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

IN THE MATTER OF THE CLAIM OF

EUROPEAN MORTGAGE SERIES B CORPORATION
c/o Ernst Dauber, Secretary
57 Broadway
New York 15, New York

Under the International Claims Settlement Act of 1949, as amended

Claim No. HUNG-22,020

Decision No. HUNG-1,605

GPO 16—72126-1

Counsel for Claimant:

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Union Trust Building
Washington 5, D. C.

FINAL DECISION

This is a claim by EUROPEAN MORTGAGE SERIES B CORPORATION against the Government of Hungary under Section 303 of the International Claims Settlement Act of 1949, as amended, for $2,151,807.19, based upon certain contractual obligations expressed in certificates known as pfandbriefe, issued by the Hungarian Banks Cooperative Society for the Issuing of Mortgage Bonds, secured by first mortgages on real property in Hungary in favor of the Cooperative Society, and guaranteed by the Cooperative Society and several Hungarian banks which were the Society's members.

The pfandbriefe were issued originally to European Mortgage and Investment Corporation, which pledged them as security for its own issue of Series B bonds. As a result of a 1935 reorganization of European Mortgage and Investment Corporation, the claimant corporation was organized as its successor in certain respects, taking over the collateral for the Series B bonds and issuing its own income bonds to Series B bondholders.

Claimant alleges loss as a result of: (1) actions of the Hungarian Government reducing, suspending, and terminating payments of interest and

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principal on the pfandbriefe and the underlying mortgages; (2) nationalization of the guaranteeing banks and the mortgages, and consequent assumption of the obligations by the Hungarian Government; (3) seizure of the mortgaged properties; (4) other decrees having adverse effect on claimant's interest in pledged properties; and (5) war damage to pledged properties.

Section 303 of the Act provides, inter alia, for the receipt and determination of claims of nationals of the United States against the Government of Hungary, for its failure: (1) to restore or pay compensation for property of nationals of the United States as required by articles 26 and 27 of the treaty of peace with Hungary; (2) to pay effective compensation for the nationalization or other taking of property of nationals of the United States in Hungary; and (3) to meet obligations expressed in currency of the United States arising out of contractual or other rights acquired by nationals of the United States prior to September 1, 1939, and becoming payable prior to September 15, 1947.

In a Proposed Decision issued on November 10, 1958, the claim was found to be not compensable under Section 303 of the Act for the reasons that: (1) it had not been established that the claimant had suffered a loss for which the Government of Hungary was required to make restoration or pay compensation under the referenced articles of the treaty of peace; (2) as a debt claim arising out of contract, this claim is one which the Congress intended be entertained only under Section 303(3) and not under Section 303(2) of the Act; and (3) the obligation was not one of the Government of Hungary on September 1, 1939, as required for compensation under Section 303(3).

Claimant filed objections to the Proposed Decision, and the matter was heard on January 21, 1959, together with other claims of a similar nature, in which objections to Proposed Decisions were filed. Having carefully considered all briefs and oral arguments presented to it, the Commission finds its position in the matter unaltered.

The requirements of Section 303(1) and Section 303(3) for compensation thereunder remain unsatisfied. The principal argument, however, of

those opposing the Proposed Decisions was for entitlement to compensation under Section 303(2) of the Act, on the theory that the nationalization of a debtor is a taking of the property of the creditor; or, at least, that this is so when the nationalization involves a taking of property of the debtor which was pledged as security for the debt. However, the Commission remains of the opinion stated in the Proposed Decision, that the enactment of Section 303(3) manifests the intention of Congress to compensate for a limited class of claims having their origin in contract, that such claims are compensable under that Section or nowhere in the Act, and that where such a claim fails under Section 303(3), the carefully worded limitations of that Section are not to be nullified by entertainment of the claim under other, less restrictive, provisions of the statute. Moreover, consideration of the claim under (1) or (2) of Section 303, notwithstanding this Congressional intention, would not achieve the result desired by claimant, as will be seen.

Title III of the International Claims Settlement Act of 1949, as amended, under which the instant claim is filed, defines "property":

Sec. 301(9) "Property" means any property, right, or interest.

