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

IN THE MATTER OF THE CLAIM OF

ALOIS SZPUNAR

Claim No. PO-1388

Decision No. PO-952

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

Appeal and objections from a Proposed Decision entered May 8, 1963, no hearing requested.

Hearing on the record held on September 11, 1963.

FINAL DECISION

Full consideration having been given to the objections, and general notice of the Proposed Decision having been given by posting for sixty days, it is

ORDERED that such Proposed Decision be and the same is hereby entered as the Final Decision on this claim.

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

25 SEP 1963

Edward D. Re, Chairman

Theodore Jaffe, Commissioner

LaVern R. Dilweg, Commissioner

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PROPOSED DECISION

This claim, in the amount of $7,375.00, is based upon the asserted loss of 29,500 zlotys, deposited with the Narodowy Bank Polski by ALOIS SZPUNAR, a national of the United States since his naturalization on June 30, 1916.

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)).

At the close of World War II three currencies were in circulation within the present territory of Poland: German marks (reichmarks and

rentenmarks), zlotys issued by the Bank Emisy jny w Polsce, and rubles of the U.S.S.R. On August 31, 1944, the Polish National Committee of Liberation, the then provisional government of Poland, introduced a new zloty, having par value with the zloty of the Bank Emisy jny w Polsce and the ruble of the U.S.S.R. (Decree of August 24, 1944, Dz. U. No. 3, it. 11). Effective October 28, 1944, the German mark was withdrawn from circulation in the area of Bialystok. Each individual was permitted to exchange 300 German marks into zlotys at par; the rest of the mark banknotes held had to be deposited. The deadline for the exchange was November 20, 1944 (Decree of October 23, 1944, Dz. U. No.9, it. 43).

In other parts of Poland the zloty banknotes of the Bank Emisy jny w Polsce and the German mark ceased to be legal tender on January 10 and February 28, 1945, respectively. Each individual was allowed to exchange 500 "old" zlotys at par, and 500 marks at the rate of two marks for one zloty, into "new" zlotys; and any remaining "old" zlotys and mark banknotes had to be deposited in financial institutions acting as agents for the Government (Decree of January 6, 1945, Dz. U. No 1, it. 2; Decree of February 5, 1945, Dz. U. No. 5, it. 17). The ruble currency of the U.S.S.R. was withdrawn from circulation and ceased to be legal tender in Poland on February 15, 1945 (Decree of January 13, 1945, Dz. U. No. 2, it. 5). The ruble banknotes were exchanged into zloty banknotes of the Narodowy Bank Polski at par and in unlimited amount.

The Commission finds on the basis of evidence of record that claimant was the owner of certain zloty banknotes of the Bank Emisy jny w Polsce on January 10, 1945 when they ceased to be legal tender; and that after making the permitted transfer of 500 "old" zlotys into 500 "new" zlotys, he deposited 29,500 "old" zlotys with the Narodowy Bank Polski as required by law, and was unable thereafter to convert this sum into "new" zlotys or to make any use thereof.

The statute which required claimant to surrender his 29,500 zlotys was enacted by the Government of Poland in the enforcement of its currency policy. A state's undeniable sovereignty over its currency is traditionally recognized by public international law; to the power granted by municipal law there is a corresponding international right to the exercise of which other states cannot, as a rule, object; (Mann, The Legal Aspects of Money, 419 (1953)) As the Permanent Court of International Justice has said, "it is indeed a generally accepted principle that a state is entitled to regulate its own currency." (Serbian and Brazilian Loan Cases, P.C.I.J., Ser. A Nos. 20-21 at 44 (1929)) It is, however, also true that although persons using foreign money may risk market fluctuations in its value, there is no reason why they should be presumed to have agreed to allow themselves to be expropriated by the results of foreign exchange control or currency legislation. (Wortley, Expropriation in Public International Law, 108 (1959)) It has been said that states do not incur international responsibility by reason of their currency policy, except when it involves an abuse of rights or a breach of treaty obligations. (Mann, The Law Governing State Contracts, 21 Brit. Yb. Int'l L. 11, 21 (1944))

It may be argued that the decree of January 6, 1945, as amended, had as its purpose the reduction of the amount of currency in circulation and for that reason was in line with sound fiscal policy as well as with international law. However, no measures were taken to alleviate the loss of those such as claimant, who had to surrender their cash. Section 5 of the decree of January 6, 1945 provided that in economically justified, exceptional cases, the Minister of the Treasury may grant permission to withdraw the deposited "old" zlotys in the form of "new" zlotys; but claimant's request for such permission was denied on September 14, 1945, and the Commission knows of no instance in which such permission was granted to a national of the United States.

