

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

In the Matter of the Claim of :

THERESA KOENIG :
59-15 Palmetto Street :
Ridgewood 27, New York :

Docket No. Y-1153

Under the Yugoslav Claims Agreement of :
1948 and the International Claims :
Settlement Act of 1949 :

Decision No. 1266

Counsel for Claimant:

JOHN KIKEL
6501 Fresh Road Pond Road
Ridgewood, Brooklyn 27, New York

approved
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11-30-54

FINAL DECISION

A Proposed Decision was entered in this claim in which an award was made in favor of Theresa Koenig, claimant, in the amount of \$7,931.23 plus interest in the amount of \$1,684.46. Subsequent to the issuance of the Proposed Decision, the attorney for claimant asked for a hearing, objecting that the amount of the award was too low. The Government of Yugoslavia filed a brief as amicus curiae in which it objected to the amount of the award as being too high.

At the hearing testimony was given to the effect that the value of the property as found in the Proposed Decision was low, that a deduction for usufructary rights encumbering the property should not have been made, and that the mortgage shown by the land extract to encumber the property did not exist.

We do not find this testimony persuasive, however, and the findings of the Proposed Decision will not be disturbed.

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Thirty days having elapsed since the claimant herein and the Government of Yugoslavia were notified of the Commission's Proposed Decision on the above claim, and the evidence presented at a hearing, which was afforded claimant, and the brief filed by the Yugoslav Government having received due consideration, the Commission hereby adopts such Proposed Decision as its Final Decision on the claim.

Dated at Washington, D. C. DEC 1 1954

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PROPOSED DECISION OF THE COMMISSION

This is a claim for \$50,000 by Theresa Koenig nee Scheer, a citizen of the United States since her birth on December 30, 1927, when she derived such citizenship through the naturalization of her father, Peter Scheer, and is for the taking by the Government of Yugoslavia of real and personal property located at Sekic, Yugoslavia, in which she owned a one-half interest.

The Commission finds it established by certified extracts from the Land Register of the County Court of Becej (Docket No. 9657, Cadastral District of Stari Becej and Docket Nos. 1551 and 3188, Cadastral District of Backo Petrovo Selo), filed by the Yugoslav Government, and admissions of that Government that claimant owned a one-fourth interest in 1 parcel of land with an area of 41 yutars, 400 square fathoms and a one-half interest in 4 parcels of land with an area of 25 yutars, 1410 square fathoms, with a structure on 1 of the parcels, when they were taken by the Government of Yugoslavia on February 6, 1945, pursuant to the Enemy Property Law of November 21, 1944 (Official Gazette No. 2 of February 6, 1945).

As evidence of value, claimant has filed the affidavit of one Lillian Spengler, a former resident of the vicinity, who swears that

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the value of claimant's property was \$50,000. A three-party committee designated by local Yugoslav authorities appraised the whole property at 762,000 dinars. An investigator for this Commission has appraised the property as follows:

<u>Docket No.</u>	<u>Appraised Value</u>	<u>Claimant's Interest</u>
9657, Stari Becej	534,000 dinars	133,500 dinars
1551, Backo Petrovo Selo	260,005 "	130,003 "
3188, Backo Petrovo Selo	<u>147,925</u> "	<u>73,962</u> "
Total	941,930 dinars	337,465 dinars

Both appraisals were made on the basis of 1938 values.

The Commission is of the opinion, on the basis of all evidence and data before it, that the fair and reasonable value of the real property was 941,930 dinars as of the year 1938*, and that claimant's fractional interest therein was 337,465 dinars.

The land extract for the property registered under Docket No. 3188, Backo Petrovo, Selo, records a right of enjoyment on the one-half interest owned by claimant in favor of Theresa Scheer nee Lohrman during the minority of claimant. On the date of taking claimant was 17 years of age and the encumbrance had 4 years to run. In order to compute the value of this encumbrance we shall apply Article 27 (2) of the Law Concerning Direct Taxation of October 26, 1945 (Official Gazette No. 854 of November 20, 1945) which provides:

"When usufructuary rights are restricted to a certain period of time, the basis of taxation shall amount for each year of usufruction to 5% of the value of the relative property, with the proviso however that the basis of taxation may not exceed 100% of the value of the property, regardless of the foreseen period of usufruction."

Five percent of 73,962 dinars for 4 years equals 14,702 dinars which will be deducted from the value of the property.