The title then goes on to provide at section 303(1), (2) and (3), at section 304 and at section 305(a)(1) and (2) for six categories of claims which, among others, may arise from injuries to or losses of American property. The word "property" appears in three of them.

The question of compensability under (2) of section 303 requires a determination of the meaning of the immediately pertinent language in the light of its relationship to other language of the section, and in the light of the legislative history and background.

The immediately pertinent part of the language is as follows:

> Sec. 303. The Commission shall---determine in accordance with applicable substantive law, including international law, the validity---of claims of nationals of the United States against the Government of---Hungary arising out of the failure to----

> (2) pay effective compensation for the nationalization, compulsory liquidation or other taking---of property of nationals of the United States in---Hungary---.

This is not equivalent to saying that every interference with American property shall be the subject of compensation. The property must have been in Hungary and the claim must be one which is valid when determined in accordance with applicable substantive law, including international law.

There are a number of indications that the Congress did not intend an extension of the coverages of section 303 beyond its clear import.

One of them is the special reference to the words "international law" to be found at page 13 of the Report of the Committee on Foreign Affairs (House Report No. 624, 84th Congress, 1st session). It is there stated:

Significance of phrase "including international law"

> In connection with all categories of claims (referred to in secs. 303, 304 and 305), the Commission is authorized and directed to determine the claims "in accordance with applicable substantive law, including international law." The inclusion of "international law" would permit the application of several principles of law which might not otherwise be available to the Commission.

Thereafter follow two examples, both of them exclusionary.

Another indication of this intention on the part of Congress is found in expressions of awareness of the very limited amount of the funds available for payment of claims. That Congress was acutely cognizant of the meagerness of the funds is clearly pointed out in the Committee reports. The fact is referred to no less than six times in the House Report (supra) and three times in the Senate Report (Report No. 1050, Committee on Foreign Relations, 84th Congress, 1st Session). In a number of instances the reports give this as a reason against extending the legislative coverage of claims.

For example, in opposition to one specific proposal to extend the coverages the Senate Committee Report (page 10) states:

> To include the non-national in origin group would only dilute the funds still further, and increase the injustice to American owners.

Again in the "Conclusions" (page 12) the report states:

> Admittedly, the bill, as it is reported to the Senate, does not embrace all categories of claimants who may feel that they should be allowed to participate in the funds. It must be emphasized, however, that these funds are limited, and that to the extent that additional, less deserving classes are admitted, those funds will be further diluted, to the prejudice of individuals who were American citizens at the time they were injured in their property rights. The Committee's primary concern has been to do the greatest possible equity while at the same time following a course which is believed to be in the best interests of the United States in maintaining a sound claims policy.

Developments to date have borne out Congressional expectation regarding the inadequacy of the funds. It now appears that on the Hungarian program, little, if any, more than the initial payments provided by statute will be possible. The situation with regard to the Rumanian claims is but a little better; and even in the case of Bulgaria only fractional final payments will be possible.

The Treaty of Peace with Hungary became effective September 15, 1947. The treaty provided for the payment of war damage claims by Hungary. Her failure to make payment brought about the vesting of her assets in the United States and application of the proceeds to the war damage claims (303(1)) plus those others designated in this statute. The Fund in this instance would be inadequate for the payment of the war damage claims and it is further diminished by the participation of every added class.

At page 3 of the House Committee Report the following appears:

> The treaty of peace with each of the three countries provides that the United States can seize and liquidate property in the United States belonging to such country or its nationals and apply the proceeds for "such purposes as it may desire, within the limits of its claims and those of its nationals ***" against such country.
>
> The peace treaties specifically require that war claims are to be taken care of by each of the three former enemy countries. None of the three countries has complied with its treaty agreement in this respect. In addition, each has seized property of United States nationals and has made no compensation. Consequently, the bill provides for the liquidation of the blocked assets to be vested and those already vested under the Trading With the Enemy Act, and the distribution of the proceeds among United States nationals having <u>prewar contract claims, war damage claims,</u> and <u>nationalization</u> or other <u>expropriation</u> claims ****. (Emphasis supplied).

