

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

IN THE MATTER OF THE CLAIM OF

JOSEPH HORNIK

Claim No. CZ-2-0239

Decision No. CZ-2-1434

Counsel for Claimant: Bernard Joseph Ferguson, Esquire

PROPOSED DECISION

This claim in the amount of \$3,000.00 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 Dolne Otrokovce, in western Slovakia.

Claimant became a United States citizen by naturalization on April 18, 1932.

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 record includes a copy of a land record extract issued by the District Court of Hlohovec, dated January 7, 1950, listing the claimant and his wife, Josephine Hornik, as the co-owners of the following property recorded under entry no. 264 in the land register of Dolne Otrokovce: (1) parcel no. 16--a garden plot with an area of 3,780 square meters, (2) parcel no. 17--a garden plot with an area of 374 square meters, (3) parcel no. 18 with an

area of 978 square meters, containing house no. 7 and yard, (4) parcel no. 19 with an area of 324 square meters, containing house no. 8 and yard, and (5) parcel no. 20--a garden plot with an area of 2,370 square meters. JOSEPH HORNIK states that he and his wife purchased the foregoing properties in 1936. Josephine Hornik, who acquired United States citizenship by naturalization on January 17, 1938, died sometime before the filing of this claim and JOSEPH HORNIK indicates that he succeeded to her interest in the subject properties.

In his statement of claim JOSEPH HORNIK asserted that the property involved herein was seized by the Communist government in 1975, although he submitted no supporting documentation or details about the alleged loss. The Commission therefore sent a letter to the claimant's attorney on October 13, 1982 requesting the submission of whatever evidence or information the claimant could provide to show that the subject property was lost in 1975. In response to this letter, claimant's attorney indicated that JOSEPH HORNIK received a letter in 1975 from a relative in Czechoslovakia advising him that his properties, which had allegedly been used by other family members up to then, had been seized by the government. The Commission then sent another letter to the claimant's attorney on November 19, 1982 requesting the submission of a copy of this 1975 letter. No copy of this letter has been submitted, however, and the Commission has received no further correspondence from the claimant or his attorney.

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 and has received a report, dated March 1, 1984, containing additional information about the subject property in Dolne Otrokovce. The report indicates that house no. 8 (on parcel no. 19) collapsed prior to 1943, while house no. 7 (on parcel no. 18) was in a poor state of repair after World War II

and torn down by the claimant's relatives around 1954. Based on this information, the Commission finds that the two dwelling houses involved in this claim could not have been taken by the Czechoslovakian Government after August 8, 1958, as required for compensation under subsection 5(a) of the Czechoslovakian Claims Settlement Act of 1981. As for the remaining land, which totaled 7,826 square meters, the report indicates that the use of 6,762 square meters was turned over free of charge to Mr. and Mrs. Chalany, both Czechoslovak citizens, pursuant to an agreement drawn up at the Local National Committee in Dolne Otrokovce, while the other 1,064 square meters were expropriated against compensation by decision of the Housing Department of the District National Committee of Trnava, dated July 30, 1964. According to the report, the claimant was offered compensation in the form of another lot, but never received it since he indicated no interest therein.

Despite the Commission's request through counsel for a clarification of the foregoing transactions from the claimant, no further documentation or information has been received. With regard to the 6,762 square meters of land, therefore, the record simply indicates that it is being used free of charge by private citizens in Czechoslovakia under some sort of contractual arrangement. In the absence of any evidence from the claimant that this contract was unilaterally imposed by Czechoslovakian authorities, or that he has been denied all rights of income from and control over the property, the Commission finds that JOSEPH HORNÍK has failed to establish that the subject land has been nationalized or otherwise taken by the Government of Czechoslovakia. As for the other 1,064 square meters of land, expropriated by Czechoslovakian authorities, the Commission notes that a government has the right under international law to expropriate privately owned real property within its jurisdiction as long as prompt and adequate compensation is provided. The record indicates that compensation in kind was offered to the claimant.

The fact that it was not accepted by the claimant does not turn the expropriation of his land into a violation of international law for which an award would be contemplated under subsection 5(a) of the Czechoslovakian Claims Settlement Act of 1981.

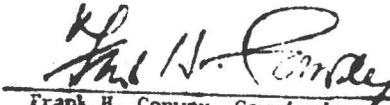
For the foregoing reasons, the Commission determines that the claim of JOSEPH HORNIK must be and it hereby is denied in its entirety.

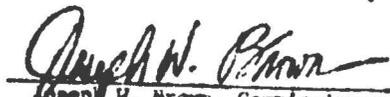
The Commission finds it unnecessary to make determinations with respect to other aspects of this claim.

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

JUN 20 1984


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.

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-2-0239