The extract for the property recorded under Docket No. 9657, Stari Becej, shows a mortgage encumbering the two one-fourth interests each owned by claimant and Gotfried Scheer in favor of Dr. Aron Sekelj

and in the amount of 4,572.65 dinars, including expenses. No evidence has been filed indicating that the mortgage debt has been satisfied. In the circumstances, we are of the opinion that a deduction for the mortgage must be made. In arriving at this decision we have not failed to consider that the claimant may be obligated to satisfy the debt for which the mortgage was given as security. However, the likelihood that the claimant herein, or that any claimant whose Yugoslav property was mortgaged, will be called upon to do so seems sufficiently remote as to be practically non-existent. A suit on the mortgage may be barred by time limitations; the mortgagee, if a Yugoslav financial institution, has either been nationalized or liquidated; the mortgagor and the mortgagee may not know the whereabouts of each other; the mortgagor and mortgagee may reside in different countries with the result that suit or payment may be impracticable; any recovery by the mortgagee from the mortgagor may be limited to 10% of the debt because of the pre-war debt devaluation law of October 27, 1945 (Law on Settlement of Pre-War Obligations, as amended, Official Gazette No. 88, November 13, 1945; Official Gazette No. 66, August 16, 1946); or, finally, the mortgagee, if a citizen of the United States, may look to this Commission for compensation for the loss of his security.

The Commission, in its determination of claims against Yugoslavia, is directed by the International Claims Settlement Act to apply (1) the terms of the Agreement with that country and (2) the applicable principles of international law, justice and equity, in that order. The Agreement contains no specific provision regarding mortgages. We have found no applicable decisions of arbitral tribunals, international or domestic, having responsibility for the determination of claims which were satisfied by the payment of lump-sums. (Because of the comparatively recent acceptance of lump-sums in settlement of large blocks of international claims, it is doubted that there are reported decisions directly in point.)

It is our view that justice and equity to all claimants require a deduction for mortgages under the circumstances involved in the claims before us, whether the property was taken before or after the above-mentioned Yugoslav debt settlement law became effective. The lump-sum of \$17,000,000 has been provided for the satisfaction of all claims. As the claims filed aggregate many times that amount, the fund may be insufficient to pay all claims allowed in full. In these circumstances we believe we are obligated to limit our awards to actual proven losses and not to make awards for contingent losses which may never materialize. We also believe that when many claimants have to share in a fund which may prove inadequate, one claimant should not receive a windfall or be enriched at the expense of other claimants. That would be the case if a claimant who was awarded the full value of his property made no payment on the mortgage, or satisfied the mortgage debt by payment of only 10% of the mortgage pursuant to the Yugoslavia debt settlement law. Accordingly, we hold that, in the absence of evidence that a mortgage of record has been satisfied, a deduction for the mortgage must be made in order to reflect the actual amount of claimant's loss. We find that the proper amount to deduct for the mortgage, including expenses, in this claim is 2,286 dinars and that amount will, therefore be deducted from the value of the property.

We, therefore, find that the fair and reasonable value of all real property of claimant which was taken by the Government of Yugoslavia was 320,477 dinars as of the year 1938.* That amount converted into dollars at the rate of 44 dinars to \$1, the rate adopted by the Commission in making awards based upon 1938 valuations, equals \$7,283.57.*

The extract for Docket No. 9657, Stari Becej, also records a mortgage in favor of the claimant on the other one-half of the property owned by Katarina Scheer nee Sifler, in the amount of 23,588 dinars at

5% interest from May 16, 1936, plus 1,371 dinars "established expenses". We find the value of this encumbrance to be 28,497 dinars, including interest and expenses, or \$647.66.

With respect to the claim for personal property, the Yugoslav Government states that military operations were conducted in the area from October 1944 until April 1945, and that the German and Hungarian armies took away agricultural products, livestock and other personal property. This Commission's investigator reports that local officials stated that all the personal and movable property claimed was taken away by enemy armed forces in the last days of the war and that he could find no trace of such property. Claimant has filed no evidence that any personal property belonging to her was taken by the Government of Yugoslavia and the claim for such property is denied.

AWARD

On the above evidence and grounds, this claim is allowed and an award is hereby made to Theresa Koenig, claimant, in the amount of \$7,931.23 with interest thereon at 6% per annum from February 6, 1945, the date of taking, to August 21, 1948, the date of payment by the Government of Yugoslavia, in the amount of \$1,684.46.*

Dated at Washington, D. C.

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* For the Commission's reasons for use of 1938 valuations, use of exchange rate of 44 to 1, and the allowance of interest, see attached copy of its decision in the claim of Joseph Senser.