This legislative history and background indicates a conservative approach in the effort to understand the meaning of the statutory language employed by the Congress and warns against any hurried recognition of claims in categories clouded by ambiguities or uncertainties.

The actual intent of the Congress in this matter becomes clearly apparent from a consideration of the language of and reasons for the presence in the statute of 303(3). This language immediately follows in the same sentence the above quoted portions of section 303. It, together with the portions of the opening phrases of the section necessary to understanding, is as follows:

> The Commission shall ---- determine in accordance with applicable substantive law, including international law, the validity and amount of claims of nationals of the United States against the Government of --- Hungary --- arising out of the failure to ----
> (1) ---
> (2) ---
> (3) --- meet obligations expressed in currency of the United States arising out of contractual or other rights acquired by nationals of the United States prior to --- September 1, 1939, in the case of Hungary --- and which became payable prior to September 15, 1947.

Claims in the category to which the instant claim belongs are primarily creditor claims. Likewise a claim against the Government of Hungary based on failure to meet obligations expressed in currency of the United States, and arising out of contractual or other rights acquired by a national of the United States prior to September 1, 1939 and payable prior to September 15, 1947, is a creditor claim. Nevertheless, it is obvious that if creditor claims are to be entertained under 303(2) then 303(3) has no purpose in the statute, for the claimant eligible under 303(3) could have his claim allowed in full if he filed under section 303(2) and free of the limitations of 303(3) to amounts payable prior to September 15, 1947.

In the interpretation of the law in this respect, there must be borne in mind a maxim of statutory construction which has been expressed as follows:

> The presumption is that the lawmaker has a definite purpose in every enactment and has adopted and formulated the subsidiary provisions in harmony with that purpose; that these are needful to accomplish it; and that, if that is the intended effect, they will, at least, conduce to effectuate it.

> That purpose is an implied limitation on the sense of general terms, and a touchstone for the expansion of narrower terms...Thus Chancellor Kent observed: "In the exposition of a statute the intention of the lawmaker will prevail over the literal sense of the terms; and its reason and intention will prevail over the strict letter. When the words are not explicit, the intention is to be collected from the context; from the occasion and necessity of the law; from the mischief felt and the remedy in view; and the intention should be taken or presumed according to what is consistent with reason and good discretion." 1/

Should the presence of (3) in 303 be interpreted as excluding only the class of creditor claims there defined from a coverage which otherwise would be enjoyed under 303(2), we reach a result which is equally startling for it would mean that claims of creditors of the offending government itself, although recognized, would nevertheless be recognized only in a limited status inferior to that of creditors of its mere nationals.

The only conclusion completely consistent with the legislative history and background and with the presence in the statute of (3) of section 303 is one which leads to a denial of the claim, i.e., that claims presenting such a set of facts as this are not, without more, to be found compensable under (2) of section 303.

The question remains as to whether such a result is consistent with the language of (2) of section 303.

It has been pointed out above that the claim must be one which is valid when determined in accordance with applicable international law. That is a requirement of section 303. It has also been pointed out that special emphasis was given to this provision in the Senate Committee Report.

It has not been demonstrated to the Commission, and the Commission's own research has not established, that international law requires a payment of compensation to a creditor when the debtor or the debtor's property has been nationalized or otherwise taken. Quite to the contrary, the weight of authority is to the effect that such losses as a creditor may suffer as a result of a wrongful act committed against his debtor are too remote or indirect to sustain an award to the creditor.

1/ 2 Sutherland, Statutory Construction 338 (3rd ed., Horack, 1943).

