

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

IN THE MATTER OF THE CLAIM OF

ROSE FREUND, AS EXECUTRIX
OF THE ESTATE OF LEO FREUND

Claim No. CZ-2-1296

Decision No. CZ-2-1467

Counsel for Claimant: John P. Reiner & William W. Reiner, Esqs.

AMENDED FINAL DECISION

This claim in the amount of \$166,000.00 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 at 12/14 at Panska ulice in Brno.

Claimant ROSE FREUND acquired United States citizenship by naturalization on February 18, 1947. She filed this claim as executrix and sole legatee of the estate of Leo Freund, her husband, who was naturalized as a United States citizen on June 12, 1951 and died on August 4, 1965.

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 June 20, 1984, the Commission denied this claim on the ground that the record failed to establish the claimant's ownership interest in the subject property, or that the property had been nationalized or otherwise taken by the Czechoslovakian Government within the meaning of

subsection 5(a) of Public Law 97-127. The claimant, through counsel, filed an objection on July 11, 1984 and submitted some additional documentation for the Commission's review. As these materials still failed to satisfy the requisites for a compensable claim, the Commission issued a Final Decision on November 28, 1984 affirming its denial of this claim.

The Commission has now received a report from the Czechoslovakian Government which confirms that Leo Freund became the owner during the 1930s of apartment building nos. 391 and 392 with the associated building lot in Brno. The report indicates that the subject property was sold at auction by court order to satisfy a claim of the State Savings Bank in Brno on May 22, 1964, whereupon the ownership of the property was transferred to the Czechoslovak State. The Commission sent a copy of the report to the claimant's attorney who responded with a letter to the Commission on December 30, 1984 petitioning to reopen this claim. Claimant's attorney also submitted some additional documentation from the claimant, including a copy of the 1964 court decision indicating that the subject property--identified as house nos. 391 and 392, lot no. 1066, with the address of no. 12/14 Panska in Brno--was sold to the Central State Veterinary Institute of the Czechoslovak Ministry of Agriculture for a price of 131,067 crowns. Based on this new evidence establishing Leo Freund's ownership of the subject property and its nationalization by the Czechoslovakian Government in 1964, as well as some additional evidence in the report from the Czechoslovakian Government with regard to the value of the subject property, the Commission hereby grants the claimant's petition to reopen this claim.

The compensability of this claim hinges on whether Leo Freund received adequate compensation for the sale of the property in 1964. The record now establishes that the sale price was 131,067 crowns. At the "tourist and/or support" exchange

rate of Kcs. 14.36 : \$1.00, which was instituted by the Czechoslovakian Government in 1957 and which the Commission determines to be the fairest exchange rate to use in measuring the relative worths of the two currencies, 131,067 crowns would have converted to \$9,127.23.

The claimant indicates that this sum was deposited into an account at the State Savings Bank in Brno, although there is no indication in the record that she has ever contacted the bank to ascertain the status of this account, either by letter or during a trip to Czechoslovakia in 1982 when she did inquire about the subject real property. There is no basis in the record for the Commission to presume that the sale price was not deposited into an account in the name of Leo Freund or that such account is not still in existence at the State Savings Bank in Brno. The claimant may well be correct in asserting, as she did in a letter to the Commission dated June 16, 1983, that "the account was blocked and no payment was made from it to the late Leo Freund or his estate." Currency regulations in Czechoslovakia, as in many other countries, place limitations upon the use of bank accounts, allowing withdrawals in certain amounts for specified purposes within Czechoslovakia, but severely restricting the right to convert such funds into foreign currency for transfer out of the country. An account subject to such regulations is termed a "blocked account." The Commission has held that the blocking of a bank account is an exercise of sovereign authority which does not give rise to a compensable claim under international law or under the Czechoslovakian Claims Settlement Act of 1981 (Claim of HELEN TASHNER HUGHES, Claim No. CZ-2-0221, Decision No. CZ-2-0763). Accordingly, the Commission finds that the 131,067 crowns paid for the subject property in 1964 did represent some compensation to Leo Freund.