The Commission finds that in claimant's case the Decree of January 6, 1945, as amended, amounted to an abuse of right, and a taking of his 29,500 zlotys, within the meaning of the Polish Agreement, when the claimant's request for the return of 29,500 "new" zlotys was denied on September 14, 1945.

Since the claimant was deprived of his 29,500 zlotys on September 14, 1945, there remains for determination the question of the dollar value of 29,500 zlotys on that date. For several years immediately preceding World War II, the official rate of exchange was 5.3 zlotys per dollar. During the war and the period immediately thereafter there was a great inflation of Polish currency and prices in Poland rose to a level many times higher than pre war. The official rate of exchange, while it was not changed, did not in fact prevail. The true value of 29,500 zlotys in September 1945 is more accurately determined by a comparison of the relative purchasing power of the zloty and the dollar in 1945. For this purpose a comparison of the relative cost of living indices for each of the two countries between 1937 and 1945 would be a proper basis. In Poland the cost of living index rose from 100 in 1937 to 8,760 in 1945 (International Monetary Fund, I International Financial Statistics, No. 6 at 104 (1948)). In the United States, the cost of living index rose in the same period of time from 100 to 125 (ibid. at 124). Since the dollar was worth 5.3 zlotys in 1937, the dollar in 1945 (as measured by relative changes in purchasing power between 1937 and 1945) was the equivalent of 371.424 zlotys. Accordingly, the Commission finds that the claimant's loss, sustained by the surrender of 29,500 zlotys, amounted to $79.42 (29,500 divided by 371.424); and concludes that claimant is entitled to compensation, under the Polish Claims Agreement of 1960, in that amount.

It is possible, of course, that claimant's total loss with respect to the 29,500 zlotys was greater than $79.42, inasmuch as he may have paid more than that amount in dollars to obtain the zlotys in the first instance. If so, the zlotys had depreciated in value, as measured by

purchasing power, to an equivalent of $79.42 at the time of taking. This portion of claimant's total loss, caused solely by depreciation in value of the currency which he had chosen to acquire, is not compensable under the Polish Claims Agreement of 1960. (See the Claim of Herbert S. Hale, Claim No. PO-1011.) A state is not liable under international law for fluctuations in the value of its currency, or for losses stemming therefrom. (See Scott and Bowne, Inc., General Docket No. 2378, Decision No. 1-B, American-Mexican Claims Commission; Borden Covel, Administrator, Estate of Leo Sigmund Kuhn, Deceased, General Docket No. 2775, Decision No. 25-B, American Mexican Claims Commission; Hackworth, Digest of Internation Law, Vol. V, p. 633; Mann, The Legal Aspect of Money, pp. 419-420; and decisions of the Foreign Claims Settlement Commission in the Claim of Joseph Winkler, Docket No. Y-1465, Decision No. 1134, and the Claim of Karolin Furst, Claim No. CZ-1381.)

Had claimant made a prewar investment of the money in real property, such property may have retained its equivalent dollar value in post-war years, at the same time becoming worth larger and larger amounts in zlotys as the value of the zloty depreciated. In fact, however, since the claimant's property was 29,500 zlotys, the portion of his loss which resulted from the depreciation in equivalent dollar value of that number of zlotys is not compensable herein, and the measure of his compensation is the dollar value of his 29,500 zlotys at the time of the action which did result in a compensable loss; namely, the denial on September 14, 1945 of claimant's request to withdraw the sum in new zlotys. That amount is $79.42.

The Commission has decided that in granting awards on claims 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. PO-3197.) Accordingly, the amount of the award will be increased to that extent.

A W A R D

An award is hereby made to ALOIS SZPUNAR in the principal amount of Seventy-Nine Dollars and Forty-Two Cents ($79.42) with interest thereon at 6% per annum from September 14, 1945 to July 16, 1960, the date of the Polish Claims Agreement, in the sum of Seventy Dollars and Seventy-One Cents ($70.71).

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

8 MAY 1963

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)).