Hackworth, in discussing claims such as the foregoing, states as follows:

"The British-Mexican Claims Commission disallowed a claim of bondholders of a corporation which held a mortgage on Mexican property damaged by acts of insurgents. The Commission said:

> . . . It was not explained just how the debenture holders had suffered that damage; but assuming that this fact had been proved, such damage would be too indirect for the Commission to venture to hold Mexico responsible for it. Independently of this consideration, the Commission agrees with Ralston, "The Law and Procedure of International Tribunals," paragraph 287:-
>
> "Creditors and Mortgagees as Parties.-The question as to whether creditors of a person suffering injury have a right to claim before a commission, came several times before the Spanish-American Commission, and it was repeatedly decided that they had no footing because of wrongs committed toward their debtor. This was the holding in the Mora and Arango, Benner and Rodriguez cases, it also being the holding in the last case that 'the embargo of an estate which was mortgaged to the claimant, but of which he had neither the legal title nor possession, afforded no ground for a claim of damages.'"

And with Borchard, "Diplomatic Protection of Citizens Abroad," p. 645, paragraph 297:-

> ". . . Mortgagees are secured creditors in a special sense. A mortgage is in form a conveyance vesting in the mortgagee upon its execution a conditional estate, which becomes absolute upon breach of the condition. The Department of State in the exercise of its discretion has on several occasions exercised good offices on behalf of the equitable interest of American mortgagees of foreign-owned property. This has been particularly true of American bondholder-mortgagees of foreign railroads.
>
> "International Commissions by weight of authority have shown a disinclination to allow American mortgagees to appear as claimants for damages arising out of injuries to the property of their debtor mortgagors. This conclusion may be defended on the ground that the mortgagee is too indirectly affected by such injuries to authorize his appearance as a claimant." 2/

Similarly, the majority of the General Claims Commission, United States and Mexico, in disallowing the claim of a United States national for nonpayment for equipment furnished to a Mexican railroad corporation which had been taken over and operated by the Mexican Government, concluded:

2/ 5 Hackworth, Digest of International Law 848. Mention in this quotation of the Rodriguez case has reference to the claim of Anna M. Rodriguez, Executrix of the Estate of Mateo C. Rodriguez, which was presented by the United States to the Spanish-United States Claims Commission, established in accordance with the agreement of February 11-12, 1871. Claimant there, a United States national, held a mortgage on an estate in Cuba which was seized and burned wrongfully by Spanish authorities. The claim was disallowed, as indicated.

I. A State does not incur international responsibility from the fact that a subject of the claimant State suffers damage as a corollary or result of an injury which the defendant State has inflicted upon one of its own nationals or upon an individual of a nationality other than that of the claimant country, with whom the claimant is united by ties of relationship.

II. A State does not incur international responsibility from the fact that an individual or company of the nationality of another State suffers a pecuniary injury as the corollary or result of an injury which the defendant State has inflicted upon an individual or company irrespective of nationality when the relations between the former and the latter are of a contractual nature. 3/

The application of the rule of proximate cause to claims of this nature was discussed by The Mixed Claims Commission (United States and Germany), established under the agreement of August 10, 1922, in its Administrative Decision II. They concluded that "The simple test to be applied in all cases is: has an American national proven a loss suffered by him, susceptible of being measured with reasonable exactness by pecuniary standards, and is that loss attributable to Germany's act as a proximate cause?" A claimant's burden of establishing that he would not have suffered loss had it not been for the wrongful act complained of was made clear in the Commission's order of May 7, 1925, which included among rules applicable to debts, bank deposits, and bonds, the following:

15. Whether an exceptional war measure was the proximate cause of the damage will depend on the facts in each particular case. In considering these facts, the following principles will be observed:

(a) ....

(b) The exceptional war measure will be established as the proximate cause of the damage sustained on account of the depreciation in the value of such bonds that may be proven by the evidence in any particular case, if it appears that from all the facts and circumstances in such case the reasonable inference to be drawn therefrom is that the claimant would have withdrawn his bonds from Germany for the purpose of sale or exchange, had he not been prevented from doing so by such exceptional war measures. 4/

3/ 5 Hackworth, Digest of International Law, 808.
4/ 5 Hackworth, Digest of International Law, 498-9.

Application of a similar rule to the instant case places upon the claimant a burden of establishing, if compensation is to be had under Section 303(2) of the Act, that the debt forming the basis of its claim would have been paid, but for the actions of the Government of Hungary of which it complains. This has not been established and does not appear susceptible of establishment in view of the events commencing in 1931 which adversely affected claimant's rights.

