

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

IN THE MATTER OF THE CLAIM OF

ADRIENA M. LINEHAN

Claim No. CZ-2-0612

Decision No. CZ-2-0958

Oral Hearing held on Wednesday, August 15, 1984 at 9:30 a.m.

FINAL DECISION

This claim in the amount of \$335,600 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 one-half interest in a house and land in Chlum u Trebone, personal property, and the loss of income from the real property.

By Proposed Decision issued January 25, 1984, the Commission denied this claim on the ground that claimant had not established that she owned any property which had been nationalized or otherwise taken by the Government of Czechoslovakia.

Claimant objected and requested an oral hearing which was held on August 15, 1984, at which time claimant and her husband testified.

The record establishes the following facts. Prior to 1939, a house in Chlum u Trebone was owned by Gabriella Preissova, claimant's grandmother. In 1939 title to this property was transferred to Richard G. Preiss, claimant's brother. The transfer was duly recorded in the land records. Richard G. Preiss lived in the house after World War II until 1968 when he left Czechoslovakia without the required permission. In 1971, as a result of his having left Czechoslovakia in violation of Czech law, his property was confiscated, including the house registered

in his name. Richard Preiss was not a United States citizen in 1971 and, therefore, the Commission denied the claim. None of the above facts are disputed by claimant.

Claimant asserts, however, that in fact she should be considered as a half owner of the house. In support of her assertion, she has submitted two pieces of contemporaneous evidence. One is a copy of Gabriella's will dated July 10, 1938, in which she leaves the house in question to her grandchildren, claimant and Richard G. Preiss. Gabriella died in 1946. As she had transferred this house after the date of her will and was not possessed of it at the time of her death, claimant did not inherit an interest in the house as a result of her grandmother's will.

The second bit of contemporaneous documentation is a letter written by Gabriella. Although undated, it was clearly written at sometime between July 10, 1938 and April 22, 1939, the date the property was transferred to Richard.

In relevant part, the letter states:

"Dear Richard, I overlooked second time your last letter, you are writing that you would like to give a certificate to Lumir. It remains indifferent to me. Adriana is writing to me that she does not want any part of villa ownership because of Ella, etc. Definitely she would prefer to get a cash. But get the title registered in the name of both of your children, we are not going to ask her again. What is important to me is that it will not be sold, you can surely avoid that and I believe that Vera will never go against my wishes in remembrance and will not try to persuade anyone to sell. . ."

While this letter expresses a desire on the part of Gabriella that the property be transferred to both Richard and ADRIENA M. LINEHAN, as well as the apparent resistance by claimant to become an owner of the house, it does not form any basis to conclude that claimant, in fact, received any ownership interest in this house.

Claimant relies on certain affidavits prepared in conjunction with the filing of this claim by Richard Preiss, and Vera Preissova, who was the mother of Richard Preiss and stepmother of claimant. The affidavits, prepared in 1982 and 1984 are to the effect that Gabriella transferred the property to her grandson to protect the property from confiscation by the Nazis, of which she was fearful because, as a well known Czech dramatist, author and patriot, she was an outspoken anti-German during World War I and continued her opposition upon Nazi occupation of the Sudetenland and final occupation of Czechoslovakia in 1939.

In the first of two affidavits dated November 16, 1982, Vera Preissova states that the property was put in the name of Richard because ADRIENA M. LINEHAN was in the United States and serving in the U.S. Army nurse corps consequently it did not seem wise to disclose her as a co-owner. In a subsequent affidavit dated March 18, 1984, Vera Preissova states that the property was put in the name of Richard alone because his father, who was an attorney, advised it would be better to put the property in the name of Richard who was a minor on the ground that confiscation of a minor's property would be more difficult and less likely to occur and it did not seem practical or prudent to name claimant as a co-owner at the time.

The Commission notes that the letter quoted above from Gabriella makes no reference to concern about the confiscation of the property, but appears, instead, to reflect her concern that subsequent owners would voluntarily sell the property.

The period of Nazi occupation of Czechoslovakia ended in May of 1945 and a socialistic but democratic government came to power. No attempt was made to transfer the property back to the name of Gabriella prior to her death in 1946. Apparently an inheritance proceeding was held following the death of Gabriella, as claimant testified to various royalties from her grandmother's writings which were inherited by her various children and

grandchildren and are still being paid. At the time of that inheritance, however, it appears that no attempt was made to ~~evidence any ownership interest in the house in claimant.~~ It was a common practice in Czechoslovakia at the time that an inheritance of real property by a non-resident was often evidenced by ~~recording a lien upon the property in the name of such second heir,~~ but this was not done in this case. In the 32 years between 1939 and 1971, there is no evidence of any written ~~acknowledgement,~~ nor any conduct evidencing that Richard Preiss held title to this property subject to any rights of any other individual.

Therefore, except for the affidavits prepared in conjunction with this claim some 43 years after the transfer of the property, there is no contemporaneous evidence, nor anything in the course of conduct of the parties to support the assertion that claimant ever had an ownership interest in this property. The Commission further notes that the reason the property was confiscated was because it was in the name of Richard Preiss. Had an ownership interest been ~~recorded in the name of claimant,~~ there is no reason to believe that such interest in the name of claimant would have been confiscated because of the defection of Richard Preiss.

