FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
WASHINGTON 25, D. C.

IN THE MATTER OF THE CLAIM OF

SOPHIA PREDKA

Claim No. PO-1178

Decision No. PO- 2491

Under the Polish Claims Agreement of 1960 and the International Claims Settlement Act of 1949, as amended

PROPOSED DECISION

This claim, for $1,000.00 plus interest, is based upon ten bonds, bearing Nos. 006821-W - 006830-W, issued by the Pocztowa Kasa Oszczednosci in Warsaw, Poland (Postal Savings Bank), an agency of the Government of Poland. Claimant, SOPHIA PREDKA, has been a national of the United States since her naturalization on June 29, 1937.

Under the Polish Claims Agreement of 1960, claims by nationals of the United States for "(a) the nationalization or other taking by Poland of property and of rights and interests in and with respect to property . . ." are settled and discharged. (Agreement with the Government of the Polish People's Republic Regarding Claims of Nationals of the United States, July 16, 1960, 11 U.S.T. & O.I.A. 1953, T.I.A.S. No. 4545 (1960), Article II).

The Agreement further defines "claims of nationals of the United States" as including

> rights and interests in and with respect to property nationalized, appropriated or otherwise taken by Poland which, from the date of such nationalization, appropriation or other taking to . . . [July 16, 1960], have been continuously owned . . . (a) directly by natural persons who were nationals of the United States . . . . (Polish Claims Agreement of 1960, supra, at Annex, Paragraph A. See also 14 FCSC Semiann. Rep. 186 (Jan.-June 1961))

It appears that in 1928 claimant purchased ten savings bonds, each in the face amount of 860 "gold" zlotys with attached interest coupons. The bond contract provided for 3% interest payable semi-annually on May 1st and November 1st of each year until maturity of the principal obligation on November 1, 1942. At the exclusive option of the bondholder, payment was required to be made in "gold" zlotys, United States dollars or in any foreign currency existing where the bondholder resided.

The record shows that regular payments of interest were made through May 1, 1939. It is noted that World War II began in Europe upon the invasion of Poland on September 1, 1939. Apparently, the bond contract made no provision for any such contingency so that payments became due periodically after May 1, 1939 despite the fact of war. No payments on account of interest or principal were made after May 1939.

Clearly, the bondholder's option to receive payment in "gold" zlotys or other currency provided a standard of value for the very purpose of preserving the investment, a safeguard against unfavorable fluctuations of the zloty. Undoubtedly many such investments would not have been made but for this option, which appears to be unconditional. That this provision in the bond contract created a valuable property right cannot be disputed.

Not only did Poland fail to make any payment on account of these obligations after the cessation of hostilities, but it destroyed concomitant rights by the enactment of the Decree of July 27, 1949 (Dz. U. of 1949, No. 45, it. 332), effective August 6, 1949. Section 7 of that decree provides as follows:

> In agreements concerning monetary obligations, all clauses stipulating that foreign currency or currencies alternative to Polish currency constitute a means of payment, are hereby declared to be null and void.
>
> The amount due in respect to obligations subject to such clauses is exclusively defined by the sum expressed in Polish currency. (2 The Legislation of Poland 200 (1949))

In effect Section 7 annulled claimant's right to receive payment in currency of the United States where she had been residing for many years. Moreover, it opened the door to the very hazards that the bond contract was designed to avoid. Hereafter, claimant could expect to be paid, if payment were ever made, in zlotys, a much depreciated currency. In recognition of the fact that the zloty had depreciated, Poland enacted a monetary reform, effective October 30, 1950 (Law of October 28, 1950, Dz. U. of 1950, No. 50, it. 459; Decree of October 28, 1950, Dz. U. of 1950, No. 50, it. 461) under which claimant's bonds in the principal amount of 8,600 "gold" zlotys were reduced to 258 zlotys.

