

FOREIGN CLAIMS SETTLEMENT COMMISSION  
OF THE UNITED STATES  
UNITED STATES DEPARTMENT OF JUSTICE  
WASHINGTON, DC 20579

In the Matter of the Claims of

ESTATE OF MOSTAFA KARIM, DECEASED;  
SANDRA SIMPSON, EXECUTRIX

Against the Great Socialist People's  
Libyan Arab Jamahiriya

Claim No. LIB-II-185

Decision No. LIB-II- 059

Counsel for Claimant:

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PROPOSED DECISION

This claim against the Great Socialist People's Libyan Arab Jamahiriya ("Libya") brought by the Estate of Mostafa Karim (the "claimant") is based upon the loss of business opportunities said to have been sustained by the late Mostafa Karim as a result of his detention in Libya beginning on or about February 10, 1987.

Under subsection 4(a) of Title I of the International Claims Settlement Act of 1949 ("ICSA"), as amended, the Commission has jurisdiction to

receive, examine, adjudicate, and render a final decision with respect to any claim of . . . any national of the United States . . . included in a category of claims against a foreign government which is referred to the Commission by the Secretary of State.

22 U.S.C. § 1623(a)(1)(C) (2006).

On January 15, 2009, pursuant to a delegation of authority from the Secretary of State, the State Department's Legal Adviser referred to the Commission for adjudication

six categories of claims of U.S. nationals against Libya. *Letter dated January 15, 2009, from the Honorable John B. Bellinger, III, Legal Adviser, Department of State, to the Honorable Mauricio J. Tamargo, Chairman, Foreign Claims Settlement Commission* (“January Referral Letter”).

The present claim is made under Category F. According to the January Referral Letter, Category F consists of

commercial claims of U.S. nationals provided that (1) the claim was set forth by the claimant named in the Pending Litigation; (2) the Commission determines that the claim would be compensable under the applicable legal principles; and (3) the Pending Litigation against Libya has been dismissed before the claim is submitted to the Commission.

*Id.* at ¶ 8. Attachment 1 to the January Referral Letter lists the suits comprising the Pending Litigation.

The January Referral Letter, as well as a December 11, 2008 referral letter (“December Referral Letter”) from the State Department, followed a number of official actions that were taken with respect to the settlement of claims between the United States and Libya. Specifically, on August 4, 2008, the President signed into law the Libyan Claims Resolution Act (“LCRA”), Pub. L. No. 110-301, 122 Stat. 2999, and on August 14, 2008, the United States and Libya concluded the *Claims Settlement Agreement Between the United States of America and the Great Socialist People's Libyan Arab Jamahiriya* (“Claims Settlement Agreement”), 2008 U.S.T. Lexis 72, entered into force Aug. 14, 2008. On October 31, 2008, the President issued Executive Order No. 13,477, 73 Fed. Reg. 65,965 (Nov. 5, 2008), which, *inter alia*, espoused the claims of U.S. nationals coming within the terms of the Claims Settlement Agreement, barred U.S. nationals from asserting or maintaining such claims, terminated any pending suit within the terms of the Claims Settlement Agreement, and directed the Secretary of State to

establish procedures governing claims by U.S. nationals falling within the terms of the Claims Settlement Agreement.

On July 7, 2009, the Commission published notice in the *Federal Register* announcing the commencement of this portion of the Libya Claims Program pursuant to the ICSA and the January Referral Letter. *Notice of Commencement of Claims Adjudication Program*, 74 Fed. Reg. 32,193 (2009).

#### BASIS OF THE PRESENT CLAIM

On July 12, 2010, the Commission received a completed Statement of Claim postmarked July 7, 2010, in which a claim under Category F of the January Referral Letter is asserted along with exhibits. This submission included evidence of: the U.S. nationality of Mr. Karim; inclusion of the Estate of Mostafa Karim as a named party in the Pending Litigation referred to in Attachment 1 of the January Referral Letter, setting forth a claim for a lost business opportunity under Count VI of the Third Amended Complaint; the dismissal of the Pending Litigation against Libya; and the business losses allegedly suffered by Mr. Karim.

