

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

IN THE MATTER OF THE CLAIM OF

PETES ALLEN, also known as
Panagiotis Fotopoulos,
444 N. W. 9th Street
Oklahoma City, Oklahoma

Under the International Claims Settlement
Act of 1949, as amended

Claim No. IT-10,640

Decision No. IT-81-2

GPO 942329

FINAL DECISION

The Commission issued its Proposed Decision on this claim on April 20, 1959, a certified copy of which was duly served upon the claimant. No objections or request for a hearing having been filed within twenty days after such service and general notice of the Proposed Decision having been given by posting for thirty days, it is

ORDERED that such Proposed Decision be and the same is hereby entered as the Final Decision on this claim, and it is further

ORDERED that the award granted pursuant thereto be certified to the Secretary of the Treasury.

Washington 25, D. C.

JUN 29 1959

Whitney Hilland

Paul Lee

Robert L. Kuyig

COMMISSIONERS

I-40

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

IN THE MATTER OF THE CLAIM OF

PETES ALLEN, also known as
Panagiotis Fotopoulos,
444 N. W. 9th Street
Oklahoma City, Oklahoma

Under the International Claims Settlement
Act of 1949, as amended

Claim No. IT-10,640

Decision No. IT-81-2

GPO 942329

PROPOSED DECISION

This claim for \$12,000.00, timely filed under Section 304 of the International Claims Settlement Act of 1949, as amended (22 USC 1641c), by Petes Allen (also known as Panagiotis Fotopoulos), a citizen of the United States since naturalization on January 14, 1944, is for losses arising out of the war in which Italy was engaged from June 10, 1940 to September 15, 1947, and for which no provision was made in the Treaty of Peace with Italy.

Prior to amendment at the 2d Session of the 85th Congress, Section 304 was as follows:

The Commission shall receive and determine, in accordance with the Memorandum of Understanding and applicable substantive law, including international law, the validity and amount of claims of nationals of the United States against the Government of Italy arising out of the war in which Italy was engaged from June 10, 1940, to September 15, 1947, and with respect to which provision was not made in the Treaty of Peace with Italy.

The evidence shows that on or about the 8th day of June, 1943, one two-family house and furnishings belonging to the claimant, located in the village of Greka, Olympia, Greece, were damaged in the sum of \$2,700.00 as a consequence of military operations in which Italy participated. This claim was denied

I-40

by the Commission prior to August 8, 1958 for the reason that the property was not owned by a United States national at the time of damage.

On that date, to-wit, August 8, 1958 the following amendment to Section 304 (Sec. 2, Public Law 85-604, 72 Stat. 531) was approved:

Section 304 of the International Claims Settlement Act of 1949, as amended, is amended by adding at the end thereof the following: "Upon payment of the principal amounts (without interest) of all awards from the Italian Claims Fund created pursuant to Section 302 of this Act, the Commission shall determine the validity and amount of any claim under this section by any natural person who was a citizen of the United States on the date of enactment of this title and shall, in the event an award is issued pursuant to such claim, certify the same to the Secretary of the Treasury for payment out of remaining balances in the Italian Claims Fund -----."

A determination must now be made as to whether or not a claim presenting such a set of facts can be allowed under the language of Section 304, as amended.

It is noted that the amendment does not speak specifically of nationality at the time of damage, and that the statutory requirement to determine claims of nationals of the United States in accordance with the substantive rules of international law has not been removed.

It is a well known and long established rule, followed without exception by this Commission and its predecessors, that a claim cognizable under principles of international law does not come into existence unless the property which is the subject of the claim was owned by a national of the United States at the time of damage. Otherwise it cannot be said that the United States has received an injury or has a legal cause to complain against another nation.