In a statement to the Commission dated December 17, 1984, ROSE FREUND alleged that only about 77,000 crowns were deposited into an account at the State Savings Bank in Brno, after 54,234 crowns had been deducted to cover the bank's mortgage against the property. The claimant asserted that the real property was free of encumbrance at the time her husband left Czechoslovakia in 1947 and that the mortgage must therefore have been unilaterally imposed by the Czechoslovakian Government. The claimant has submitted no documentation in support of this contention. Even if the mortgage was imposed by the Czechoslovakian Government after Leo Freund's departure from the country, it seems quite likely that it would have represented a charge against the property covering costs incurred by the government for ongoing maintenance and repairs. As such, the amount of the mortgage would be offset by the increase in the value of the real property. Thus, regardless of whether the 131,067 crowns were all deposited into a bank account on behalf of Leo Freund or used in part to liquidate the mortgage against the property, the entire sum would have represented compensation to the claimant's husband. Accordingly, the Commission finds that Leo Freund received the equivalent of \$9,127.23 for the subject real property.

In determining whether this amount represented adequate compensation for the property, the Commission has considered the description of the premises in the report from the Czechoslovakian Government, the claimant's own description of the property, as well as comparative value determinations the Commission has made in the current program for similar properties in Czechoslovakia. According to the Czechoslovak report, the building was constructed in 1908, contained four stories in the front, three stories in the rear, and a basement, and was situated on a lot of 717 square meters. At the time of taking in 1964, stores and warehouses were located in the basement, while a trade school and

ten apartment units with bath were located above. The building had central heating and an elevator. According to the claimant, the building contained office space and a mezzanine on the ground floor, above which were five additional floors housing three to four apartments each. Based on the entire record in this claim, the Commission determines that the building and land had a value of \$30,000 at the time of loss in 1964. Accordingly, the Commission finds that the amount paid for the property by the Czechoslovak State did not represent adequate compensation. The Commission concludes, therefore, that ROSE FREUND, AS EXECUTRIX OF THE ESTATE OF LEO FREUND, is entitled to an award under subsection 5(a) of Public Law 97-127.

Subsection 7(a) of Public Law 97-127 incorporates section 407 of the International Claims Settlement Act of 1949, as amended, which provides:

"In determining the amount of any award by the Commission there shall be deducted all amounts the claimant has received from any source on account of the same loss or losses with respect to which such award is made."

Since Leo Freund was paid the equivalent of \$9,127.23 for the nationalization of the subject real property in Brno in 1964, the Commission finds that this sum represents partial compensation which shall be deducted from the total value of the property at that time in determining the claimant's rightful award. Thus, the claimant herein is entitled to an award in the principal amount of \$20,872.77 for the loss of the apartment building and land in Brno.

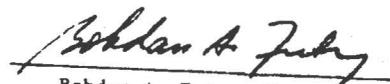
The Commission has concluded that in granting awards under subsection 5(a) of Public Law 97-127, for the nationalization or other taking of property, interest shall be allowed at the rate of 6% simple interest per annum from the date of loss to February 2, 1982, the date the claims settlement agreement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

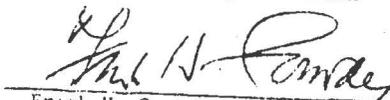
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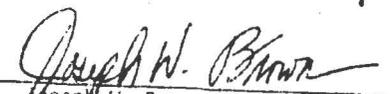
Claimant, ROSE FREUND, AS EXECUTRIX OF THE ESTATE OF LEO FREUND, is therefore entitled to an award in the principal amount of Twenty Thousand Eight Hundred Seventy-Two Dollars and Seventy-Seven Cents (\$20,872.77), plus interest at the rate of 6% simple interest per annum from May 22, 1964 to February 2, 1982 in the amount of Twenty-Two Thousand One Hundred Sixty-Three Dollars and Thirty-Three Cents (\$22,163.33), for a total award of Forty-Three Thousand Thirty-Six Dollars and Ten Cents (\$43,036.10).

