

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

In the Matter of the Claim of

JOHN J. PALLAY
67 Franklin Avenue
Yonkers, New York

Claim No. SOV-40,181

Decision No. SOV-2

Under the International Claims Settlement
Act of 1949, as amended

Counsel for Claimant:

J. GILMER KORNER, JR., Esquire
Blair, Korner, Doyle & Worth
Transportation Building
Washington 6, D. C.

FINAL DECISION

Twenty days having elapsed since the claimant herein was notified of the Commission's Proposed Decision on the above claim, and the thirty-day period of general notice provided by posting having expired, and the objections thereto and the evidence and arguments presented at a hearing held on September 12, 1956 having been fully considered, it is

ORDERED that such Proposed Decision be, and the same is hereby, entered as the Final Decision, that this claim does not come within the purview of Section 305 (a)(1) of the Act; it is further

ORDERED that this claim be considered under Section 305 (a)(2) of the Act.

Dated at Washington, D. C.

OCT 9 1956

Whitney Gilliland
Whitney Gilliland, Chairman

Pearl Carter Pace
Pearl Carter Pace, Commissioner

Henry J. Clay
Henry J. Clay, Commissioner

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

IN THE MATTER OF THE CLAIM OF

JOHN J. PALLAY
67 Franklin Avenue
Yonkers, New York

Claim No. SOV-40,181

Decision No. SOV-2

Under the International Claims Settlement
Act of 1949, as amended

GPO 10-72126-1

Counsel for Claimant:

J. GILMER KORNER, JR.
Blair, Korner, Doyle & Worth
Transportation Building
Washington, D. C.

FINAL DECISION

On October 9, 1956, the Commission made and entered a final determination that this claim was not compensable under Section 305(a)(1) of the above-entitled Act. Said determination provided that the claim be considered under Section 305(a)(2) of the Act.

Accordingly, the claim was subsequently considered under the provisions of Section 305(a)(2) of the Act, and a Supplemental Proposed Decision was issued on October 16, 1957, which denied the claim under said Section 305(a)(2). Claimant, by his attorney, filed objections thereto, submitted a brief and supplemental statement in support of his objections and requested a hearing.

Notice of the Supplemental Proposed Decision was duly posted for at least 30 days as prescribed by Section 531.5(c) of the Commission's regulations.

Full consideration has been given to claimant's objections, brief and supplemental statement and to the argument of his attorney at the hearing which was held on February 19, 1958.

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The Commission finds that the asserted corporate obligation on which this claim is founded arose long after the nationalization of such corporation by the Soviet Government. The obligation was created by an individual who was an agent of the corporation at the time of its nationalization and who thereafter purportedly continued to act as such agent. Under the facts and circumstances, and in the absence of consent or ratification by the Soviet Government of which there is no proof, the acts of the agent in creating the obligation does not bind the Soviet Government in personam so as to give rise to a compensable claim against that government under Section 305(a)(2) of the International Claims Settlement Act of 1949, as amended. In view thereof and upon the entire record, it is

ORDERED that the above-mentioned Supplemental Proposed Decision denying the claim under Section 305(a)(2) of the Act be and the same is hereby entered as the Final Decision on this claim.

Dated at Washington, D. C.

APR 16 1958

Whitney Williland
Pearl Rice
Henry S. Clay

COMMISSIONERS

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

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SUPPLEMENTAL PROPOSED DECISION

The above-captioned claim was filed as a preferred claim against the Soviet Government under Section 305(a)(1) of the International Claims Settlement Act of 1949, as amended. It was denied by the Commission's Proposed Decision dated August 4, 1956, for the reasons stated in said Proposed Decision without prejudice to further consideration under Section 305(a)(2) of the Act. Claimant's attorney filed objections thereto, and after a hearing thereon the Proposed Decision was affirmed by the Commission's Order dated October 9, 1956.

The question now before the Commission is whether the claim is compensable under Section 305(a)(2), which reads as follows:

"Sec. 305 (a) The Commission shall receive and determine in accordance with applicable substantive law, including international law, the validity and amounts of--

"(2) claims, arising prior to November 16, 1933, of nationals of the United States against the Soviet Government."

