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

IN THE MATTER OF THE CLAIM OF

WLADYSLAW ZIEMNIAK

Claim No. PO-5035

Decision No. PO-2379

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 on January 29, 1964; No oral hearing requested.

Hearing on the record held on April 15, 1964.

FINAL DECISION

The Commission issued its Proposed Decision in this matter on January 29, 1964, finding that claimant was the owner of a bar-restaurant business at 3 Plac Trzech Krzyzy, City of Warsaw, Poland, said business having been taken from him by the Government of Poland on November 6, 1945; and proposed an award to claimant in the principal amount of $1,400.03.

Full consideration having been given to objections of claimant and the entire record having been reviewed, the Commission now finds that the value of the claimant's business, at the time of taking by the Government of Poland, was $3,467. Accordingly, the Commission concludes that claimant is entitled to an award in the principal amount of $3,467, and it is

ORDERED that the award be restated accordingly, and that in all other respects the Proposed Decision is affirmed.

A W A R D

An award is hereby made to WLADYSLAW ZIEMNIAK in the principal amount of Three Thousand Four Hundred Sixty-seven Dollars ($3,467.00), with interest thereon at 6% per annum from November 6, 1945, to July 16, 1960, the date of the Polish Claims Agreement of 1960, in the sum of Three Thousand Fifty-six Dollars and Seventy-five Cents ($3,056.75).

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

MAY 13 1964

Edward D. Re, Chairman

Theodore Jaffe, Commissioner

LaVern R. Dilweg, Commissioner

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

IN THE MATTER OF THE CLAIM OF

WLADYSLAW ZIEMNIAK

Claim No. PO-5035

Decision No. PO- 2379

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

PROPOSED DECISION

This claim, for $100,000, is based upon the asserted ownership and loss of a bar-restaurant business, "Bar Amerykanski", specifically for money actually invested in the founding of business, good will, and prospective profits, at 3 Plac Trzech Krzyzy, Warsaw, Poland. Claimant, WLADYSLAW ZIEMNIAK, has been a national of the United States since his birth in Buffalo, New York, on January 12, 1919.

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 FCSC Semiann. Rep. 186 (Jan.-June 1961))

On the basis of the evidence submitted by the claimant, the Commission finds that claimant was the owner of a bar-restaurant business, "Bar Amerykanski", at 3 Plac Trzech Krzyzy, Warsaw, Poland; and that this business

was taken from him on November 6, 1945, pursuant to an eviction order of the Municipal Government of the Capital City of Warsaw, Housing Division, dated September 12, 1945.

In arriving at the value of this business property, the Commission has considered claimant's evaluation and his description of the property as consisting of eight rooms completely furnished and equipped. On the basis of all evidence of record, the Commission finds that this property had a value of 520,000 zlotys at the time of loss, which then was the equivalent of $1,400.03; and concludes that claimant is entitled, under the Polish Claims Agreement of 1960, to an award in that amount.

Claims based on "good will" are, generally, not allowed under international law. Edwin M. Borchard discusses this matter in his recognized treatise entitled "Diplomatic Protection of Citizens Abroad". In section 172 thereof, Mr. Borchard cites the historic "Alabama Arbitration" and goes on to say:

> This award [in the Alabama case] including the finding that "prospective earnings cannot properly be made the subject of compensation, inasmuch as they depend in their nature upon further and uncertain contingencies" has been regarded as reliable precedent by numerous other arbitral tribunals, which have disallowed indirect claim based upon loss of anticipated profits, loss of credit, and similarly consequential elements of loss.
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> Acts of Congress authorizing domestic commissions to distribute international awards have followed the general rule excluding anticipated profits and indirect losses from consideration as elements of damage . . . . Domestic commissions have reached the same conclusion without specific direction from Congress.

This is in harmony with decisions of this Commission in previous claims programs involving countries other than Poland, such as Czechoslovakia under Title IV of the International Claims Settlement Act of 1949, as amended (64 Stat. 13 (1950), 22 U.S.C. § 1623(a) (1958)), (See Claim of Robert Max Bunzl, et al., Claim No. CZ-3,157), and the Soviet Union under Title III of the same Act (See Claim of United Shoe Machinery Corporation, Claim No. SOV-40,353).

Therefore, the portion of the claim based upon "good will" and prospective profits is denied.

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 WLADYSLAW ZIEMNIAK in the principal amount of One Thousand Four Hundred Dollars and Three Cents ($1,400.03), with interest thereon at 6% per annum from November 6, 1945, to July 16, 1960, the date of the Polish Claims Agreement, in the sum of One Thousand Two Hundred Thirty Four Dollars and Thirty Six Cents ($1,234.36).

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

9 JAN 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))