bohdan A. Futey, Chairman


Frank H. Conway, Commissioner


Joseph W. Brown, Commissioner

This is a true and correct copy of the decision of the Commission which was entered as the final decision.

CZ-2-0285

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IN THE MATTER OF THE CLAIM OF

JACOB GABRIEL MICHAEL

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PROPOSED DECISION

This claim in the amount of \$200,000.00 against the Government of Czechoslovakia under subsection 5(a) of the Czechoslovakian Claims Settlement Act of 1981 (Public Law 97-127, 95 Stat. 1675) is based upon the loss of a house and land in Rimavska Sobota.

The evidence of record indicates that claimant became a citizen of the United States by naturalization on June 19, 1962.

Under subsection 5(a) of the Czechoslovakian Claims Settlement Act of 1981, the Commission is given the following jurisdiction:

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Accordingly, under the law the Commission can grant awards only for property which was taken after August 8, 1958, at a time when it was owned by a United States national.

Claimant asserts the loss of a one-family house and land located 21 Lenin Street, formerly 21 Forgach Street, in Rimavska Sobota. Claimant stated that the property had been owned by his parents, Dr. and Mrs. Steven Michael, formerly Furchtgott, but that they gave him the property as a gift in 1956.

As evidence that his parents owned the subject property, claimant has submitted a bill for taxes owing on the property, sent to his father in 1937. In support of his assertion that his parents transferred the property to him in 1956, claimant has

submitted a document signed by his parents which states that they were giving him the house and land in Rimavska Sobota. The document, however, is undated, although the Commission notes that the English translation provided by the claimant lists "August 1956" on it. Claimant also submitted an affidavit executed by the claimant's parents in 1973, stating that the transfer of property to their son had occurred in 1956. Claimant further submitted two affidavits from acquaintances in Israel stating that the transfer had occurred in August 1956. The affidavits, which used identical language, were both prepared in February 1982.

The document transferring ownership of the property to the claimant also states that the parents expected to register the transfer of the property "as soon as possible" at the City Hall in Rimavska Sobota. This, however, was never done, according to claimant's letter to the Commission dated September 19, 1983.

With respect to the taking of the subject property, claimant first wrote to the Commission on May 15, 1967. He stated in that letter that his family had left Czechoslovakia in 1949, "without selling our house or making any other legal provisions about it." He also stated that "recently" the family had been informed that the house was nationalized by the Czechoslovak Government. According to this 1967 letter, therefore, the property had been taken at some point prior to May 1967. However, on claimant's claim form, he stated that the property was taken in 1970, when it was confiscated and given to another family. He also stated on the claim form that the property had been managed by his uncle after the family left Czechoslovakia in 1949 and that the property was nationalized after his uncle escaped to West Germany in 1969. An affidavit from the claimant's cousin, dated April 15, 1982, also stated that the uncle had managed the subject property until his departure from Czechoslovakia in November of 1969 and that the property was confiscated after that date.

In telephone conversations with the Commission's staff on July 29, July 30, and September 13, 1982, May 12 and December 12, 1983, as well as in letters dated April 19 and September 28, 1983, claimant was advised that, since the record contained no primary evidence of the taking of his property, it would be necessary to obtain such evidence to support his assertions of a taking by the Czechoslovak authorities. On May 31, 1983 the claimant telephoned the Commission's staff and made an appointment to discuss the claim in the Commission's offices on June 22, 1983. However, the claimant did not arrive at the scheduled time, nor did he contact the Commission to cancel the appointment.

Nevertheless, in order to assist the claimant in substantiating his claim, the Commission forwarded a request to the Government of Czechoslovakia for information about the subject property. By letter dated October 3, 1983, the Czechoslovak Government responded to the Commission's inquiry. The response stated that "J. Gabriel Michael has never been registered as the owner of the real estate. The registered owners were different persons, Czechoslovak citizens who were gradually gaining the above mentioned property from the previous owners since 1891 until today in a legal way."

Based upon the foregoing, the Commission finds that the evidence of record in this claim is not sufficient to establish that the subject property was nationalized or otherwise taken by governmental authorities in Czechoslovakia. There is no indication that legal title to the subject property was taken by governmental authorities. Nor is there any evidence to support the claimant's assertion that the authorities assumed control over the property, inasmuch as the report from Czechoslovakia indicated that ownership of the property was acquired "in a legal way."

In light of the above information from Czechoslovakia and the inconsistent information provided by the claimant as to the disposition of the property, the Commission concludes that the evidence of record does not establish that the subject property was taken by the authorities, or that, if taken, the taking occurred after June 19, 1962, the date that claimant became a citizen of the United States.

Furthermore, the Commission finds that, even if the property were considered by the Commission to have been taken in 1967, in 1969 or in 1970, the evidence of record is not sufficient to establish claimant's ownership interest in the property at that time. In light of the fact that the Czechoslovak Government has stated that the claimant was never registered as the owner of the property, and the fact that the documents submitted by the claimant to establish the date of the transfer were executed 17 years and 26 years, respectively, after the alleged transfer, the Commission concludes that the evidence does not support claimant's assertions as to his acquisition of the property.

Subsection 531.6(d) of the Commission's regulations provides:

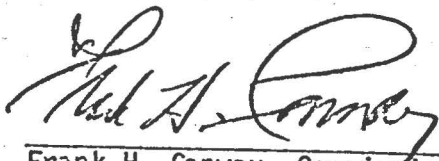
"The claimant shall be the moving party and shall have the burden of proof on all issues involved in the determination of his claim."


Based upon the foregoing, the Commission concludes that the evidence of record in this claim is not sufficient to establish a taking by the Czechoslovak authorities of the subject property, at a time when the claimant held an ownership interest in it, and at a time when claimant was a United States citizen. Accordingly, the Commission finds that this claim must be and hereby is denied.

The Commission finds it unnecessary to make determinations with respect to other aspects of this claim.

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

FEB 21 1984


Frank H. Conway, Commissioner


Joseph W. Brown, 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.)