

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

IN THE MATTER OF THE CLAIM OF

HEDWIGA GELLER
200 West 86th Street
New York 24, New York

Against the Government of Hungary

Under the International Claims Settlement
Act of 1949, as amended

Claim No. HUNG-20,506

Decision No. HUNG-36

GPO 16-72126-1

Counsel for Claimant:

Coudert Brothers, Esquires
488 Madison Avenue
New York 22, New York

FINAL DECISION

This is a claim by HEDWIGA GELLER against the Government of Hungary, under Section 303(3) of the International Claims Settlement Act of 1949, as amended, which embraces claims for the failure of the said Government 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, in the case of Hungary . . . , and which became payable prior to September 15, 1947.

In a Proposed Decision issued on January 30, 1957, the claim was denied, inasmuch as the claimant did not become a national of the United States until April 20, 1944, although it is based upon certain bonds which the claimant acquired prior to September 1, 1939.

It is contended that the eligibility requirements of the Act are met by a claimant who acquired a contractual right before September 1, 1939, so long as his United States nationality predates the loss for which

he seeks compensation, in view of the opening sentence of Section 303 that--

The Commission shall receive and determine in accordance with applicable substantive law, including international law, the validity and amounts of claims of nationals of the United States against the Governments of Bulgaria, Hungary, and Rumania. . .

The argument is that international law would require United States nationality only as of the time of loss; and that in Section 303(3), the Congress defined the nature of one type of claim, with no intention of altering the rule as to nationality of the claimant.

The Commission finds, however, that the natural import of the words of Section 303(3) of the Act leads to the inescapable conclusion that, among other things, it must be established as a basis for an award that a right was acquired prior to September 1, 1939, by a person who was a national of the United States prior to September 1, 1939. Further, the Commission is constrained to make this interpretation by an elementary rule of statutory construction-- that a statute is to be construed so that not a word, phrase, or sentence is meaningless, without effect, or superfluous. Had Congress intended the result urged in behalf of the claimant herein, the words "by nationals of the United States" would have been eliminated from Section 303(3) of the Act. To interpret the section as counsel for claimant contends that it should be interpreted, is to deprive those words of all meaning and effect.

As counsel for claimant points out, the Commission's interpretation results in a nationality requirement for contractual claims which differs from the requirement for claims under Section 303(2) of the Act. However, as counsel admits, there is a third and different requirement under Section 303(1); and it is within the power of the legislature so to differentiate. Such a distinction is not to be regarded as unusual or surprising however, in a type of claim which is not usually cognizable under the rules of customary international law, and which, as a strictly statutory

creature, became a part of the law bearing its own peculiar restrictions.

Counsel for claimant places considerable reliance upon Section 311(b) of the Act, which reads--

A claim based upon an interest, direct or indirect, in a corporation or other legal entity which directly suffered the loss with respect to which the claim is asserted, but which was not a national of the United States at the time of the loss, shall be acted upon without regard to the nationality of such legal entity if at the time of the loss at least 25 per centum of the outstanding capital stock or other beneficial interest in such entity was owned, directly or indirectly, by natural persons who were nationals of the United States.

Counsel states that under this Section, a claimant who is an indirect owner of a defaulted contractual obligation need only have been a United States national at the time of loss; and decries a more restrictive requirement as to date of nationality for claimants who are direct owners. The Commission finds the requirement to be the same, in either case.

It is to be noted that Section 311(b) contains no requirement regarding the claimant's nationality at any particular time, but has to do only with the nationality of the legal entity which is the direct owner, where the claim is based upon indirect ownership. Hence, the claim may be acted upon "without regard to the nationality of such legal entity" if United States nationals, not necessarily including the claimant, owned 25% of the beneficial interest in the entity at the time of loss. However, notwithstanding a fulfillment of that requirement in a claim by an indirect owner, it remains for him, as a claimant, to satisfy the requirements of Section 303 regarding nationality.

Having carefully considered the entire record, including the contentions advanced in claimant's behalf by brief and oral argument, the Commission concludes that in order to support an award under Section 303(3)

of the Act in a claim against the Government of Hungary, the contractual obligation must have been acquired prior to September 1, 1939, by a person who was a national of the United States on September 1, 1939. Accordingly, the Proposed Decision herein is affirmed, and the claim is denied.

Dated at Washington, D. C.

AUG 12 1957

*Whitney Hilliard
Pearl Carter Pace*

COMMISSIONERS

Commissioner Clay, dissenting:

I cannot agree with the conclusions reached by my colleagues in this case. The final decision of the Commission impels me to set forth reasons why they have, in my opinion, erred in their interpretation not only of the law that is controlling but the very fundamentals with which this Commission is charged in disposing of matters such as the instant claim before us.

The claimant is the widow of one Dr. Rudolf Geller, who died a citizen of the United States on April 21, 1954. She is the sole heir and distributee

of her husband's estate, according to his last will and testament. Dr. Geller acquired by purchase or inheritance certain Hungarian municipal and commercial bonds prior to September 1, 1939 which she alleges have been in default or have been repudiated by the Hungarian Government. The claimant and her husband arrived in this country in February 1939, and both became citizens on or about April 21, 1944. The claim is being denied by the Commission upon the grounds that the claimant and her husband were not citizens of the United States prior to September 1, 1939.

There are no basic facts concerning the case in dispute. The sole issue involved is whether Section 303, subsection (3) of the International Claims Settlement Act, as amended, requires citizenship prior to September 1, 1939 as a condition precedent or as a prerequisite to eligibility for entitlement under the said Act.

