

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

IN THE MATTER OF THE CLAIM OF

ANTON ZAJDLIK

Claim No. CZ-2-1535

Decision No. CZ-2-0571

Oral Hearing held on Thursday, April 26, 1984 at 9:00 a.m.

FINAL DECISION

This claim in the amount of \$226,145.83 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 and unimproved real property, including a family dwelling, grocery store, garage for a taxi business and personal property in Czechoslovakia.

By Proposed Decision issued September 22, 1983, the Commission denied this claim on the ground that claimant had not established that property for which he had made claim had been nationalized or otherwise taken by the Government of Czechoslovakia at a time when it was owned by a United States citizen. Claimant objected to the Proposed Decision and requested an oral hearing which was held on April 26, 1984, at which time claimant appeared in support of the objection.

The property for which claim is asserted was originally owned by claimant's parents, Jan and Ludmila Zajdlik. They became United States citizens in January 1965. In the Statement of Claim, claimant asserted that the property was expropriated subsequent to 1965, although it had been administered by the state from 1948. The evidence establishes that part of the property, including a business with inventory was taken as of February 28, 1948 when claimant's mother was notified to convey to the national manager of the management committee her shop with

its contents immediately. Claimant has submitted a document dated November 10, 1983 in the form of a letter addressed to claimant with reference to property owned by Jan and Ludmila Zajdlik. In relevant part it states:

"This is to confirm that the following listed properties belonging to the above, who resided at Uhersky Ostroh-Kvacice cp 122, were nationalized in September of 1958, after interim securing by the Action Committee.

Due to the high value of these properties, the issue had to be decided through three jurisdictions; Local National Committee Uhersky Ostroh, County National Committee Uherske Hradiste, Provincial National Committee Brno."

The letter then cites specific property including a house, orchard, courtyard, retail and wholesale outlet with warehoused goods, a parcel and a tract of property.

Claimant therefore asserts that the listed property was not finally confiscated until September of 1958.

Claimant asserts that on that date the property was owned by him. He bases his claim for ownership upon a document dated April 29, 1954 which states:

"Today is the day of my birthday. I Jan Zajdlik and my wife Ludmila Zadjlik decided to turn over all of our properties left in Czechoslovakia to our oldest son Anton Zajdlik. Our son became an American citizen not too long ago, so we want him to get our property in Czechoslovakia. All of the property, real as well as personal property and all of the rights arising out of them.

House in Ostroh III., number 122, land - four lots, two lots "Louky Zavistne" - two acres, one acre "Mokry Dil" - Ostroh II, three acre lot with a garden in Ostroh I.

All the inventory including an automobile and concessions for a taxi company concession for an inn, concession for dredging for river Morava in township Ostroh. Wholesale of glass, grocery store and all the monies in the bank accounts as well as checking accounts totaling 255,000.00 Kcs (Krowns)."

The signature of Jan and Ludmila Zadjlik is witnessed by two individuals.

In 1973, a form was filed by or on behalf of Jan and Ludmila Zajdlik with a Czechoslovakian organization in the United States which was securing information concerning claims against Czechoslo-

vakia. The form lists the property for which claim is made herein as being owned at that time by claimant's parents, Jan and Ludmila Zajdlik.

Claimant became a United States citizen in 1954 and therefore if the property had been nationalized on September 8, 1958 and if the property were owned by claimant's parents, it was not owned by a United States citizen on the date of loss, whereas if the property were owned by claimant, it would have constituted property owned by a United States citizen.

The transfer of property from claimant's parents to claimant was not recorded or registered in the land records in Czechoslovakia. The Commission notes that in filing the claim, it was asserted that the property was taken after 1965 when claimant's parents would have been United States citizens. In a letter dated October 19, 1983 from an attorney for claimant, it is stated that claimant would be able to establish by a preponderance of the evidence that no overt act of expropriation occurred prior to 1965, even though the state acted in an administrative function relative to the property of the claimant.