Also for consideration herein is the 1945 Annual Report of the Foreign Bondholders Protective Council, which, at page 6, quotes from the October 20, 1933 White House announcement concerning the organization of the Council, as follows:

> The White House announcement to the press on October 20, 1933, stated that the making of satisfactory arrangements and protecting American interests was "a task primarily for private initiative and interests. The traditional policy of the American Government has been that such loan and investment transactions were primarily private actions, to be handled by the parties directly concerned. The Government realizes a duty, within the proper limits of international law and international amity, to defend American interests abroad. However, it would not be wise for the Government to undertake directly the settlement of private debt situations."

This language is quoted with approval in the Senate Committee Report, supra, at the bottom of page 11.

It is also to be noted that (2) of section 303 requires that the property which is the subject of the claim have been in Hungary. Credits, bonds, notes, mortgages and the like are intangible property which for many purposes is given the situs, not of the debtor or of any property encumbered to secure the debt, but more commonly that of the owner. (See 15 C.J.S. 928, 84 C.J.S. 656, and cases thereat cited.)

It is clear that no American who has a claim against Hungary, Rumania, or Bulgaria, has an effective remedy against those countries and it is equally clear that Section 303 does not purport to include all types of claims which claimants might reasonably expect to be chargeable against those countries.

Accordingly, it is not a sufficient basis for an award under Section 303 for the Commission to find merely that the claimant appears to have no remedy elsewhere. What the Congress, mindful of the impracticability of any but limited

coverages, appears to have undertaken to do here is to set up a classification, each section of which is self-contained and exclusive. Again and again in the Committee reports and earlier history of the legislation, the three types of claims included in the three divisions of section 303 are described as war damage claims, postwar nationalization claims, and prewar governmental debt claims. There is no reason to suppose that any overlapping or blurring of distinctions was anticipated. Debt claims not in the prewar governmental category are nowhere mentioned, and there can be little reason to believe that they could have been expected to crop up in the guise of war damage or postwar nationalization claims free of the severe limitations imposed by (3) of section 303.

There is still another statutory provision which is inconsistent with any Congressional purpose to throw open the gate for creditor claims under(2) of section 303. Sectinn 208 of Title II specifically authorizes recovery on a limited class of creditor claims, being claims against those debtors whose property has come under the jurisdiction of the Office of Alien Property. If such claims were also to be considered under (2) of section 303 it would give rise to the possibility of double benefits, a result which Congress could scarcely have intended.

The Commission has carefully considered the contentions of the claimant that its mortgage bonds qualify under the provisions of (1) of 303. The pertinent parts of the opening language of 303 and of (1) are as follows:

> The Commission shall determine in accordance with applicable substantive law, including international law, the validity--- of claims of nationals of the United States against the Government of Hungary---arising out of the failure to---
> (1) restore or pay compensation for property of nationals of the United States as required by---articles 26 and 27 of the treaty of peace with Hungary---.

The claimant relies on the following language of article 26:

> 1. Insofar as Hungary has not already done so, Hungary shall restore all legal rights and interests in Hungary of the United Nations and their nationals as they existed on September 1, 1939, and shall return all property in Hungary of the United Nations and their nationals as it now exists.

It is obvious that if claimant's contention be regarded as valid on this point it would apply with equal force in the case of defaulted obligations of the Government of Hungary and reach a result which Congress could scarcely have contemplated. Otherwise it would not have added (3) of 303. The language of (1) of 303 is not to be interpreted as so far reaching.

In any event, a plea for restoration under article 26 of the treaty of claimant's legal rights as they existed on September 1, 1939, is without substance, since there has been no showing of a diminution of such rights since that date. Moreover, while articles 26 and 27 of the treaty of peace are referenced in (1) of Section 303, article 31 of the treaty is not so referenced, and provides:

> 1. The existence of the state of war shall not, in itself, be regarded as affecting the obligation to pay pecuniary debts arising out of obligations and contracts which existed, and rights which were acquired, before the existence of the state of war, which became payable prior to the coming into force of the present Treaty /September 15, 1947/, and which are due by the Government or nationals of Hungary to the Government or nationals of one of the Allied and Associated Powers or are due by the Government or nationals of one of the Allied and Associated Powers to the Government or nationals of Hungary.