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
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IN THE MATTER OF THE CLAIM OF

ROSE FREUND, AS EXECUTRIX
OF THE ESTATES OF LEO FREUND

Claim No. CZ-2-1296

Decision No. CZ-2-1467

Counsel for Claimant: John P. Reiner & William W. Reiner, Esqs.

Hearing on the Record held on NOV 28 1984

FINAL DECISION

This claim in the amount of \$166,000.00 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 Brno.

By Proposed Decision issued June 20, 1984, the Commission denied this claim on the ground that claimant had not established any ownership interest in herself or any predecessor in interest in the building for which claim was made, nor had she established that any confiscation of the property occurred after August 8, 1958.

Counsel for claimant objected on the record to the Proposed Decision and submitted two documents. One is a document which refers to LEO FREUND as a co-owner of property No. 3754 of the land registry entry. The second document makes reference to land entry 3754 described as Land Class 5 of 7 ars 20 square meters (.18 acre). The document states it is relating the status of the property as of 1941. It is not established that the property to which reference is made in these documents is the same property for which claim has been submitted. In this regard LEO FREUND previously filed Claim No. CZ-1693 in the first Czechoslovakian claims program which adjudicated losses arising between January 1, 1945 and August 8, 1958. In that claim LEO FREUND asserted the loss of a 1/2 interest in an apartment house described as No. 8 Masary Kova, Brno. Extensive documentation was submitted in that program concerning that apartment house in-

cluding detailed land record entries, correspondence, and decrees relating thereto. A letter dated October 16, 1959, from claimant's counsel stated that claimant had filed a "statement of assets" concerning the apartment house for which claim was made in the program. Counsel in that letter stated "in this connection claimant adds that apart from the building in question, he owned another lot in a suburb of Bruno. Although the value of that lot was stated to be Kcs. 4,000 in the statement of assets, claimant sold it in 1948 for Kcs. 70,000." It appears from counsel's letter that the assets listed by claimant in his "statement of assets" included only the apartment house, the subject of the previous claim, and the lot which was sold in 1948. There is no reason to believe that the evidence now submitted does not refer to that lot.

The Commission also notes, that apparently in the "statement of assets" LEO FREUND made no mention of the apartment house for which claim is presently filed and although in his previous claim extensive evidence was submitted indicating that LEO FREUND kept in close contact with his interests in Czechoslovakia, there is absolutely no such similar documentation submitted in the present claim.

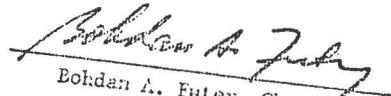
In the previous claim claimant established that the apartment house for which claim was therein made was nationalized in 1953 and received an award in the amount of \$63,200.84.

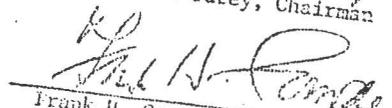
On the state of this record, therefore, the Commission is presented with no documentary evidence concerning the ownership of the property and no evidence, whatsoever, concerning its history, management, or nationalization by the Government of Czechoslovakia and therefore the Commission has no basis to change its denial of this claim.

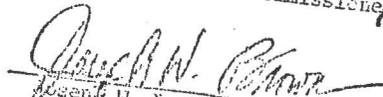
As previously set forth in the Proposed Decision the Commission has forwarded a request to the Government of Czechoslovakia to see if any evidence of ownership or nationalization of this property can be obtained. If at any time prior to February 24, 1985 the Commission should receive evidence from the Government of Czechoslovakia or additional evidence from the claimant which would establish that this claim is in whole or in part compensable, the Commission on its own motion will reopen the claim and issue an appropriate award.

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

NOV 28 1984


Bohdan A. Fuley, Chairman


Frank H. Conway, Commissioner


Joseph W. Brown, Commissioner

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Claim No. CZ-2-1296

Decision No. CZ-2-1467

Counsel for claimant: John P. Reiner & William W. Reiner, Esqs.