It is clear that for all practical purposes, all control and indicia of ownership of the property had been taken by the Czech government before August 8, 1958. The letter dated November 10, 1983, which referred to the property as being owned by Jan and Ludmila Zajdlik, states the conclusion that the property was nationalized in September of 1958, after apparently having previously been subject to orders of nationalization by the Local National Committee, the County National Committee and Provincial National Committee. This provides some question as to the actual date that the Commission would conclude that the property was taken.

The Commission is of the view, however, that title to the property of claimant's parents had not been effectively transferred to claimant even as of September 1958.

Normally, title to property is that which is established by recordation or registration of the owner in the land records. Such recordation of a transfer of title did not occur in this claim. The Commission in several claims has been faced with the question of whether title to property can be transferred without such recordation or registration of transfer. At times this question has been presented in a situation similar to that presented in this claim where a United States citizen asserts that title was transferred to him by a Czech citizen so that the property should be considered as having been owned by a United States citizen on the date of confiscation. The Commission has also had to consider the factual situations where a document purporting to transfer property was made by a United States citizen to a Czech citizen prior to the date of confiscation and where the United States citizen has argued that such transfer is not effective without having been recorded. The particular facts surrounding the purported transfer of title has, of course, varied in different claims. The Commission holds that a purported transfer of title to property which is not recorded can be found to be effective if the following conditions are met.

1. The transfer is evidenced by a written contemporaneous document.
2. The language of the document and the surrounding circumstances evidence a clear and unequivocal intent to make an immediate inter vivos transfer of title and forever divest the transferor of any right title or interest in the property.
3. The written document is in fact delivered to the transferee.
4. There are reasonable grounds for the failure to register the transfer in appropriate government records.

In the present claim, the Commission holds that the necessary intent to make an inter vivos gift of property and to divest the original owners of any right, title or interest in the property is not established by the record. The translation of the document itself, as submitted to the Commission, states that

claimant's parents "decided to turn over all our properties" and further states that "we want him to get our property in Czechoslovakia." The language of the document itself is therefore subject to the interpretation that claimant's parents are making a statement of their intention to make a will to provide for the inheritance of the property by the claimant upon their death. The Commission recognizes that claimant's parents were not attorneys or presumably versed in legal words of art. However, where a transfer of title to property is asserted without the necessary recordation of title, the Commission must be convinced from the words actually used that the transferor clearly understood and intended an immediate transfer of all right, title or interest to property.

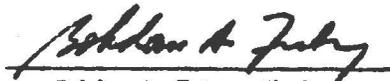
In the present record, it is demonstrated that as of 1973 claimant's parents still considered themselves as the owners of the property and entitled to assert claim for the loss thereof. Based upon the ambiguous wording of the 1954 document and the subsequent action indicating that claimant's parents still considered themselves the owners of the property, the Commission concludes that the necessary elements for the transfer of title to property which was not duly recorded have not been met.

For the above reasons, the Commission affirms its original denial as its final determination of this claim.

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

JAN 23 1985

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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PROPOSED DECISION

This claim in the amount of \$226,145.83 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 and unimproved real property, including a family dwelling, grocery store, garage for a taxi business and personal property in Czechoslovakia.

Claimant states that he became a United States citizen by naturalization on February 3, 1954.

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.

At the time of filing this claim, claimant stated that the property in question was administered by the State from 1948, but that it was taken subsequent to 1965. No documentary evidence was submitted in support of this statement. By letter dated January 18, 1983, the claimant was advised that, from the Com-

mission's experience, it appeared that the property losses claimed would have occurred prior to August 8, 1958. He was further advised that if this were correct, the claim would have to be denied. Claimant was invited, however, to submit any evidence or comment he wished the Commission to consider in reaching a determination on his claim. To date, no evidence, comment 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 he has not submitted evidence from which the Commission could reasonably conclude that the property on which this claim is based was taken by the Government of Czechoslovakia after August 8, 1958. Since under subsection 5(a) it must be established that the property on which a claim is based was nationalized or otherwise taken by Czechoslovakia after August 8, 1958, 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.

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


Joseph W. Brown, Commissioner

SEP 22 1983


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.)