Claimant, however, insists that precedents of the Commission support her claim.

The staff of the Commission has surveyed the previous decisions of the Commission and finds no previous decision directly on point where title is recorded in the name of one individual for over a generation and a claim is subsequently made that another individual should be considered as having an ownership interest therein. The Claim of Ruzica Pereplotchikov, et al., Claim Nos. Y-2-1733, Y-2-1734, Y-2-1375, Decision No. Y-2-0252 in the Yugoslav program appears to be the closest in point. In that claim, the owner of the property, Anka Soubbotitch

attempted to convey a one-third interest in her property to each of her two daughters. On March 8, 1941, she executed a power of attorney before the Yugoslav Consulate General in London authorizing her two daughters to transfer to themselves ownership of the subject property and to enter appropriate records of such transfers in the land books. Although the claim differs from the present claim, in that the original owner prepared a written document attempting to transfer an interest to her two daughters, as these interests, in fact, were never recorded the Commission held that the two daughters failed to establish that they had acquired any proprietary interest in the property.

In the previous program involving claims against Czechoslovakia under Title IV of the International Claims Settlement Act of 1949, as amended, the Commission dealt with an asserted ownership interest which had not been recorded. In Claim of Charles Evan, Claim No. CZ-0893, Decision No. CZ-3097 the claimant purchased land in 1939 or 1940 in the name of one Frantisek Plocek. Claimant was a member of a class who were subject to the racial and religious persecutions of the Nazi regime and testified he put it in Mr. Plocek's name to protect the property from confiscation. Claimant, therefore, asserted he had a beneficial or equitable title to the land in question. The Commission, determined that ownership of real property is determined by the law of situs of the property. The property, as the property in the instant claim, was located in Bohemia. The Commission noted that prior to January 1, 1951 with respect to the laws on real property, they were governed by the General Austrian Civil Code of 1811 as amended. The Commission then concluded:

"Such code does not recognize beneficial or equitable ownership in real property. The rule is that the record owner of real property is considered as the legal owner against the whole world, and if there are rights acquired by third persons, these are contractual rights only."

The Commission cited section 322 of the General Austrian Civil Code, that the legal possession of a right in real property can be acquired only by regular entry in the public books; and by section 431 of the code, in order to transfer ownership of real property, the acquisition thereof must be evidenced by an instrument in writing, duly acknowledged and recorded in public books established for that purpose.

In Claim of Joseph Singer, Claim No. CZ-3393, Decision No. CZ-2556, claimant asserted, and submitted a series of affidavits in support thereof, to the effect that part of the property recorded in claimant's name was equitably owned by claimant's brother and therefore requested that his brother be added as a party claimant to the proceedings. The Commission held that as the property was in Slovakia, it was governed until January 1, 1951 by Hungarian customary law, however, pointed out that Hungarian customary law was based on the Austrian civil code and the Austrian laws which introduced land registers. Again citing section 322 and 431 of the Austrian civil code the Commission held that claimant's brother had acquired no ownership interest in the property.

Claimant, however, cites Claim of Betty Tomaska Papanek, Claim No. CZ-3207, Decision No. CZ-3534 as supporting her claim. By Proposed Decision in that claim, the Commission denied a substantial part of claimant's claim on the ground that claimant was not an owner of the property. Objection was made and an oral hearing was held, following which the Commission issued a Final Decision which, without discussion, found that claimant owned a 50% interest in certain large farms. An examination of the contentions made by claimant in that claim, and the evidence and testimony submitted, shows that the Commission's finding of 50% ownership was based as to most of the property upon a finding that under Hungarian law in effect in Slovakia, claimant had acquired a one-half interest in property purchased during the

marriage by her husband and as to most of the rest of the property, the evidence indicated that the property had been sold to a cooperative which, in fact, was owned by claimant and her husband. None of these determinations are relevant to the present claim. Claimant, however, points to one piece of property which claimant asserted had been transferred to a Dr. John Papanek for the purpose of avoiding confiscation, and as the Commission granted an award for all the property including this piece, the Commission must have accepted some theory of beneficial ownership in the transferor.

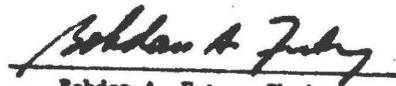
The Commission notes that the particular parcel of land constituted less than 1% of the entire claim made by Mrs. Papanek. An affidavit and oral testimony were presented by the attorney for claimant in Czechoslovakia. He testified that the parcel of just over 49 hectares was transferred in 1947 in the name of Dr. John Papanek, former Ambassador of Czechoslovakia. This was done to attempt to avoid the full effect of Czechoslovakia Decree No. 46/1948 which was then being proposed, which called for the confiscation of farmland owned by one individual in excess of 50 hectares. The attorney testified it was never the intention that John Papanek would have any ownership rights and John Papanek submitted an affidavit denying that he was ever the owner of this property. More importantly, contrary to the situation in the present claim, the Government of Czechoslovakia did not accept the purported transfer and confiscated the property as the property of claimant and her husband.

