

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

IN THE MATTER OF THE CLAIM OF

ALFRED BEER

Claim No. CZ-2-1085

Decision No. CZ-2-0880

Counsel for Claimant:

George R. Farnham, Esquire

Hearing on the Record held on JAN 23 1985

FINAL DECISION

This claim in the amount of \$4,936.90 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 two bank accounts at the Ceska Statni Sporitelna in Karvina.

The facts presented in this claim present an unusual situation. Claimant's brother had administered property in Czechoslovakia on behalf of claimant. Net proceeds were placed in two bank accounts clearly noted as being owned by claimant. At the time of the death of the claimant's brother the State Notary included these bank accounts in the estate of claimant's brother as personal property. Pursuant to the brother's will the personal property went to a third party, Valerie Uhrova, who, according to claimant, has acknowledged that these accounts were erroneously transferred to her.

In the Proposed Decision issued November 17, 1983, the Commission denied this claim on the ground that this factual situation did not constitute a nationalization or other taking of property by the Government of Czechoslovakia.

By letter dated December 6, 1983, counsel for claimant filed an objection to the Proposed Decision.

The reason given for treating the accounts as the personal property of claimant's brother appears to be that the accounts were set up as "local" accounts rather than "foreign" accounts. Even if an error were made by claimant's brother, according to Czechoslovakian law sources consulted by the Commission, there should be no penalty if one who could have set up a foreign exchange alien account or foreign exchange citizen account had in fact set up a local account. The Commission, therefore, believes that an error was made by the State Notary in transferring claimant's accounts through the estate of his brother to the individual who inherited his brother's personal property. An error in the handling of an inheritance preceeding, however, would not, in the Commission's view, constitute a nationalization or taking of property if the government received no benefit from the error, even though the Commission recognizes that the State Notary is an agent of the Government.

Claimant, however, argues that this error by a State Notary did constitute a direct benefit to the Government of Czechoslovakia due to the fact that, treating the bank accounts as an inheritance made them subject to substantial inheritance taxes which went to the Government of Czechoslovakia. Claimant has submitted evidence of the inheritance taxes imposed by the Government of Czechoslovakia which vary with the size of the estate and the category of the inheritor. Based upon claimant's calculations he asserts that Kcs. 20,882 were received by the Government of Czechoslovakia due to the error of the State Notary.

The Commission has carefully considered this argument. The factual situation is unique among those claims which have been considered by the Commission in this program. The Commission finds that action by a government agent (the State Notary) improperly caused a transfer of funds by way of inheritance tax

from the bank accounts which rightfully belong to claimant and is willing to conclude that this transfer constitutes an "other taking" of property as that term is used in Public Law 97-127. It appears that the State Notary's action occurred on January 28, 1980 and the Commission will find that claimant's property was taken as of that date. The Commission concludes that the dollar value of the inheritance taxes which were inappropriately taken by the Government of Czechoslovakia was in the amount of \$1,982. Claimant is entitled to an award in that principal sum. In addition, the Commission has held that claimant is entitled to simple interest at 6% per annum from the date of loss until February 2, 1982, the effective date of the settlement agreement between the United States and Czechoslovakia.

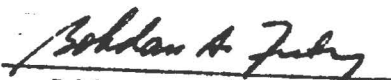
The Commission therefore makes the following award as its final determination of this claim.

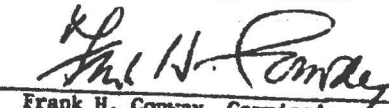
A W A R D

Claimant, ALFRED BEER, is entitled to an award in the principal amount of One Thousand Nine Hundred Eighty-Two Dollars (\$1,982.00), plus interest at the rate of 6% simple interest per annum from January 28, 1980 to February 2, 1982 in the amount of Two Hundred Forty Dollars (\$240.00), for a total award of Two Thousand Two Hundred Twenty-Two Dollars (\$2,222.00).

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.

CZ-2-1085

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IN THE MATTER OF THE CLAIM OF

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PROPOSED DECISION

This claim in the amount of \$4,936.90 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 two bank accounts in the Ceska Statni Sporitelna in Karvina.

The evidence of record indicates that claimant became a United States citizen by naturalization on May 26, 1952.

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]."

Claimant has asserted the loss of two bank accounts in the Ceska Statni Sporitelna in Karvina, one containing 16,375.70 crowns and the other containing 35,165.50 crowns. The accounts were established by claimant's brother after World War II for claimant's half of the rental income from property jointly

owned by the brothers. As the brother was a resident of Czechoslovakia after the war, he administered the claimant's interests in Czechoslovakia, since claimant himself had left in 1939.

Under Czechoslovak regulations, accounts established for a nonresident should have been classified as "foreigner's accounts" or accounts set up for an "exchange alien." Instead, claimant's brother established regular interest-bearing bank accounts for the claimant.

Claimant's brother died in Czechoslovakia on June 9, 1979. Under his will, the claimant was the heir to his brother's real property, but the personal property was to pass to the brother's housekeeper. In the course of sorting out the brother's belongings after his death, the passbooks set up in the claimant's name were discovered and reported to the State Notary's Office, which was handling the estate proceedings. Because Czechoslovakian laws did not recognize the validity of deposits for foreigners being made into a regular, non-foreigner's bank account, the funds were transferred to the brother's estate, whereupon they passed to the housekeeper. The housekeeper, however, recognized that the funds were the property of the claimant and stated, through her representative, that she would transfer the funds as soon as a foreign account was set up for the claimant at the Statni Banka in Prague. This was never done, however, according to the claimant.

The facts of this claim indicate that the two accounts in claimant's name in Czechoslovakia were transferred to his brother's estate by the State Notary's Office in Karvina. They then passed to the control of the brother's housekeeper. There is no evidence that governmental authorities ever took the subject accounts for their own benefit and use. The authorization by the State Notary's Office to transfer the bank accounts

to the decedent's estate did not constitute a taking over or an expropriation of the subject accounts. The mere facilitation of the transfer of funds from one private individual to another, without the funds' being used for the benefit of the State, did not constitute an expropriation of the funds. For this reason, the Commission finds that the bank accounts for which loss is asserted were not the subject of a nationalization or other taking by Czechoslovak governmental authorities, as is required for compensation under subsection 5(a) of the Act. Accordingly, this portion of the claim must be and hereby is denied.

After the death of the claimant's brother in 1979, a new account for the claimant was established at the State Savings Bank in Karvina and proceeds from the continuing rental of the claimant's property were deposited in that account. As of the end of 1981, the new bank account had a balance of 13,900 crowns. The evidence of record establishes that this account is a blocked account, subject to Czechoslovak currency regulations.

Currency regulations in Czechoslovakia, as in many other countries, place limitations upon the free use of bank accounts, allowing withdrawal within Czechoslovakia in certain amounts for certain specified purposes but prohibiting the conversion of the funds to foreign currency. An account subject to such regulations is termed a "blocked account."

The Commission has held that it is a well-established principle of international law that such blocking of a bank account is an exercise of sovereign authority which does not give rise to a compensable claim. (See In the Matter of the Claim of IBM World Trade Corporation, Claim No. HUNG-21107, Decision No. HUNG-2030, Final Decision).

While the fact of the blocking of the account may cause non-residents of Czechoslovakia some hardship, the Commission concludes that such action does not constitute a nationalization, expropriation or other taking as required for compensation under section 5(a) of the Act.


For the foregoing reasons, 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.

NOV 17 1983


Joseph W. Brown, Commissioner


Frank H. Conway, 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-2-1035