

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

IN THE MATTER OF THE CLAIM OF

MILAN KESLER

Claim No. CZ-2-1275

Decision No. CZ-2-1257

AMENDED FINAL DECISION

This claim in the amount of \$25,000.00 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 improved real property in Luka pod Mednikem, district of Jilove.

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]."

By Proposed Decision dated March 20, 1984, the Commission denied this claim on the grounds that the record failed to establish the claimant's ownership of the subject property or that it was nationalized or otherwise taken by the Czechoslovakian Government on or after August 14, 1973, the date the claimant became a United States citizen. MILAN KESLER filed an objection on March 30, 1984 and advised the Commission that he had some new documentation to submit.

Thereafter the Commission received a report from the Czechoslovakian Government, dated June 14, 1984, confirming that Milan Kesler owned a cabin in Luka pod Mednikem, by purchase in 1951, and that he had leased the building lot on which the cabin

was located and an adjoining parcel of forest land, which were owned by the community of Luka pod Mednikem, for a period of twelve years beginning on September 23, 1952. The report stated that the cabin subsequently became property of the Czechoslovak State following court judgments in Prague dated August 29, 1975 and February 1, 1977, which held that the cabin constituted abandoned property as defined by section 453, subsection 2, of the Civil Code. The Commission forwarded a copy of the report to the claimant, asking for his comments.

As no further information or documentation was forthcoming, the Commission issued a Final Decision on January 23, 1985. In this decision the Commission surmised that the claimant's lease for the subject land expired in 1964 and that the cabin was subsequently nationalized by the Czechoslovak State because the claimant, who emigrated from Czechoslovakia in 1967, had effectively abandoned the property. The Commission held that a takeover of the cabin under these circumstances did not constitute a violation of international law for which an award was contemplated under Public Law 97-127, and therefore affirmed its previous denial of this claim.

The claimant has now submitted some new documentation to the Commission, under cover letter dated February 14, 1985, indicating that his cabin was treated as abandoned property under Czechoslovak law and nationalized by the Czechoslovak State as punishment for his departure from the country. The Commission finds that a taking under these circumstances represents a violation of customary international law for which an award would be contemplated under Public Law 97-127. Accordingly, the Commission concludes that Milan Kesler's claim is compensable under subsection 5(a) of the Act.

In determining the value of the subject cabin, the Commission has relied primarily on the information contained in the 1984 report from the Czechoslovakian Government. This report

states that the cabin was built during 1940's, is a one-story building covering 45.45 square meters, contains two rooms, a cooking area, and a porch, and is supplied with electricity. The cabin is not habitable yearround, however, which would appear to indicate that it is not a substantial structure and may not have any heating. The claimant describes the cabin as a "weekend house." Based on the entire record, the Commission determines that the cabin had a value of \$1,000 at the time of taking by the Czechoslovakian Government on February 1, 1977.

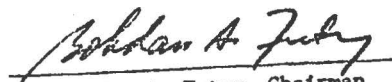
The Commission has concluded that in granting awards under subsection 5(a) of Public Law 97-127, for the nationalization or other taking of property, interest shall be allowed at the rate of 6% simple interest per annum from the date of loss to February 2, 1982, the date the claims settlement agreement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

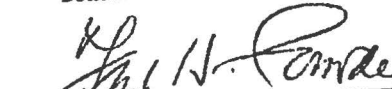
AWARD

Claimant, MILAN KESLER, is therefore entitled to an award in the principal amount of One Thousand Dollars (\$1,000.00), plus interest at the rate of 6% simple interest per annum from February 1, 1977 to February 2, 1982 in the amount of Three Hundred Dollars and Seventeen Cents (\$300.17), for a total award of One Thousand Three Hundred Dollars and Seventeen Cents (\$1,300.17).

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

FEB 25 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

MILAN KESLER

Claim No. CZ-2-1275

Decision No. CZ-2-1257

Hearing on the Record held on JAN 23 1985

FINAL DECISION

This claim in the amount of \$25,000.00 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 improved real property in Luka Pod Mednikem, district of Jilove.

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]."

By Proposed Decision issued March 20, 1984, the Commission denied this claim on the ground that claimant had not established ownership of any property in Czechoslovakia nor had he established that any property was nationalized or otherwise taken on or after August 14, 1973, the date claimant became a United States citizen.

By letter dated March 30, 1984, claimant objected on the record and stated that he had new documentation which he would forward to the Commission.

Although claimant has forwarded no new documentation, the Commission, however, has received a response to its official request to the Government of Czechoslovakia for information concerning this claim. The response states as follows:

"It was found out that Milan Kesler owned a cabin No 42/I in the Luka pod Mednikem cadastre which he obtained through a purchase in 1951. The cabin is located on a lot which is owned by the community of Luka pod Mednikem. The building lot and the wooded area was by the American claimant only leased. This is confirmed by a lease drawn up September 23, '52 through which the MNV (Local Natl. Committee) leased to Milan Kesler both mentioned lots for the period of 12 years.