Failure to reference the above-quoted article in (1) of Section 303 can only indicate Congressional intention to include creditor claims not within that provision of the statute, but only within Section 303(3), which uses similar provisions to delineate the type of claim envisioned.

As to (3) of Section 303, nothing has been brought to the attention of the Commission to effect any modification of its consistent holding that compensation thereunder in a claim against Hungary depends, among other things, upon the obligation having been one of the Government of Hungary on September 1, 1939 and continuously thereafter. In the instant case, the obligation was not one of the Government of Hungary on that date, if, indeed, it ever became so.

The Commission is of the opinion that the instant claim must be denied. It is not intended to find that a creditor claimant could under no

circumstances show himself entitled to recover, particularly under a statute with different background, history and language, 1/ or that this particular claimant does not have a legitimate claim against the Government of Hungary. All that is found is that on such a set of facts as that presented here a claim does not come within the coverage of Section 303.

The Proposed Decision herein is affirmed and the claim denied.

Dated at Washington, D. C.

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Whitney Gillilland

Robert L. Kunzig

COMMISSIONERS

Commissioner Pace dissents:

I cannot agree with the majority decision of the Commission which would deny a claim based on a secured creditor interest in a property nationalized by the Government of Hungary.

I find nothing either in the Act or in the Congressional mandate to this Commission which permits a distinction between the holder of title to and the holder of a mortgage on realty nationalized by the Government of Hungary. Both suffered measurable loss through nationalization of their property without compensation, and it is difficult to imagine that it was the intent of Congress to provide for compensation in the one instance while not providing for it in the other. My reading of the legislative history of the statute authorizing the receipt and determination of claims against the Governments of Bulgaria,

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1/ For example, in Decision No. 1130, In the Matter of the Claim of Emma Brunner, Docket No. 1281, this Commission found claims of mortgage holders compensable because "the mortgagee has a right and interest in and with respect to property as that term is employed in the agreement of July 19, 1948", claims under Title I of the Act being determined in accordance with the Yugoslav Claims Agreement of 1948.

Hungary and Rumania discloses nothing which indicates that mortgagee interests do not fall within the ambit of subsection (2) of Section 303 of the Act.

It is an anachronism, in my opinion, to deny the instant claim on the basis of so-called traditional reluctance of international tribunals to look with favor upon claims based on secured creditor interests. Such decisions have always been founded on the theory that any losses sustained by the creditor were too remote, or indirect, and were not the proximate result of the wrongful act forming the basis of the claim. There is nothing remote or indirect, in my opinion, about the loss sustained by a mortgagee when the property securing his mortgage was nationalized under conditions which have prevailed in Hungary since 1946. Moreover, the total lack of due process in the nationalization program of the present government of Hungary demands, it seems to me, that the precedents cited by the majority of the Commission be distinguished from the situation herein, for the decisions cited were rendered in an atmosphere which assumed the existence of all of the rights and remedies which nations have customarily afforded.

The need for International Law to keep abreast by constant examination of its assumptions was well expressed by Frederick Sherwood Dunn in "The Protection of Nationals", as follows:

> ...By bringing its basic assumptions into the light and testing out alternative possibilities, our physical science has freed itself from the prepossessions remaining from a narrower world of experience and has made remarkable strides forward within the space of a few years.
>
> It seems that our body of knowledge about international law and relations has now reached a similar stage in its development, where its underlying assumptions and the methods of inquiry used are no longer adequate to their task. Since the present ways of thinking about the subject became established, the range of our experience has widened in a spectacular manner and our knowledge of the world in which our international institutions operate has greatly increased. The practical problems we now face are radically different from those which forged the original postulates of our systematic thinking on the subject. 1/

1/ At page 7.

Similarly, in domestic law, Judge Lehman used these words with reference to the tangled problems which survived the Russian revolution. "There can be no true precedent in the books, when the facts are unprecedented." Russian Reinsurance Co. v. Stoddard, 1925, 240 N.Y. 149, 147 N.E. 703, 707. He called attention to the need of limiting the force of juridical conceptions at the boundary of common sense and justice.