PROPOSED DECISION

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Under subsection 5(a) of the Czechoslovakian Claims Settlement Act of 1981, the Commission is given the following jurisdiction:

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The claimant asserts that her husband, Leo Freund, owned a 7-story apartment building located at 12/14 Panska ulice in Brno. The record contains no evidence of such ownership aside from a letter to the Commission from Leo Freund, dated August 15, 1964, in which he referred to a "5-story apartment house" in Brno which had been acquired at "public auction" by the Czechoslovakian

Department of Agriculture. In her statement of claim ROSE FREUND asserted that the subject property had been sold on June 18, 1964 to the State Veterinarian Institute in Brno for 131,067.00 crowns, although she submitted no documentary evidence of this transaction. It is the claimant's contention that the sale of the subject property constituted a taking by the Czechoslovakian government since fair compensation was not received.

By letter dated January 28, 1983, the Commission requested the claimant, through counsel, to submit whatever additional documentation or information she had concerning the alleged sale of the subject property in 1964 and the disposition of the 131,067.00 crowns paid therefor. Counsel for claimant responded by letter on June 16, 1983 indicating that ROSE FREUND had no documentation concerning the sale, but that she had visited Brno in July 1982, met with the former manager of the apartment building, and been advised by a current employee of the Central Veterinarian Institute that this organization had purchased the building at an auction on June 18, 1964. According to this source, the 131,067.00 crowns were deposited into an account at the State Savings Bank in Brno. The claimant asserts that she knew nothing about this account, which in any event was blocked since no payments were ever made therefrom to Leo Freund or his estate. The Commission has received no further documentation or information from the claimant.

Thus, the evidence of Leo Freund's ownership of the apartment building at 12/14 Panske ulice in Brno remains sketchy. His 1964 letter to the Commission did not identify the property in Brno by address and described the improvements as a 5-story building rather than the 7-story building claimed for by ROSE FREUND. The record is still without documentary evidence of the sale of the subject property in 1964. Furthermore, the transaction as described by ROSE FREUND does not necessarily indicate a nationalization or other taking of the property by the Czechoslovakian Government within the meaning of subsection 5(a)

of the Czechoslovakian Claims Settlement Act of 1981. 131,067.00 crowns were apparently paid for the subject property and deposited into a bank account in Brno over which ROSE FREUND may well have certain rights of disposition within Czechoslovakia. There is no basis in the record for the Commission to conclude that the sale price did not represent fair compensation since the claim file contains no documentary evidence of the value of the property. If adequate compensation was paid for the apartment building in 1964, then Leo Freund would not have suffered a loss under international law for which an award would be contemplated under the Act.

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."

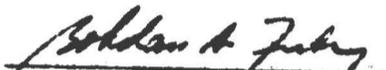
Based on the foregoing requirement and the paucity of evidence in this claim, the Commission concludes that the record does not establish a compensable loss under subsection 5(a) of the Czechoslovakian Claims Settlement Act of 1981. Therefore, the Commission finds that the instant claim must be and it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

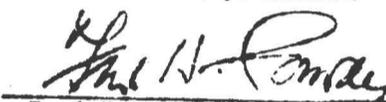
In accordance with the provisions of the claims settlement agreement signed by the United States and Czechoslovakia in 1982, the Commission referred this claim directly to the Czechoslovakian Government in hopes of obtaining additional information about the apartment building at 12/14 Panske ulice in Brno. Thus far the Commission has received no report from Czechoslovakia. Should the Commission receive information before the end of this claims program confirming that Leo Freund was the owner of the subject property and indicating that the Czechoslovakian Government took some action against the property which could be construed as a nationalization or other taking thereof between

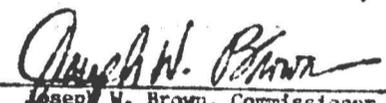
August 8, 1958 and February 2, 1982, as required for compensation under subsection 5(a) of the Act, the claimant will be so advised and the Commission will reopen this claim on its own motion.

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

JUN 20 1984


Bohdan A. Futey, Chairman


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.)