

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

IN THE MATTER OF THE CLAIM OF

ADELE C. NACHMAN

Claim No. CZ-2-0723

Decision No. CZ-2-0895

AMENDED FINAL DECISION

On November 17, 1983, the Commission issued its decision denying this claim for the reason that the claimant failed to submit evidence to establish that the mortgage interest on which her claim is based was taken by the Government of Czechoslovakia after August 8, 1958, as required for compensation under subsection 5(a) of the Czechoslovakian Claims Settlement Act of 1981. No objection to the decision being filed, it was entered as the Commission's Final Decision on January 25, 1984.

The Commission has now received a report on this claim from the Government of Czechoslovakia which indicates and from which the Commission now finds that claimant, ADELE C. NACHMAN, owned a mortgage recorded against real property in Czechoslovakia in the amount of 350,000 Czechoslovak crowns since 1939 and that this mortgage was cancelled by the Czechoslovak State on February 1, 1967. Accordingly, the Commission concludes that the cancellation of the mortgage interest by the Government of Czechoslovakia was a taking of the claimant's property interest and that she is entitled to an award under subsection 5(a) of the Act, above, for this loss.

In determining the value of the mortgage, the Commission has considered the value of the real property against which the mortgage was registered and the value of the Czechoslovak crown in 1939 when the mortgage was recorded. Based upon the fore-

going, the Commission concludes that the mortgage interest of the claimant had a value of \$11,970.00 when it was cancelled by the Government of Czechoslovakia, and that claimant, ADELE C. NACHMAN, is entitled to compensation in that amount.

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.

The Commission notes that the report from Czechoslovakia concerning this claim indicates that there was interest due on the mortgage obligation at 6% computed as of September 1, 1938. However, neither the report nor the other evidence of record establishes that any interest was paid or, if paid, that any interest was taken by the Government of Czechoslovakia. Accordingly, the Commission finds that any claim based upon interest payments must be and it is hereby denied.

The Commission also notes that the report refers to an additional obligation of 35,000 Czechoslovakian crowns relating to the mortgage interest. The record indicates and the Commission finds that this was in the nature of a contingent fee for court costs and attorneys' fees in the event foreclosure proceedings were instituted. The record contains no evidence that foreclosure proceedings were instituted or that the Government of Czechoslovakia took any action which could constitute a nationalization or other taking of claimant's interest in such contingent fee, since there is no indication that claimant had a right to such fees, absent the institution of foreclosure proceedings. Accordingly, the Commission finds that any claim based upon this 35,000 crowns additional obligation must be and it is hereby denied.

Based upon the foregoing, the Commission concludes that the Final Decision on this claim must be reopened and amended in accordance with the findings above and that in all other respects that decision is affirmed.

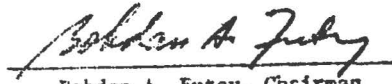
AWARD

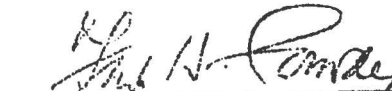
Claimant, ADELE C. NACHMAN, is therefore entitled to an award in the principal amount of Eleven Thousand Nine Hundred Seventy Dollars (\$11,970.00), plus interest at the rate of 6% simple interest per annum from February 1, 1959 to February 2, 1982, in the amount of Ten Thousand Seven Hundred Seventy-Five Dollars and Three Cents (\$10,775.03), for a total award in the amount of Twenty Two Thousand Seven Hundred Forty-Five Dollar and Three Cents (\$22,745.03).

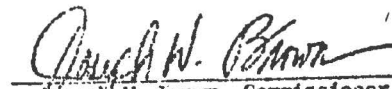
Dated at Washington, D.C.
and entered as the Amended
Final Decision of the Commission.

JUL 18 1984

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


Bohdan A. Futey, Chairman


Frank R. Conway, Commissioner


Joseph W. Brown, Commissioner

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

IN THE MATTER OF THE CLAIM OF

ADELE C. NACHMAN

Claim No. CZ-2-0723

Decision No. CZ-2-0895

PROPOSED DECISION

This claim in the total amount of \$49,175.43 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 mortgage interest on property in Czechoslovakia.

Claimant acquired United States citizenship by birth in the United States.

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.

Claimant, ADELE C. NACHMAN, had previously filed a claim, Claim No. CZ-1285, under Title IV of the International Claims Settlement Act of 1949, as amended (the First Czechoslovakian Claims Program) for this same loss. That claim, for a mortgage on improved real property located in Hodovicky and Senohraby Czechoslovakia at six percent interest from September 1, 1938, was denied for the reason that the claimant failed to submit evidence to establish that the mortgage had been annulled or cancelled by the Government of Czechoslovakia between January 1, 1945 and August 8, 1958, the period during which losses must have

occurred under the First Czechoslovakian Claims Program. This finding was upheld by the Commission on appeal from Decision No. CZ-3400 on Claim No. CZ-1285. No new evidence which would establish a taking of the interest claimed was submitted in support of the instant claim under Public Law 97-127.

Therefore, by letter dated February 8, 1983, claimant was advised that it would be in her interest to obtain and submit evidence to establish the date and manner of the taking of the mortgage interest on which her claim is based. Claimant responded by letter dated June 13, 1983 that she had tried to obtain evidence of the taking of her property interests in Czechoslovakia but had been unsuccessful. By letter dated June 17, 1983, claimant was advised that under the Commission's regulations she had the burden of proof with respect to submitting evidence to establish that her interest in property in Czechoslovakia had been nationalized or otherwise taken after August 8, 1958. She was further advised that it might become necessary for the Commission to act on her claim in the near future based upon the record available and that without evidence to establish the date or manner by which her mortgage interest was cancelled or annulled by the Government of Czechoslovakia, the Commission would have no alternative but to issue a denial. To date, no evidence or response to the Commission's letter has been received.

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."

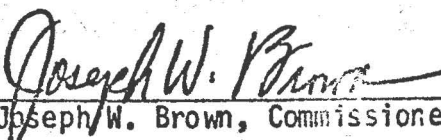
Based upon the foregoing, the Commission finds that claimant has failed to meet the burden of proof in that she has failed to submit evidence to establish that the property interests on which her claim is based were nationalized or otherwise taken by the Government of Czechoslovakia after August 8, 1958 as required for compensation under subsection 5(a) of the Act, above. Accordingly, the Commission finds that this claim must be and it is hereby denied.

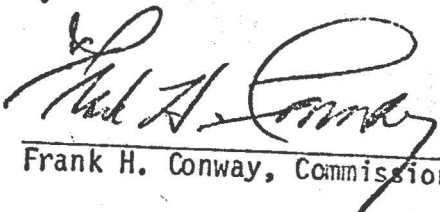
The Commission finds it unnecessary to make determinations with respect to other aspects of this claim.

While the evidence in this claim does not establish a compensable loss, nevertheless, the Commission has sent a request to the Czechoslovakian Government concerning this claim. To date, however, no response has been received. If a response is received prior to the October 31, 1984 deadline for the completion of the current program for losses in Czechoslovakia and if a change in the Commission's determination is warranted, this matter may be reopened by the Commission on its own motion.

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

NOV 17 1983


Joseph W. Brown, Commissioner


Frank H. Conway, Commissioner

This decision was entered as the Commission's
Final Decision on JAN. 25, 1984

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.)