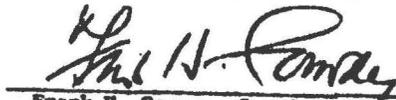
The Commission is of the view that the Papanek claim provides no support for claimant's position in the present claim.

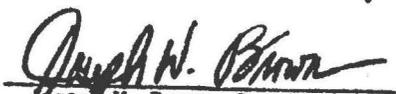
The Commission, therefore, finds that claimant never acquired any ownership interest in the property for which claim is made and therefore affirms its original denial as its final determination of this claim.

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.

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

IN THE MATTER OF THE CLAIM OF

ADRIENA M. LINEHAN

Claim No. CZ-2-0612

Decision No. CZ-2-0958

PROPOSED DECISION

This claim in the amount of \$335,600 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 Chlum u Trebone, personal property, and the loss of income from the real property.

The evidence of record indicates that claimant became a United States citizen by naturalization on February 18, 1942.

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 the time of filing her claim, claimant asserted the loss of a 1/2 interest in a two-story villa at 325 Street of Legions in Chlum u Trebone, personal property contained in the house, and the loss of rental income from the house. Claimant stated that the other 1/2 interest in the property was owned by her brother, Richard G. Preiss, in whose name the property had been registered. Information from the Czechoslovakian

Government confirms the fact that Richard G. Preiss became the owner of the subject property on April 22, 1939.

The documentation submitted by the claimant as well as the information received from the Czechoslovakian Government establishes that the property of Richard G. Preiss, including the subject house and land, was confiscated by the Czechoslovak State pursuant to a decision of the City Court in Brno dated June 16, 1961. At that time Richard G. Preiss was not a citizen of the United States.

With respect to the 1/2 interest in the property that claimant asserted she held, she stated that the subject property had originally been owned by her grandmother, Gabriella Preissova-Halbaerth, who died in 1946. Claimant submitted a letter from her grandmother indicating that it was her grandmother's wish that the property pass to both of her grandchildren. An affidavit submitted by claimant's mother states that, after German forces occupied Czechoslovakia in the beginning of World War II, the property was placed in the name of Richard Preiss as a means of preventing its takeover by the Germans. Later, ownership was continued in Richard Preiss's name because ADRIENA M. LINEHAN had become a United States citizen by 1942 and was serving in the United States Army Nurse Corps. As the family was aware that property of United States citizens was being taken over after the close of World War II, they decided to keep the property registered in Richard's name alone. An affidavit dated July 23, 1982 from Richard G. Preiss asserts that, although he was listed as the record owner of the land, his sister was to receive a 1/2 interest in the property and that she had equal responsibilities and rights to the property.

Having considered the evidence of record, including the affidavits and statements of the various parties, as well as the letters and the documents submitted, the Commission finds that the evidence is not sufficient to enable it to determine that ADRIENA M. LINEHAN owned a 1/2 interest in the subject property when it was confiscated in 1971. The affidavit from Richard G. Preiss was prepared in July of 1982, shortly before claimant filed her claim with the Commission. As Richard Preiss was not eligible to receive an award himself for the loss of his property in 1971 because he was not a United States citizen at that time, his statements about the claimant's owning 1/2 of his interest in the property are of little probative value in establishing the ownership of the subject property.

The Commission also notes that, in the grandmother's letter in which she stated that she wanted the property to go to both of her grandchildren, she stated that "Adriena is writing to me that she does not want any part of villa ownership" Moreover, Richard G. Preiss stated in his affidavit that the grandmother willed the property to him and his sister; however, the only indication of a change in ownership of the property is the transfer to Richard Preiss in 1939, seven years before the grandmother's death. No documentation has been submitted evidencing the terms of the grandmother's will, and the fact that the Czechoslovakian Government took over the entire house and land when it confiscated Richard Preiss' property indicates that it had no reason to believe that any other person had an interest in the property.

Based upon the foregoing, the Commission concludes that the record is not sufficient to establish that ADRIENA M. LINEHAN owned an interest in the property taken by the Czecho-

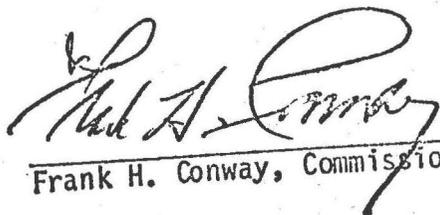
slovak Government in 1971, as is required for compensation under the Act. Accordingly, this portion of the claim must be and hereby is denied.

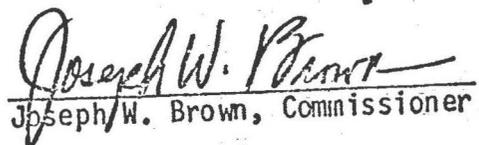
Claimant has also asserted the loss of rental income and personal property contained in the villa at the time that it was taken. The Commission finds that the evidence of record does not establish that the claimant had an ownership interest in any rent or items of property which might have been confiscated by governmental action at the same time that the real property was taken. Accordingly, the Commission concludes that this entire 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.

JAN 25 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.)

CZ-2-0612