It does not appear from a reading of the statute, or of the words so clearly set forth, to lead one to the end that Section 303(3) of the Act "leads to the inescapable conclusion" that September 1, 1939 is a basic element to an award. This cavalier and narrow interpretation of this subsection is at variance with well-established principles of American as well as international law, and is not in keeping with the traditional practice of this Government to espouse claims of its nationals who were such at the time of the loss. With rare exception, international law requires that a Government speak only for those of its nationals who were its citizens at the time of their losses. The theory is that it is the nation that is offended and not the individual. Although Section 303(3) is domestic legislation and one may argue that the Congress was unfettered in setting the eligibility requirements - even to the point of whimsey - it is reasonable to assume that the Congress was well aware of the basic philosophies of international law and that - as a result of the full and thorough examination of this problem in the course of the hearings held while the legislation was being proposed - it expressly

intended that such basic principles would be incorporated in the law by reference. The preamble to Section 303 provides that: "The Commission shall receive and determine in accordance with applicable substantive law, including international law, the validity and amounts of claims of nationals of the United States***." These words do not express any standard of eligibility as to the date of claimant's U. S. nationality. Subsection 3 of Section 303 merely provides for compensation "arising out of contractual or other rights acquired by nationals of the United States prior to September 1, 1939."

It may be inquired of this, why the Congress would refer to September 1, 1939, and require ownership on that date. The answer seems clear. The Congress intended that those who purchased bonds during peacetime had the right to expect protection for their contractual rights as a matter of course, whereas those who purchased foreign government bonds while Europe was at war, must have considered the calculated risk in such an investment. They took their chances. These chances were highly speculative and it is not unreasonable to assume that the Congress wanted no part in espousing speculative investments of this nature.

Section 303(3) does not purport to compensate for the obligation which was created by the Government of Hungary when it issued the bonds in question. What it does do and what is the clear intention of the section is that it intends to compensate eligible bondholders for Hungary's default in failing to meet or honor its obligation on these bonds. Therefore, the date of acquirement is of no interest to the United States Government so far as nationality on the September 1, 1939 date is concerned. From the time of acquirement through the time of default or repudiation, while the obligation was "in good standing", there was no concern to this Government inasmuch as there was no international claim involved. Our Government's interest would arise, however, the moment the obligation was

dishonored while in the hands of one of its nationals. The wrong took place when the default or repudiation was actually occasioned.

The Commission's conclusion in its interpretation of Section 303, subsection (3) to reject this claim, is somewhat inconsistent with the general scope and area encompassed by Section 303 as a whole. If we are to follow the decision arrived at here, we will set up a double standard which we cannot believe the Congress intended in the course of passing this legislation. Dr. Geller and his wife, as we have seen, became citizens of the United States in 1944. If, during the remaining days of the war, their real property in Hungary suffered war damage, they unquestionably could have recovered under Section 303(1), having come within the eligibility standard in the treaty where there was no other qualification but that of citizenship at the time of loss. Had their property been nationalized or expropriated after their naturalization, they would have been entitled to benefits under Section 303(2). Certainly it could not be contended, in either case, that citizenship must have dated back to date of acquirement of the property. It is difficult then to reason how or why the Congress could have intended - except as a result of positive evidence of intent to do so - that the traditional rule should be abrogated. There is no principle of international law which justifies such an interpretation. It is most difficult and somewhat inconsistent to believe that a careful Congress should have intended such an irrational deprivation of rights of one segment of its citizens. If such were its intentions, it might well be that its design would be unconstitutional for it would be reminiscent of the hateful gradations of rights among classes of the population from which these people fled when they came to our shores and became American citizens.

It is my belief that such an interpretation should be rejected when, as is the case here, plain wording of the Act permits a more just result.

I would urge that this claim be allowed, inasmuch as the loss, as such, took place after Dr. Geller and his wife became nationals of the United States.

Dated at Washington, D.C.

August 12, 1957

Henry J. Clay

Henry J. Clay, Commissioner

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

In the Matter of the Claim of :
HEDWIGA GELLER : Claim No. HUNG-20,506
200 West 86th Street :
New York 24, New York : Decision No. HUNG- 36

Against the Government of Hungary :
Under the International Claims
Settlement Act of 1949, as Amended :

Attorney for Claimant:

Coudert Brothers, Esquires
488 Madison Avenue
New York 22, New York

PROPOSED DECISION

This is a claim under the provisions of Section 303(3) of the International Claims Settlement Act of 1949, as amended, against the Government of Hungary by HEDWIGA GELLER, for the failure of that government to meet its contractual obligations.

Section 303(3) of the Act provides that the Commission shall receive and determine the validity and amounts of claims of nationals of the United States against the Government of Bulgaria, Hungary and Rumania resulting from failure 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, in the case of Hungary, and which became payable to September 15, 1947.

The record shows that claimant's husband who, like claimant, became a citizen of the United States by naturalization on April 20, 1944, purchased prior to his arrival in the United States on February 23, 1939, bonds of the 1927 6% issue of the City of Budapest in the

principal amount of \$5000, and acquired from the estate of his brother "a Viennese lawyer" who died "in the fall of 1939," 7% bonds of the Hungarian Commercial Bank of Pest in the principal amount of \$10,000.

It further appears that claimant acquired the bonds upon which this claim is based subsequent to the death of her husband on April 21, 1954.

Accordingly, this claim is denied for the reason that it has not been established that the bonds upon which it is based gave rise to rights which were acquired by nationals of the United States prior to September 1, 1939. Other elements bearing upon the compensability of the claim, including the question as to whether claimant's bonds are obligations of the Government of Hungary, have not been considered.

Dated at Washington, D. C.

JAN 30 1957

FOR THE COMMISSION:

NB
3RR

Donald G. Benn

Donald G. Benn, Director
Balkan Claims Division