

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

IN THE MATTER OF THE CLAIM OF

MARIANNE KABES-CRANE
ALEXANDRA M. KABES

Claim No. CZ-2-0547
CZ-2-0548

Decision No. CZ-2-1184

Counsel for Claimants:

Steven R. Creyke, Esquire

PROPOSED DECISION

These claims in the amounts of \$65,108.00 apiece against the Government of Czechoslovakia under subsection 5(a) of the Czechoslovakian Claims Settlement Act of 1981 (Public Law 97-127, 95 Stat. 1675) are based upon the loss of personal property in the estate of the claimants' grandmother, Milada Kabesova, a Czechoslovakian national who died on December 24, 1966.

MARIANNE KABES-CRANE and ALEXANDRA M. KABES both acquired United States citizenship by naturalization on April 11, 1956.

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]."

The record establishes that the claimants' grandmother, Milada Kabesova, owned considerable personal property in Czechoslovakia until her death in Prague on December 24, 1966. As listed in various inventories and evaluations prepared by Czechoslovakian authorities in 1967, the assets in Milada Kabesova's estate included household furnishings, artworks and other valuables, jewelry, clothing, cash, and bank accounts, officially appraised

at 490,940.59 crowns. Subsequently, another 65,493.50 crowns worth of property was added to the estate. In a handwritten will, dated June 6, 1966, Milada Kabesova designated her two daughters, MARIANNE KABES-CRANE and ALEXANDRA M. KABES, as the beneficiaries of her estate. The record indicates, however, that the instant claimants did not actually inherit any of the property in their grandmother's estate.

The Commission has received two reports from the Czechoslovakian Government, dated July 1, 1983 and November 23, 1983, indicating that Milada Kabesova's estate was 7,129,066.81 crowns in debt. Accompanying the second report from Czechoslovakia is a copy of a decision issued by the State Notary Office for Prague 7, dated January 3, 1968, ordering that all of the estate property be handed over to the Financial Section of the District National Committee of Prague 1 for liquidation. The resulting proceeds were then to be distributed among the creditors of the estate.

The record includes a copy of a protocol dated December 20, 1967 from the State Notary Office for Prague 7 listing the debts of Milada Kabesova's estate. They included five minor items totalling 4,943.90 crowns, along with certain "outstanding taxes (owed to the) Financial Section of the District National Committee of Prague 1" in the amount of 7,743,557.00 crowns.

It is the contention of the claimants herein that the "outstanding taxes" cited in the foregoing protocol did not represent a legitimate obligation of Milada Kabesova at the time of her death. Since this tax figure accounted for nearly all of the indebtedness of her estate, the proper deletion of this item would have made the estate solvent. The claimants assert, therefore, that the liquidation of the assets of their grandmother's estate and the distribution of the resulting proceeds among her purported creditors constituted a taking, within the meaning of subsection 5(a) of Public Law 97-127, of property rightfully belonging to them.

The "outstanding taxes" at issue in these claims go back to the 1940's and involved the "Aero Aircraft and Automobile Factory" in Prague-Vysocany. The claimants' grandfather, Dr. Vladimir Kabes, Sr., founded this enterprise in 1919 and was its sole owner. During the German occupation of Prague from 1939 to 1945, however, the factory was placed under tight controls by the occupation authorities. According to Vladimir Kabes, Jr., who remained in Czechoslovakia with his father and helped run the business throughout World War II, the "Aero" factory was highly productive during the war, generating considerable income and tax liabilities. Concerned about keeping as much tax revenue as possible out of German hands, Vladimir Kabes, Sr. reached an agreement with Czech officials at the tax office in Prague whereby a special account was opened at the Zivnostenska Banka for the deposit of tax payments as they became due. According to Vladimir Kabes, Jr. the balance in this account reached some 100 million crowns and was intended to be turned over to the Czechoslovakian Government after the war to help in rebuilding the state.

