

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

IN THE MATTER OF THE CLAIM OF

MICHAEL TOMASKO

Claim No. CZ-2-0319

Decision No. CZ-2-0268

Hearing on the Record held on OCT 17 1983

FINAL DECISION

This claim in the asserted amount of \$25,200.00 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 nine \$1,000 bonds of Czechoslovakia.

By Proposed Decision issued May 12, 1983, the Commission denied claimant's claim on the ground that there had been no express repudiation of the bond obligations by the Government of Czechoslovakia which could constitute a nationalization or other taking under international law. The Commission further noted that as an adjunct to the agreement between the Government of the United States of America and the Government of the Czechoslovak Socialist Republic on the settlement of certain outstanding claims and financial issues signed in Prague on January 29, 1982, the Czechoslovak government has undertaken to begin negotiations on defaulted dollar bonds with representatives of the American bondholders.

By letter dated May 23, 1983, claimant requested that his claim receive further consideration and the Commission has treated this letter as an objection on the record.

Claimant contends that, although the Commission may have been correct in its determination that the bonds had not been nationalized prior to the signing of the agreement on January 29, 1982, there was a subsequent implied repudiation by the failure of negotiations, subsequent to January 29, 1982, to resolve the issue of payments of such bonds. Claimant suggests that the Commission "... has failed its constituents by not prevailing on the Czechs to comply with the agreement signed January 29, 1982 to begin negotiations on defaulted bonds held by U.S. citizen bondholders."

Even if action by the Government of Czechoslovakia occurring after the entry into force of the agreement of January 29, 1982 could be considered a taking of property, the Commission would still not be authorized to find such action a basis for a compensable claim under Public Law 97-127. The authority granted to the Commission by that statute was to receive and determine claims where a loss had occurred from the nationalization or other taking of property which occurred between August 8, 1958, and the date on which the agreement of January 29, 1982 came into force, which date was February 2, 1982.

The Commission sympathizes with claimant and others in his position who hold dollar bonds issued by the Government of Czechoslovakia and hopes that negotiations may speedily find a resolution of this outstanding issue. The Commission notes, however, that it is not the Foreign Claims Settlement Commission but, rather, the Department of State which has the responsibility for monitoring those negotiations.

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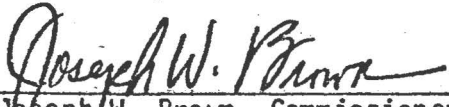
For the reasons above set forth, the Commission has no alternative but to affirm its original denial as its final determination of this claim.

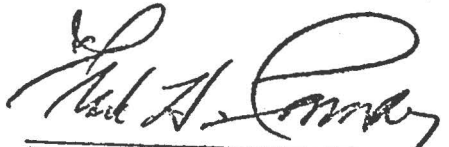
Accordingly, it is

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

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

OCT 17 1983


Joseph W. Brown, Commissioner


Frank H. Conway, Commissioner

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

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PROPOSED DECISION

This claim in the asserted amount of \$25,200.00 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 nine \$1,000 bonds of Czechoslovakia.

Claimant became a United States citizen by birth on December 6, 1903.

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.

Under the First Czechoslovakian Claims Program administered by the Commission under Public Law 85-604 for property losses of United States nationals between January 1, 1945 and August 8, 1958, the Commission held that bonds issued by the Czechoslovakian Government or by municipal

subdivisions thereof expressed in dollars were not cancelled or annulled by the decree, effective on June 1, 1953, which annulled Czechoslovakian Government bonds expressed in domestic currency (Claim of CHARLES H. SISAM, Claim No. CZ-1551, Decision No. CZ-397). These "dollar bonds" were therefore found not to be compensable under Public Law 85-604 for the reason that no taking of the owner's interests had occurred.

Under international law, in order for the debt of a government to give rise to a claim, there must first be an express repudiation of the obligation by that government.

Simply to default in payment does not constitute a taking under international law. To date, there has been no repudiation by the Government of Czechoslovakia of dollar bonds such as the ones on which this claim is based.

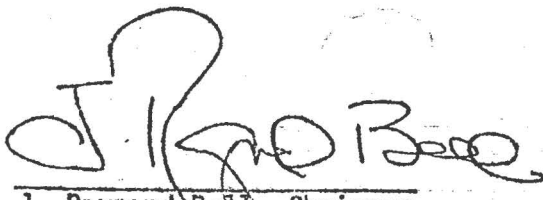
The Commission notes that as an adjunct to the Agreement between the Government of the United States of America and the Government of the Czechoslovak Socialist Republic on the Settlement of Certain Outstanding Claims and Financial Issues signed in Prague on January 29, 1982, the Czechoslovak Government has undertaken to begin negotiations on defaulted dollar bonds with representatives of the American bondholders.

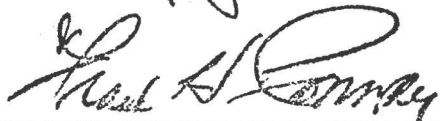
Based upon the foregoing, the Commission concludes that the Czechoslovak bonds expressed in dollars on which this claim is based have not been nationalized or otherwise taken by the Czechoslovakian Government between August 8, 1958 and February 2, 1982, the effective date of the claims settlement agreement between the United States and Czechoslovakia, as required for compensation under subsection 5(a) of the Act. Accordingly, the Commission finds that this claim must be and it is hereby 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.

MAY 12 1983


J. Raymond Bell, Chairman


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.)

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