The judgement of the District Court Prague West from August 29, '75 corresponding to the judgement of the Regional Court in Prague dated February 1, '77 contains the conclusion that the above mentioned cabin with all equipment is the property of the Czechoslovak State as the abandoned property pursuant to the sec, 453, subsec, 2 of the Civil Code.

The claimed cabin is wooden, one story building, without basement. It has electricity and the roof is made out of asbestos shingles. The cabin cannot be used all year-around. It was built in 1945 - 48. The built-up area including the porch is 45.45 m². The cabin has 2 rooms and a cooking area."

An untranslated copy of this response was forwarded to claimant on August 2. On September 19, 1984 the copy of the translation was forwarded and claimant was requested to submit any comments or additional evidence he wished considered by the Commission. There has been no further response from claimant. Therefore, the evidence before the Commission is that claimant was the owner of a small cabin which was upon land owned by the community. A lease was entered in 1952 for 12 years and would therefore have expired in 1964. Apparently, claimant left Czechoslovakia in 1967 without making any further lease arrangements. Although in the Statement of Claim claimant states that the "property was not abandoned when the claimant left the country, but it was arranged to be maintained by a responsible

party " no further information or evidence concerning such arrangements has been submitted nor has claimant forwarded any comment after receipt of the report from Czechoslovakia.


Subsection 2 of section 453 in the 1964 Civil Code, provides that abandoned and hidden property whose owner is unknown falls to the ownership of the state. The section further applies to property where the owner is known, if the facts show an intention to abandon the property.

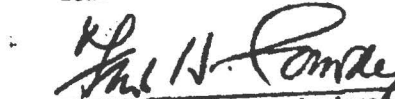
Under the facts as presented, the Commission concludes that the Government was within its sovereign rights in implementing the provisions of section 453 of the 1964 Civil Code and did not violate acceptable standards of international law to constitute the basis of a compensable claim.

For the above reasons, the Commission affirms its original denial as its final determination on 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

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

IN THE MATTER OF THE CLAIM OF

MILAN KESLER

Claim No. CZ-2-1275

Decision No. CZ-2-1257

PROPOSED DECISION

This claim in the amount of \$25,000.00 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 improved real property in Luka Pod Mednikem, district of Jilove.

Claimant became a United States citizen by naturalization on August 14, 1973.

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 claimant asserts that he owned a weekend house in Luka Pod Mednikem, district of Jilove, whose management he left in the hands of a private citizen in Czechoslovakia at the time of his immigration to the United States in 1967. According to MILAN KESLER, the subject property was taken by the Czechoslovakian Government on February 1, 1977. The record contains no evidence of the claimant's ownership of the property in Luka Pod Mednikem, however, nor evidence of its taking by the Czechoslovakian Government.

The Commission sent a letter to the claimant on January 25, 1983 requesting that he submit whatever documentation he might have that could help to establish his ownership of the weekend

house involved herein. The Commission also asked for details about the alleged taking of this property on February 1, 1977 and for the submission of whatever documentation the claimant might have showing the date and circumstances of the loss. The Commission has received no response to its letter.

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

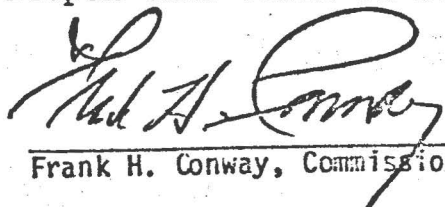
"The claimant shall be the moving party and shall have the burden of proof on all issues involved in the determination of his claim."

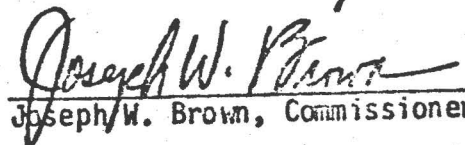
Based on the foregoing requirement and the lack of evidence in this claim, the Commission concludes that the record does not establish a compensable loss under subsection 5(a) of the Czechoslovakian Claims Settlement Act of 1981. Therefore, the Commission finds that this claim must be and it hereby is denied.

In accordance with the provisions of the claims settlement agreement signed by the United States and Czechoslovakia in 1982, the Commission referred this claim directly to the Czechoslovakian Government in hopes of obtaining additional information about the ownership, value, and taking of the subject property in Luka Pod Mednikem. Thus far the Commission has received no report from Czechoslovakia. Should the Commission receive information before the end of this claims program confirming MILAN KESLER's ownership of the subject property and indicating that this property was nationalized or otherwise taken between August 14, 1973, the date the claimant acquired United States citizenship, and February 2, 1982, the effective of the claims settlement agreement between the United States and Czechoslovakia, MILAN KESLER will be so advised and the Commission will reopen this claim on its own motion.

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

MAR 20 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.)