Lastly, I find the position of the majority of the Commission difficult to reconcile with the position taken by its predecessor Commission under Title I of the Act where claims by holders of mortgages on properties nationalized by Yugoslavia were held to be compensable despite the fact that that Commission held "that creditors' interests were not settled or discharged by the Yugoslav Claims Agreement of 1948". 2/ I have looked into the question of whether or not the law of Hungary may be relied on to distinguish the position of the majority of the Commission herein from the position taken under Title I and find it to be identical with that of Yugoslavia with respect to the character of the interest created by a mortgage against realty.

For the foregoing reasons, I dissent from the opinion of the majority of the Commission herein.

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Pearl Lace
COMMISSIONER

2/ In the Matter of the Claim of Joseph and Liana Menton, Docket No. 435

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

IN THE MATTER OF THE CLAIM OF

EUROPEAN MORTGAGE SERIES B
CORPORATION
c/o Ernst Dauber, Secretary
57 Broadway
New York 15, New York

Under the International Claims Settlement
Act of 1949, as amended

Claim No. HUNG-22,020

Decision No. HUNG- 1605

GPO 16—72126-1

PROPOSED DECISION

This is a claim by EUROPEAN MORTGAGE SERIES B CORPORATION against the Government of Hungary under Section 303 of the International Claims Settlement Act of 1949, as amended, for $2,151,807.19, based upon a failure to fulfill contractual obligations expressed in certificates known as pfandbriefe, issued by the Hungarian Banks Cooperative Society for the Issuing of Mortgage Bonds, secured by first mortgages on real property in Hungary in favor of the Cooperative Society, and guaranteed by the Cooperative Society and several Hungarian banks which were the Society's members.

The Pfandbriefe were issued originally to European Mortgage and Investment Corporation, which pledged them as security for its own issue of Series B bonds. As a result of a 1935 reorganization of European Mortgage and Investment Corporation, the claimant corporation was organized as its successor in certain respects, taking over the collateral for the Series B bonds and issuing its own income bonds to Series B bondholders.

Claimant alleges loss as a result of: (1) actions of the Hungarian Government reducing, suspending, and terminating payments of interest and principal on the pfandbriefe and the underlying mortgages; (2) nationalization of the guaranteeing banks and the mortgages, and consequent assumption of the obligations by the Hungarian Government; (3) seizure of the mortgaged properties; (4) other decrees having adverse effect on claimant's interest in pledged properties; and (5) war damage to pledged properties.

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Section 303 of the Act provides, inter alia, for the receipt and determination of claims of nationals of the United States against the Government of Hungary, for its failure: (1) to restore or pay compensation for property of nationals of the United States as required by articles 26 and 27 of the treaty of peace with Hungary; (2) to pay effective compensation for the nationalization or other taking of property of nationals of the United States in Hungary; and (3) to meet obligations expressed in currency of the United States arising out of contractual or other rights acquired by nationals of the United States prior to September 1, 1939, and becoming payable prior to September 15, 1947.

There has been no showing that property of this claimant suffered loss or damage as a result of World War II, for which the Government of Hungary was required to make restoration or pay compensation under the referenced articles of the treaty of peace. It is therefore concluded that this claim is not compensable under Section 303(1) of the Act.

It is further concluded that a claim of this nature--a debt claim arising out of contract--is not compensable under Section 303(2) of the Act, but may be entertained only under Section 303(3). The claim must be denied under Section 303(3) inasmuch as the obligation does not appear to have been one of the Government of Hungary on September 1, 1939, if, indeed, it became a governmental obligation at any time.

For the above reasons, which are more fully set forth in the attached copy of Proposed Decision No. HUNG-1438, In the Matter of the Claim of Pauline V. Brower (HUNG-20,190), this claim is denied.

Dated at Washington, D. C.

NOV 1 0 1958

FOR THE COMMISSION:

William Barrett

William Barrett, Acting Director
Balkan Claims Division