In the meantime there was a reorganization of banks in Poland (Decrees of October 25, 1948; Dz. U. of 1948, No. 52, items 410, 411 and 412), and the Postal Savings Bank in question went into liquidation as of January 1, 1950. Its accounts were liquidated by order of the Minister of Finance (December 19, 1949; Dz. U. of 1949, No. 63, it. 508), and claimant's bonds were regarded as accounts for the purpose of this order. By public notice of the liquidator (Monitor Polski of April 21, 1951, No. B-15), payment in reduced zlotys was offered during the period April 21, 1951 to May 5, 1952, in full satisfaction of the obligations. Had claimant elected to accept this offer, presumably she could have recovered the amount of 258 zlotys. This amount would have been equivalent to $64.50 or a smaller sum, depending upon whether the official rate of 4 zlotys to $1.00 or a less favorable rate were applied. However, to have done so would have required claimant to surrender the bonds and release Poland from its obligations.

The circumstances in this case are not fortuitous. They are the result of specific action taken by the Government of Poland. The record shows that claimant's bonds were treated like bank accounts for the purpose of the order of the Minister of Finance of December 19, 1949, supra, and that her rights under the bond contract were disregarded.

The Commission holds that Section 7 of the Decree of July 27, 1949, effected an annulment of claimant's right to receive payment in accordance with the terms of the bond contract, and that this annulment constituted a taking of property within the meaning of Article II (a) of the Polish Claims Agreement of 1960, as of August 6, 1949, when that Decree became effective.

Inasmuch as claimant has been a national of the United States since June 29, 1937, it is clear that her claim is within the purview of the Agreement. The only remaining question is the amount of her loss.

Under the terms of the bond contract, the exchange rate that was to be applied was the rate prevailing on the Warsaw Exchange on the day immediately preceding the date of payment. Since claimant's property was taken on August 6, 1949, the rate in effect on the Warsaw Exchange at that time would appear to be appropriate. However, the Warsaw Exchange never reopened after World War II and no other such organization ever came into being.

Title I of the International Claims Settlement Act of 1949, as amended (64 Stat. 12), which governs claims under the Polish Claims Agreement of 1960, provides as follows:

> . . . In the decision of claims under this tile, the Commission shall apply the following in the following order: (1) The provisions of the applicable agreement as provided in this subsection; and (2) the applicable principles of international law, justice, and equity." (Section 4(a))

The appropriate exchange rate to be applied in this case cannot be determined from the provisions of the Polish Claims Agreement of 1960. Resort must, therefore, be had to international law, justice and equity.

The currency in Poland depreciated considerably during and after World War II. If claimant's loss were measured in terms of such currency, her ten bonds would have little value. It would mean that the bond provisions intended to guard against fluctuations of the zloty have no effect. That such conclusion would be neither just nor equitable is beyond peradventure of doubt.

In view of the safeguards that the bond provided against fluctuations of the zloty, the Commission is of the opinion that justice and equity can be best served in this case by compensating claimant in the amount to which she was entitled pursuant to the original terms of the bond contract which amount the Commission finds to be the sum of $1,065.50 for the ten bonds with the attached coupons.

The Commission has decided that in granting awards under the Polish Claims Agreement of 1960 interest shall be allowed at the rate of 6% per annum from the date of loss to July 16, 1960, the effective date of the Agreement. (See the Claim of John Hedio Proach, Claim No. 3197). Accordingly, the amount of the award will be increased to that extent.

A W A R D

An award is hereby made to SOPHIA PREDKA in the principal amount of One Thousand Sixty-Five Dollars and Fifty Cents ($1,065.50) with interest thereon at 6% per annum from August 6, 1949 to July 16, 1960, the effective date of the Polish Claims Agreement of 1960, in the sum of Six Hundred Ninety-Nine Dollars and Sixty-Eight Cents ($699.68).

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

FEB 12 1964

Edward D. Re, Chairman

Theodore Jaffe, Commissioner

LaVern R. Dilweg, Commissioner

NOTICE: Pursuant to the Regulations of the Commission, if no objections to this Proposed Decision are filed within 20 days of service thereof, the decision will, upon the expiration of 60 days after such service or receipt of notice, be entered as the Final Decision of the Commission unless the Commission otherwise orders. (FCSC Reg., 45 C.F.R. § 531.5(e) and (g) (1961)).