

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

IN THE MATTER OF THE CLAIM OF

ANNY MAHLER

Claim No. CZ-2-0596

Decision No. CZ-2-1189

PROPOSED DECISION

This claim in the amount of \$44,000.00 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 three apartment houses in Brno.

Claimant became a United States citizen by naturalization on March 7, 1944.

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 claimant became the owner of an apartment house at Zemedelska 17 in Brno in 1939, and that her mother, Rose Muller, became the owner in 1950 of 1/2 interests in two apartment houses located at Zahradnikova 26 and Tomanova 12 in Brno. Rose Muller, a United States citizen according to the claimant, died on June 15, 1961 leaving a will designating her daughter, the claimant herein, as the sole beneficiary of her estate.

The subject properties were administered on behalf of the claimant and her mother by a local resident of Brno until his resignation on December 31, 1971. ANNY MAHLER never appointed a

new administrator. The claimant has furnished no documentary evidence as to what ultimately became of her property interests, although she asserts that they were effectively taken by the Czechoslovakian Government as of January 1, 1972. The Commission received a report from the Czechoslovakian Government dated October 22, 1983, however, which does provide information as to what has become of the properties involved in this claim.

With regard to the apartment house at Zemedelska 17 in Brno, the report indicates that the Czechoslovak State was compelled to take over the administration, use, and maintenance of the building because the owner, ANNY MAHLER, had failed to appoint her own private administrator. Administrative duties were assumed by the Czechoslovak State pursuant to a decision of the District National Committee in Brno, dated September 7, 1978, in accordance with Law No. 41/1964.

The above act, issued on February 26, 1964 and entitled "Concerning the Management of Flats," was designed to assure the maximum use of residential units in Czechoslovakia by providing a mechanism for the assignment of dwelling space that is not fully utilized by the owners of the property or their families to other persons or entities in Czechoslovakia. The law does not affect an owner's legal title to the property, however, and includes provisions allowing the owner or various members of his family to reoccupy the dwelling unit themselves. Thus, ANNY MAHLER remains the record title holder to the apartment house at Zemedelska 17 in Brno and would appear to retain significant ownership rights in the property.

The Commission concludes, therefore, that the administration of the apartment house at Zemedelska 17 in Brno by the Czechoslovak State in accordance with Law No. 41/1964 does not constitute a nationalization or other taking of this property by the Czechoslovakian Government. Nor does the record contain any other evidence of an action taken against this property between August 8, 1958 and February 2, 1982 which could be construed as a nationalization

or other taking by the Government of Czechoslovakia, as required for compensation under subsection 5(a) of Public Law 97-127. This part of the instant claim, therefore, must be denied.

With regard to the property at Zahradnikova no. 26, the report from Czechoslovakia states as follows: "The real estate was transferred to the Czechoslovak State by decision of the State Notary in Brno (of) January 14, 1976 in connection with the suit of the Investment Bank in Prague pursuing the coverage of their claim." As indicated in a letter addressed to the claimant's mother from the Property and Foreign Exchange Administration in Prague, dated January 9, 1973, the subject bank claim originated as a mortgage against the subject property in favor of First Moravian Savings in Brno securing a loan of 450,000 crowns in 1935 to the owner of the apartment house at Zahradnikova 26 at that time. In accordance with the terms of the loan agreement, the obligation passed to the subsequent owners of Zahradnikova 26. In acquiring a 1/2 interest in the subject property in 1950, therefore, the claimant's mother also assumed the obligation for 1/2 of the outstanding mortgage. This obligation would have passed to the claimant upon the death of her mother in 1961. Pursuant to laws passed by the postwar regime in Czechoslovakia, the outstanding mortgages held by First Moravian Savings were transferred to the Investment Bank in Prague.

In the aforementioned letter of January 9, 1973 to the claimant's mother from the Property and Foreign Exchange Administration in Prague, it was suggested that the subject property be given to the Czechoslovak Government with the provision that such gift nullify the outstanding debts against the property, including the Investment Bank's mortgage. As is evident from the Czechoslovakian Government's report in 1983, however, the mortgage remained unpaid, the Investment Bank brought suit, and the subject property was transferred to the Czechoslovak State in 1976 to cover the debt.

