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

IN THE MATTER OF THE CLAIM OF

NAUM MAGASANIK

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

Claim No. PO-5441

Decision No. PO-5893

Counsel for Claimant: Regosin, Edwards & Freeman
Attorneys at Law

Appeal and objections from a Proposed Decision entered January 6, 1965; oral hearing requested.

Oral argument April 22, 1965, by Andrew Freeman, Esquire for claimant.

FINAL DECISION

In a Proposed Decision issued on January 6, 1965, the Commission found that claimant inherited from his late mother, Fajga Magasanik, a one-fourth interest in improved real property, the use and enjoyment of which he lost on February 12, 1959, at which time the total value of the property was $121,900, reduced by mortgages to $121,794.25. An award was made in the principal amount of $30,448.56.

Full consideration having been given to claimant's objections and to counsel's argument during the oral hearing on April 22, 1965, to counsel's letter dated April 26, 1965, and to counsel's letter dated April 29, 1965, to which was attached a certificate from the Municipal Court of Lodz dated April 19, 1965, and general notice having been given by posting for 30 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

JUN 2 1965

Edward D. Re

Edward D. Re, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

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

IN THE MATTER OF THE CLAIM OF

NAUM MAGASANIK

Claim No. PO-5441

Decision No. PO-5893

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

Counsel for Claimant: Regosin, Edwards & Freeman, Attorneys at Law

PROPOSED DECISION

This claim, for $150,000.00, is based upon the asserted ownership and loss of improved real property located in Lodz, Poland. Claimant has been a national of the United States since his naturalization on February 14, 1944.

Under Section 4(a) of the International Claims Settlement Act of 1949, as amended, (64 Stat. 13 (1950), 22 U.S.C. § 1623(a) (1958)), the Commission is given jurisdiction over claims of nationals of the United States included within the terms of the Polish Claims Agreement of 1960 (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)). That Agreement provides as follows:

> Claims to which reference is made in Article 1 and which are settled and discharged by this Agreement are claims of 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;
>
> (b) the appropriation or the loss of use or enjoyment of property under Polish laws, decrees or other measures limiting or restricting rights and interests in and with respect to property . . .; and

(c) debts owed by enterprises which have been nationalized or taken by Poland and debts which were a charge upon property which has been nationalized, appropriated or otherwise taken by Poland. (Polish Claims Agreement of 1960, supra, 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 (January - June 1961))

The Commission finds, on the basis of official Polish documentation and its own independent investigation that Fajga Magazanik, the claimant's late mother, who died intestate on November 11, 1941, was the owner of an improved real property located at 109 Piotrkowska Street in Lodz, Poland. The Commission further finds, on the basis of Polish laws and decrees controlling rental property, that the owner lost the use and enjoyment of this property within the meaning of Article II(b) of the Polish Claims Agreement of 1960, on the effective date of the Law of January 30, 1959, (Dz. U. 1959, No. 10, it. 59), i.e. on February 12, 1959. (See the Claim of Jan Glowacki, Claim No. PO-3455.)

It appears from an affidavit dated September 23, 1964, executed by the claimant, that there may be surviving children of his sister, Perl Magazanik Schneerson, and of his brother, Markus Magazanik, living in the Soviet Union. It further appears that claimant's brother Hershel Magazanik died in 1942, subsequent to the death of his mother, Fajga Magazanik, leaving as his survivor a wife Rachel Magazanik, who later died in England in 1960.

The Commission finds that the claimant has not met the burden of proof in regard to his claim to be sole heir of his mother, in that he has failed to convincingly establish that all descendants of Fajga Magazanik died intestate leaving him as the heir. Accordingly, the Commission finds on the basis of the present record that claimant inherited a one-fourth interest in the subject property.

In arriving at a value for the improved real property at 109 Piotrkowska Street in Lodz, the Commission has considered evidence submitted by the claimant, including official Polish documentation, and the results of the Commission's own independent investigation, including a sketch of the subject property. On the basis of the entire evidence of record, the Commission finds that the subject property had a value on the date of loss of $121,900.00.

The Commission also finds that this property was encumbered with mortgages in the original amount of 72,000 zlotys and 210,000 zlotys. As a result of the application of the Law of October 28, 1950, on Monetary Reform (Dz. U. 1950, No. 40, it. 459), and the Decree of October 28, 1950 by the Council of Ministers (Dz. U. 1950, No. 50, it. 461) the 282,000 "old" zlotys were converted into 8,460 "new" zlotys, the equivalent of $105.75 on the date of loss. After deduction of this amount, the net value of the subject property at the time of loss is found to be $121,794.25; and the Commission concludes that claimant is entitled, under the terms of the Polish Claims Agreement of 1960, to an award in the amount of $30,448.56 for his one-fourth interest therein.

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.

An award is hereby made to NAUM MAGASANIK in the principal amount of Thirty Thousand Four Hundred Forty-Eight Dollars and Fifty-Six Cents ($30,448.56) with interest thereon at 6% per annum from February 12, 1959 to July 16, 1960, the date of the Polish Claims Agreement in the sum of Two Thousand Six Hundred Eight Dollars and Fifty-three Cents ($2,608.53).

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

JAN 6 1965

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 30 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) (1964))

PO-5441