A few months after the close of World War II, the "Aero Aircraft and Automobile Factory" was nationalized by the Czechoslovakian Government under Decree No. 100/45, dated October 24, 1945, and thereafter identified as "Aircraft Industry, National Enterprise." Vladimir Kabes, Sr. therefore ceased to be the owner of the subject factory in October 1945 and he subsequently died in Prague in March 1947. The claim file contains copies of subsequent correspondence involving the Kabes family and Czechoslovakian officials, however, indicating that some tax matters involving the enterprise remained unsettled.

Two letters in January 1948 from the Kabes family's attorney, Dr. Hubeny-Belsky, to Vladimir Kabes, Jr., referring to "income and commercial benefits tax" for the years 1943 to 1946, make mention of the funds in the account of Vladimir Kabes, Sr. "meant

to pay future taxes." In the second letter, dated January 19, 1948, Dr. Hubeny-Belsky indicated that he had reminded the tax office about "the compensation claim for nationalized property" to which Vladimir Kabes, Sr. had been entitled, under the provisions of Decree No. 100/45, as a former owner of a nationalized enterprise. According to Dr. Hubeny-Belsky: "The official was willing-- provided we agree--to seize this claim against the Aircraft Industry and thus liquidate (up to its amount) the question of the taxes due." This correspondence from January 1948, therefore, suggests two possible modes of payment for the subject tax: (1) out of the funds in the special account of Vladimir Kabes, Sr. or (2) by liquidating the Kabes family's compensation claim against the national enterprise up to the amount of the tax.

There followed a letter dated February 4, 1948 from the "Aircraft Industry" to Vladimir Kabes Sr.'s brother, Dr. Frantisek Kabes, regarding the "general business profit tax" of the nationalized enterprise for the years 1943 to 1946. This letter makes reference to section 1 of Article 5 of Decree No. 100/45, the first sentence of which provides as follows:

"A national enterprise which takes over the property of a nationalized enterprise, also takes over its obligations on the vesting date."

The letter goes on to say that:

". . .due to the above cited legal stipulation the obligation to pay the due general business profit tax is taken over by our nationalized firm . . ."

In a subsequent letter to Vladimir Kabes, Jr., dated February 12, 1948, Dr. Hubeny-Belsky wrote that he had inquired at the Finance Ministry as to whether ". . .the duty of nationalized enterprises to pay taxes of former owners due before the nationalization is still valid," and received a reply in the affirmative. As this correspondence from February 1948 would indicate, therefore, the "Aircraft Industry, National Enterprise" assumed all of the tax obligations of Vladimir Kabes, Sr. at the time of "Aero's" nationalization in October 1945.

The foregoing correspondence from the winter of 1948 immediately preceded the Communist seizure of power in Czechoslovakia, which was completed in Prague by February 25, 1948. Vladimir Kabes, Jr., his wife, and two daughters emigrated from Czechoslovakia in July 1948, while Vladimir Kabes, Sr.'s widow, Milada Kabesova, stayed behind. Vladimir Kabes, Jr. indicates that his mother shortly thereafter "was served a tax claim for my father's alleged tax arrears."

The record includes a draft of a petition purportedly filed by Milada Kabesova with Czechoslovakian tax authorities in June 1951 objecting to the tax assessment against her. She reiterated that her husband had an account of over 100 million crowns at the Zivnostenska Banka in Prague for the express purpose of paying business-related taxes and reminded Czechoslovakian authorities of the compensation provision of Decree No. 100/45, which would more than cover the tax assessment. Milada Kabesova also indicated that she was personally unable to pay the tax since most of her own property had already been taken by the Czechoslovakian Government.

In view of the evidence contained in the previously discussed correspondence from January and February 1948, the legal and factual rationale for the tax assessment against Milada Kabesova is entirely unclear. Decree No. 100/45, under which the "Aero" factory was nationalized, specifically provided for the assumption by the national enterprise of the obligations of the former owner. Even disregarding this provision of Czechoslovakian law, the record indicates that the subject enterprise had more than enough assets to cover the tax at the time of its nationalization, as evidenced by a financial report prepared by government officials in February 1947 and the expressed willingness of Czechoslovakian tax authorities in early 1948 to liquidate the Kabes family compensation claim (under Decree No. 100/45) up to the amount of the tax. After the installation of the Communist regime in Czechoslovakia, however, the tax authorities appear to have completely ignored the foregoing law and imposed a personal tax

on Milada Kabesova that was eminently payable out of the funds of her husband's former enterprise. Since Milada Kabesova was financially unable to pay the tax, its practical effect was to indebt her to the Government for the rest of her life.