Subsection 5(a) of Public Law 97-127 contemplates the granting of awards for the taking of property by the Czechoslovakian Government only when adequate compensation has not been paid to the U.S. owners. An award to ANNY MAHLER for the Zahradnikova 26 property could be justified only if she held some equity in the property at the time of loss--that is, if the value of the property in 1976 was greater than the amount owed on the mortgage. If the claimant held no equity in the property at the time of its loss, then the expunging of the mortgage obligation would in and of itself represent adequate compensation for the transfer of her legal title to the Czechoslovak state.

The Commission has reviewed the evidence in the file relating to the value of the Zahradnikova 26 property, including a photograph of the house, descriptions of the premises in the statement of claim and the 1983 report from the Czechoslovakian government, as well as financial statements from the years 1966 and 1969. The Commission also notes that the record contains no evidence as to the amount still owing on the mortgage in 1976, which, with accumulated interest, could conceivably have been greater than the original loan of 450,000 crowns. Based on the entire record, the Commission finds that the claimant has failed to establish that the subject property was worth more than the outstanding mortgage obligation at the time of loss. The Commission concludes, therefore, that the takeover of claimant's 1/2 interest in the Zahradnikova 26 property by the Czechoslovakian Government in 1976 does not represent a compensable loss under subsection 5(a) of Public Law 97-127. This part of the instant claim, therefore, must also be denied.

With regard to the apartment house at Tomanova 12 in Brno, the 1983 report from the Czechoslovakian Government states that this property was transferred to the Czechoslovak State, in accordance with law no. 40/1964, pursuant to a decision of the District National Committee in Brno on October 20, 1976. Based on the entire record, the Commission concludes that this act of the Czechoslovakian Government constituted a taking of claimant's

1/2 interest in the property without compensation, for which ANNY MAHLER is entitled to an award under subsection 5(a) of Public Law 97-127.

In determining the value of the property at Tomanova 12 in Brno, the Commission has considered such evidence as a financial statement from the year 1966, a photograph of the building, as well as descriptions of the premises in a letter from the acting administrator of the property to the claimant in 1974 and the report from the Czechoslovakian Government in 1983. The record indicates that the house was a two-story structure with basement containing a two-room apartment on the ground floor and a three-room apartment on the upper floor. The apartment units included baths, but had no central heating. The house was built in 1926 and, according to the 1974 letter from the acting administrator, was in a dilapidated condition requiring some 80,000-100,000 crowns worth of repairs.

Based on all the evidence of record, the Commission determines that the property at Tomanova 12 in Brno had a value of \$4,000.00 at the time of taking by the Government of Czechoslovakia on October 20, 1976. For her 1/2 interest in the property, claimant ANNY MAHLER is entitled to an award in the principal amount of \$2,000.00.

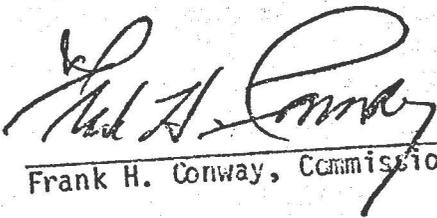
The Commission has concluded that in granting awards under subsection 5(a) of Public Law 97-127, for the nationalization or other taking of property, interest shall be allowed at the rate of 6% simple interest per annum from the date of loss to February 2, 1982, the date the claims settlement agreement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

A W A R D

Claimant, ANNY MAHLER, is therefore entitled to an award in the principal amount of Two Thousand Dollars (\$2,000.00), plus interest at the rate of 6% simple interest per annum from October 20, 1976 to February 2, 1982 in the amount of Six Hundred Thirty-Four Dollars and Thirty-Four Cents (\$634.34), for a total award of Two Thousand Six Hundred Thirty-Four Dollars and Thirty-Four Cents (\$2,634.34).

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

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

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.)