According to the Statement of Claim, on October 2, 1982, Mr. Karim entered into a contract with the Director of the City of Hurghada for the sale of 45,000 square meters of land in Egypt within the Governorate of the Red Sea, in the district of the City of New Hurghada, for the purpose of constructing a diving harbor and tourist village. Under Article 12 of the contract, Mr. Karim was "...obliged to construct the project for which the land is intended within a period not exceeding three years from the date of handing over...." Article 16 of the contract provides that "[i]mmediately following the signature, the [Director of the City of Hurghada] is obliged to hand over the land..." to Mr. Karim.

It appears, therefore, that under Articles 12 and 16 of the contract, Mr. Karim was obliged to complete the construction of the project by October 1985. The claimant gives no explanation as to why the project was not completed by this time.<sup>1</sup>

In any event, the Statement of Claim indicates that Mr. Karim was crossing the Mediterranean from Italy to Egypt in his yacht (the Carin II) in February 1987 when a severe storm damaged the yacht, and forced the passengers and crew to take refuge in the port of Benghazi in Libya. Together with the others on board, Mr. Karim was confined to the boat for several days before being taken by Libyan authorities and detained in various Libyan hotels. The claimant asserts that Mr. Karim was held against his will for 16 months during 1987 and 1988 “while he was in the middle of developing and constructing the project.” The claimant states that, in November of 1987 (approximately 9 months after taking refuge the port of Benghazi in Libya), a Libyan official offered to release him and arrange for his passage back to Egypt, to which Mr. Karim responded “[n]o, I don’t want to leave at the moment, I want to get my boat back, I don’t want to leave without my boat.” The claimant asserts Mr. Karim returned to Egypt on June 15, 1988.

The claimant contends that upon his return to Egypt, Mr. Karim “was immediately pressured by the City Council of Hurghada and a new Governor of the Red Sea to complete his project.” Mr. Karim submitted a work plan on October 11, 1988, in which he set forth a new time schedule for the completion of the project. The work plan

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<sup>1</sup> The minutes of a March 15, 1989 meeting of the Red Sea Governate included with the claim file note as follows:

“2-Since the contracting and the receiving of the location until 14 Nov. 1982 , no installment of the value of the land has been paid which were due as of 1 January 1986 based on the contract terms. In spite of notifying him of the above.

3-No building license has been issued per the provisions of the law. On the other hand, some buildings were erected with an unclear concrete structures.” [SIC]

provided that the first phase of the project would be completed within one year of obtaining the necessary licenses, which were obtained on January 14, 1990, as noted by the Governorate of the Red Sea in Decree No. 171.

The minutes of a March 15, 1989 meeting of the Red Sea Governorate incorporated Mr. Karim's work plan into the 1982 contract and provided further that any delay would be considered a violation of the approved work plan, and would entitle the Governorate "to issue an administrative decree to halt the construction work, withdraw the dedicated land and cancel the contract where the land, with all its facilities, is returned to the Governorate... ."

By its decree dated November 23, 1991, The Governorate of the Red Sea reclaimed 30,000 square meters of the 45,000 square meters allotted to Mr. Karim. The decree provided that, "considering [Mr. Karim's] circumstances and not desiring to cause him any harm, the Governorate...deemed fit to reclaim the vacant land on which no construction ha[d] been erected, leaving the constructed area." The decree further noted that several other plots, which had been placed under similar contract later than 1982, had also been reclaimed from other developers for non-performance.

On October 20, 1992, Mr. Karim filed suit against the Governorate of the Red Sea in the Hurghada Court of First Instance regarding the authority of the Governorate of the Red Sea to reclaim the property. The claimant has submitted a letter dated August 31, 1993 to Mr. Karim from the Counselor for Commercial Affairs of the U.S. Embassy in Cairo. The Counselor for Commercial Affairs, after noting that Mr. Karim had recently become a U.S. citizen, states that the "...Embassy has declined to become involved in

your case until now because we could not establish a United States interest. Your citizenship establishes a U.S. interest in the matter.”