From the claimant's statement submitted in support of this claim, and other evidence before the Commission, it appears that prior to

January 1918 the Eastern Company of Warehouses, Insurance and Transport of Goods With Advances, Limited (hereinafter referred to as "Company") was a corporation organized and existing under the laws of the Imperial Russian Government with headquarters in St. Petersburg (Petrograd), Russia. In January of 1918, the Soviet Government nationalized the "Company" and expropriated all of its assets in Russia. Thereafter the "Company" continued to operate in London and New York. No evidence has been submitted to establish that such operations were conducted by authority of the Soviet Government. On the contrary, it clearly appears that the operations were conducted under the management of one Jules Hessen pursuant to authority delegated by Power of Attorney, dated November 20, 1917, executed by the Board of Directors of the "Company" who were in office on that date. These operations were, according to claimant, "continued in its (Company's) attempt to carry on in London and New York against the day when its property and assets in Russia would be restored to it."

Claimant asserts that in connection with the aforementioned operations the "Company" became indebted to one George A. Evalenko, a citizen of the United States, for services rendered and money advanced; that on or about December 31, 1926 an account was stated between the parties which showed a balance of \$38,685.12 due Mr. Evalenko; that the claim based on such account stated was on January 3, 1927 assigned by Mr. Evalenko to the claimant herein; that the latter instituted suit thereon against the "Company" and procured a judgment in the Supreme Court, State of New York, no part of which has been paid or discharged.

The Commission holds that an obligation of a Russian Corporation incurred subsequent to the nationalization of such Corporation by the Soviet Government and without the authority or consent of that

Government, does not form the basis of a compensable claim against the Soviet Government under Section 305(a)(2) of the Act.

For the foregoing reason, the claim is likewise denied under Section 305(a)(2) of the aforementioned Act.

Dated at Washington, D. C.

OCT 16 1957

FOR THE COMMISSION:



Joseph Stein
Director, Soviet Claims Division

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

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Counsel for claimant:

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Transportation Building
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PROPOSED DECISION OF THE COMMISSION

This is a claim by John J. Pallay under Section 305 of the
International Claims Settlement Act of 1949, as amended, for the fol-
lowing:

(a) Judgment dated February 23, 1927 (composed of (1) value of claim at time it arose of \$38,685.00, (2) interest of \$199.18, and (3) costs and disbursements of \$23.34	\$ 38,907.52
(b) Interest at 6% on judgment of \$38,907.52 from date thereof (February 23, 1927) to March 31, 1956	68,088.16
Total amount of claim	<u>\$ 106,995.68</u>

Originally, the claim arose in favor of George A. Evalenko, an alleged national of the United States, by reason of services rendered and monies advanced to The Eastern Company of Warehouses, Insurance and Transport of Goods With Advances, Limited, (referred to hereinafter as The Eastern Company), subsequent to the nationalization of said Russian corporation in January, 1918. Prior to January 3, 1927, George A. Evalenko assigned his claim to the instant claimant,

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John J. Pally, an alleged national of the United States. On January 3, 1927, John J. Pally brought suit against The Eastern Company in the Supreme Court in and for the County of New York, State of New York. On January 4, 1927 the summons and complaint was served upon The Eastern Company by delivering copies thereof to Alexander M. Evalenko, the managing agent of the Company. On February 23, 1927 the court entered judgment by default in favor of John J. Pally in the sum of \$38,685 plus interest and costs. To date the judgment has not been satisfied.

Section 305 (c) of the Act provides that the Commission shall give preference to the disposition of claims presented pursuant to section 305 (a) (1) of the Act. Accordingly, without prejudice to the merits under section 305 (a) (2) of the Act, the assertion of the instant claim under section 305 (a) (1) is considered and determined hereinafter.

Section 305 (a) (1) of the International Claims Settlement Act of 1949, as amended, requires, inter alia, that with a judgment a lien must be obtained by a national of the United States, prior to November 16, 1933, upon any property in the United States which has been taken, collected, recovered, or liquidated by the Government of the United States pursuant to the Litvinov Assignment.

The claimant contends that his judgment "created a lien upon property in the United States which has been taken, collected, recovered or liquidated by the United States pursuant to the Litvinov agreement." The contention is not, however, substantiated.

Inasmuch as it has not been established by the evidence of record that a judgment lien was obtained, prior to November 16, 1933, upon property of The Eastern Company or upon property which the United States has taken, collected, recovered or liquidated pursuant to the Litvinov Assignment, the claim of John J. Pally under section 305 (a) (1) of the Act must be and is hereby denied.

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This finding is without prejudice to consideration of the claim under section 305 (a) (2) of the Act, which relates to "claims arising prior to November 16, 1933, of nationals of the United States against the Soviet Government."

ACR 7/25/56
JMM 7/25/56
LTD 7/25/56

Whitney Gilliland
Whitney Gilliland, Chairman

Pearl Carter Pace
Pearl Carter Pace, Commissioner

Henry J. Clay
Henry J. Clay, Commissioner

Dated at Washington, D. C.

AUG 1 1956