

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

IN THE MATTER OF THE CLAIM OF

IDA HERSCH

Claim No. CZ-2-0938

Decision No. CZ-2-0946

FINAL DECISION

This claim in the amount of \$112,500.00 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 a house, 26 acres of land, a "mountain," and a stone quarry in or near the town of Szentes.

Claimant became a United States citizen by naturalization on May 19, 1959.

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, and at a time when it was owned by a United States citizen.

By Proposed Decision issued January 25, 1984 the Commission denied this claim on the ground that no evidence of sufficient probative value had been submitted to establish ownership of property, and inheritance thereof by claimant, or any action by the government of Czechoslovakia constituting a nationalization or other taking of the property on or after May 19, 1959.

By letter dated February 10, 1984 the claimant objected on the record to the proposed decision.

Claimant argues that under Article IV (1) of the agreement between the Government of the United States of America and the government of the Czechoslovakia Socialist Republic on the Settlement of Certain Outstanding Claims and Financial Issues, the Government of Czechoslovakia agreed to furnish certain information where available concerning details of ownership and value of properties. Claimant argues that this constituted a treaty which, as a supreme law of the land and as interpreted under Article 31 of the Geneva Convention, prohibits the Commission from denying her claim without receiving a response from Czechoslovakia.

Whatever may be the merits of the argument that a treaty supersedes local law in conflict therewith, and even assuming for the sake of argument that the settlement agreement was of the nature of a treaty, despite the fact that it was not a formal treaty requiring ratification by the senate, there is nothing in the terms of the agreement which prohibits the Congress from directing that the Foreign Claims Settlement Commission to adjudicate claims within a deadline established by Congress. Therefore the argument as presented by claimant does not have merit.

The Commission notes that it has forwarded a request to the Government of Czechoslovakia and as set forth in the Proposed Decision if a response is received thereto before the statutory deadline for the Commission to complete its affairs and if the response provides a basis for making this claim compensable, the Commission on its own motion will reopen this claim and make an Amended Final Decision in record of the response.

The Commission has reviewed the entire record and other than two statements from individuals stated to be "to the best of (my/our) knowledge and belief", one of which states that approximately 26 acres of land and mountain and stone quarry was owned

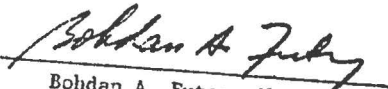
by Maximilian Keisler and family since 1925, and one that states on information and belief without providing details thereof, that property of IDA HERSCH was occupied by a two-story building belonging to the Government of Czechoslovakia in 1965, there is no evidence concerning the ownership, inheritance or taking of this property. The Commission notes that claimant indicates that her father, Maximilian Keisler died as a result of Nazi persecutory measures during World War II which create a strong possibility that his property was taken by Nazi authorities as part of the same policies of racial and religious persecution and there is no evidence of any restoration proceeding to restore title to the rightful owners.

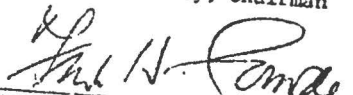
Based on this record the Commission has no alternative but to affirm its original denial as its final determination of this claim.

Dated at Washington, D.C.
and entered as the 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 H. Conway, Commissioner


Joseph W. Brown, Commissioner

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IN THE MATTER OF THE CLAIM OF

IDA HERSCH

Claim No. CZ-2-0938

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PROPOSED DECISION

This claim in the amount of \$112,500.00 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 asserted loss of a house, 26 acres of land, a "mountain," and a stone quarry in or near the town of Szentes.

Claimant became a United States citizen by naturalization on May 19, 1959.

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.

The Commission's jurisdiction is also limited by certain provisions of Title IV of the International Claims Settlement Act of 1949, as amended (Public Law 85-604, approved August 8, 1958), which are incorporated by reference in the present Act. Under those provisions, an award may not be granted in a claim unless the property upon which it is based was owned at the time of loss by a "national of the United States," the relevant definition of which is "a natural person who is a citizen of the United States."

Claimant states that her father, Maximilian Keisler, who died as a victim of Nazism during World War II, had been the owner of a house, 26 acres of land, including a "mountain," and a stone quarry near the village of Szentes, Slovakia, and that, as her father's sole heir, she is entitled to claim for the property, which was assertedly taken by the Czechoslovakian Government in 1965. However, she has submitted no documentation of her father's ownership of the property or of the date and circumstances of its nationalization. The only supporting evidence which she has submitted consists of an affidavit by one Yitzhak Feuereisen stating that "to the best of [his] knowledge and belief," the claimed property, as described in the foregoing, "was owned by Maximilian Keisler and family since 1925," and an affidavit by one Alexander Hersch stating that "to the best of [his] knowledge and belief," the property "as of the year 1965 was occupied by a two-story building belonging to the Government of Czechoslovakia."

Claimant was advised in a letter from the Commission's staff dated December 16, 1982, that the evidence and information she had submitted did not appear sufficient to enable the Commission to grant an award in her claim, since it did not establish her ownership of specific property in Czechoslovakia or the date and circumstances of its nationalization by the Czechoslovakian Government, and she was further advised that unless such evidence was received, her claim would have to be denied. To date, however, the only further submission received from the claimant consists of a letter dated February 13, 1983, stating that she was attempting to obtain the necessary documentation through an acquaintance in Czechoslovakia, together with a hand-drawn map purporting to show where her inherited property is located and an affidavit of inheritance.

Subsection 531.6(d) of the Commission's regulations provides:

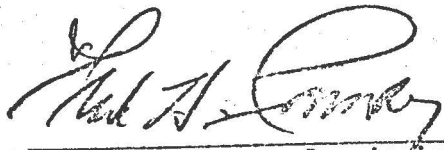
"The claimant shall be the moving party and shall have the burden of proof on all issues involved in the determination of his claim."

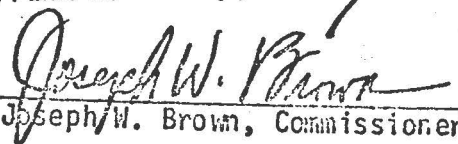
The Commission must conclude that the burden of proof has not been met in this claim, as the evidence and information thus far of record does not establish that the claimant owned property which was nationalized or otherwise taken by the Czechoslovakian Government on or after her naturalization date of May 19, 1959, when it would first have been owned by a national of the United States. Accordingly, her claim must be and it is hereby denied.

Utilizing a provision in the U.S.-Czechoslovak claims settlement agreement of 1982, the Commission has transmitted a request to the Czechoslovakian Government through diplomatic channels for information which might assist the claimant in substantiating the facts of her claim. The Commission may reopen the claim if this request, or any other source, should produce information before the statutory completion deadline of October 31, 1984, which would permit the claim to be found compensable.

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.)

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