The claimant contends that, as a consequence of the lost time and severed communications between Mr. Karim and the outside world while he was detained in Libya, he was unable to complete the Red Sea tourist development project. The claimant further contends that this loss was foreseeable to the Libyan government because “[h]e would have been well known to Libyan Intelligence as a prominent Egyptian businessman and developer...”

#### DISCUSSION

As an initial matter, the Commission notes that on January 5, 2005 Letters of Administration on the Estate of Mostafa Fahmy Karim were granted to Sandra J. Simpson as established by the Certificate of the Register of Wills of the Orphans Court of Butler County Pennsylvania dated November 10, 2008. Accordingly, the Commission finds that the ESTATE OF MOSTAFA KARIM, DECEASED; SANDRA SIMPSON, EXECUTRIX, is the proper claimant in this claim.

In the *Claim of* <sup>5 U.S.C. §552(b)(6)</sup>, Claim No. LIB-I-001, Decision No. LIB-I-001 (2009), the Commission held, consistent with its past jurisprudence and generally accepted principles of international law, that in order for the nationality requirement to have been met, the claimant must have been a national of the United States, as that term is defined in the Commission’s authorizing statute, continuously from the date the claim arose until the date of the Claims Settlement Agreement. In the case of claims brought by estates on behalf of beneficiaries, it is a well-established principle of the law of international claims, which has been applied by both this Commission and its

predecessors (the War Claims Commission and the International Claims Commission) that, for purposes of determining the nationality of a claim, the nationality of the injured party as well as the beneficiaries of his or her estate must be evaluated in order to establish that the claim has been held continuously by U.S. nationals from the date the claim arose through the date of the Settlement Agreement.<sup>2</sup>

By letter dated May 5, 2011, a member of the Commission staff requested that the claimant provide a date upon which it alleges this claim arose, however; no response to this letter was received. Therefore, based on the evidence in the claim file, the Commission determines that this claim arose on November 23, 1991, the date the Governorate of the Red Sea took the action complained of: namely, when it reclaimed a portion of Mr. Karim's property.

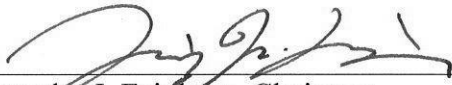
To meet the nationality requirement, the claimant has provided a copy of Mr. Karim's Certificate of Naturalization, which reflects that he became a U.S. national on August 23, 1993, nearly two years after this claim arose. Accordingly, having determined the loss on which this claim is based occurred on November 23, 1991, the Commission concludes that the claim was not held by a U.S. national on the date the claim arose, and thus is not within the jurisdiction conferred upon it by the ICSC and the January Referral Letter. Therefore, the claim must be and is hereby denied.

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<sup>2</sup> See, e.g., *Claim of THE ESTATE OF JOSEPH KREN, DECEASED, against Yugoslavia*, Claim No. Y-0660, Decision No. Y-1171 (1954); *Claim of PETER KERNAST*, Claim No. W-9801, Decision No. W-2107 (1965); *Claim of RALPH F. GASSMAN and URSULA ZANDMER against the German Democratic Republic*, Claim No. G-2154, Decision No. G-1955 (1981); *Claim of ELISAVETA BELLO, et. al. against Albania*, Claim No. ALB-338, Decision No. ALB-321 (2008).

The Commission finds it unnecessary to make determinations with respect to other elements of this claim.

Dated at Washington, DC, July 12, 2011  
and entered as the Proposed Decision  
of the Commission.

  
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Timothy J. Feighery, Chairman

  
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Rafael E. Martinez, Commissioner

**This decision was entered as the  
Commission's Final Decision on  
DEC 02 2011**

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NOTICE: Pursuant to the Regulations of the Commission, any objections must be filed within 15 days after service or receipt of notice of this Proposed Decision. Absent objection, this decision will be entered as the Final Decision of the Commission upon the expiration of 30 days after such service or receipt of notice, unless the Commission otherwise orders. FCSC Regulations, 45 C.F.R. § 509.5 (e), (g) (2010).