Based on the entire record in these claims, the Commission concludes that the imposition of the foregoing tax and its citation in the protocol from the State Notary Office for Prague 7 on December 20, 1967 as an ongoing debt of the estate of Milada Kabesova served as a pretext for that office to order the liquidation of her assets for the benefit of the Czechoslovak State. The Commission finds that the liquidation of this property and the distribution of the proceeds arising therefrom to the "creditors" of the estate constituted a taking of the subject property by the Czechoslovakian Government within the meaning of subsection 5(a) of Public Law 97-127. The Commission also determines that the subject property was taken as of January 3, 1968, when the State Notary Office for Prague 7 issued its decision ordering the take-over of the estate property by the Financial Section of the District National Committee for Prague 1 for the purpose of liquidation.

Since MARIANNE KABES-CRANE and ALEXANDRA M. KABES, as the rightful beneficiaries of the estate of Milada Kabesova, were both United States nationals at the time of taking, they are entitled to awards under subsection 5(a) of the Act.

As evidence of the value of the property in the estate of Milada Kabesova, the record includes the aforementioned inventories and evaluations listing the items of personalty, the protocol from the State Notary Office for Prague 7, and the decisions issued by this office ordering the liquidation of the estate property. These documents placed the total value of Milada Kabesova's assets at 556,434.09 crowns, and also recorded debts of the estate totalling 4,943.90 crowns separate and apart from the "outstanding taxes (owed to the) Financial Section of the District National Committee for Prague 1." After review of the foregoing documentation and currency charts available to the Commission listing

applicable exchange rates of Czechoslovakian crowns to U.S. dollars, the Commission determines that the property comprising Milada Kabesova's estate was worth \$38,500.00 at the time of loss. For their respective 1/2 interests therein, the instant claimants are each entitled to an award in the principal amount of \$19,250.00.

The Commission notes that in granting awards under subsection 5(a) of Public Law 97-127, for the nationalization or other taking of property, interest shall be allowed at the rate of 6% simple interest per annum from the date of loss to February 2, 1982, the date the claims settlement agreement between the United States and Czechoslovakia entered into force.

A W A R D S

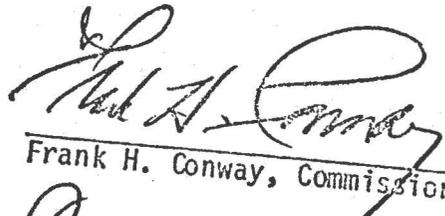
Claimant, MARIANNE KABES-CRANE, is therefore entitled to an award in the principal amount of Nineteen Thousand Two Hundred Fifty Dollars (\$19,250.00), plus interest at the rate of 6% simple interest per annum from January 3, 1968 to February 2, 1982 in the amount of Sixteen Thousand Two Hundred Sixty-Six Dollars and Twenty-Five Cents (\$16,266.25), for a total award of Thirty-Five Thousand Five Hundred Sixteen Dollars and Twenty-Five Cents (\$35,516.25).

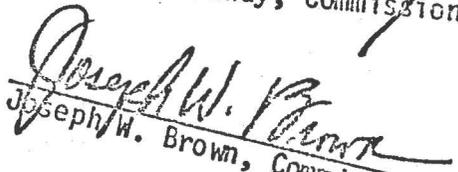
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Claimant, ALEXANDRA M. KABES, is therefore entitled to an award in the principal amount of Nineteen Thousand Two Hundred Fifty Dollars (\$19,250.00), plus interest at the rate of 6% simple interest per annum from January 3, 1968 to February 2, 1982 in the amount of Sixteen Thousand Two Hundred Sixty-Six Dollars and Twenty-Five Cents (\$16,266.25), for a total award of Thirty-Five Thousand Five Hundred Sixteen Dollars and Twenty-Five Cents (\$35,516.25).

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

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

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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