(Borchard, "Diplomatic Protection of Citizens Abroad", p. 351; Whiteman, "Damages in International Law", Vol. 1, p. 96; Judge Parker in Administrative Decision No. V, the Mixed Claims Commission, United States and Germany, "Decisions and Opinions" 1928, pp. 145,

176-177; Jessup, "A Modern Law of Nations", p. 99; Moore, "Digest of International Law," Vol. VI, pp. 636-637; Hackworth, "Digest of International Law", Vol. V, p. 802; Ralston "The Law and Procedure of International Tribunals", pp. 161-162; Hyde, "International Law as Applied by the United States", Vol. II, p. 893; Nielsen, "International Law Applied to Reclamations", p. 13; Oppenheim, "International Law", 6th Ed. Vol. I, p. 314, edited by Lauterpacht.)

The property which is the subject of the claim before the Commission was not owned by a United States national at the time of damage and the United States received no injury. Therefore, the possible allowance of the claim under the amendment would at first appear to conflict with the foregoing rule. In view of the general and long acceptance of the rule and in the absence of clear and positive language, an intent on the part of the Congress to override it is scarcely to be presumed. That the Congress had no such intent is clearly shown in the Report of the Foreign Relations Committee (Senate Report No. 1794, 85th Congress, pp. 8-9).

Careful consideration of the matter leads to the conclusion that without doubt Congress had in mind to reaffirm the rule rather than to override it.

Nevertheless it is the considered opinion of the Commission that the instant claim is entitled to an award under Section 304, as revised, for the following reasons.

An international claims settlement is founded on the wrong done to a nation itself through injuries to its nationals. (Feller, The Mexican Claims Commission, p. 83 et. seq., and authorities cited supra.) A settlement fund when received, and at least unless otherwise committed by the terms of the settlement agreement, belongs to the nation whose nationals suffered the injuries. (First National City Bank of New York vs. Gilliland, 257 F. 2d 223, 227.)

Under the amendment to Section 304, the rights of persons who do have valid claims under rules of international law have been preserved. What the Congress has done is merely to provide for the disposition of any balances which may remain in the fund received from Italy after

the payment of such claims. This claim, although not cognizable under rules of international law, is allowable within the class which, by specific legislative authorization, may be entitled to participate in any such residual disposition.

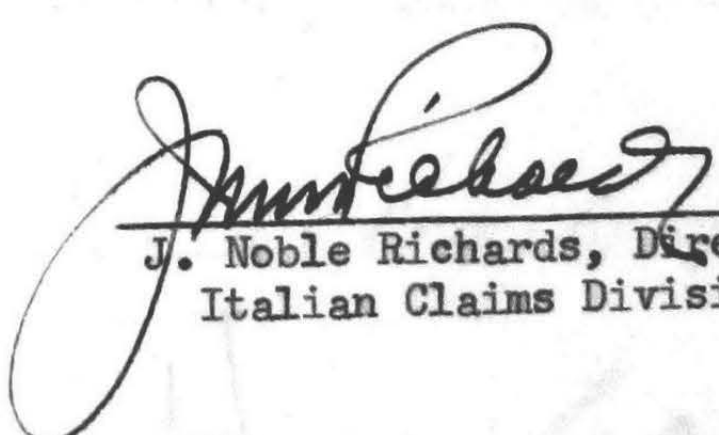
A W A R D

It is therefore ORDERED that said claim be and the same is hereby allowed and an award made to the claimant in the sum of \$2,700.00, together with interest in the amount of \$783.00, being 6 percent per annum from June 8, 1943 to April 23, 1948, the date of payment by the Government of Italy of \$5,000,000 pursuant to the Memorandum of Understanding dated August 14, 1947, PROVIDED that no payment shall be made with respect to this award until payment in full, from the Italian Claims Fund created pursuant to Section 302, of the principal amounts (without interest) of all awards upon claims determined under the original provisions of Section 304.

Dated at Washington, D. C.

April 20, 1959

FOR THE COMMISSION:



J. Noble Richards, Director
Italian Claims Division

Henry T. Clay *6/24/59*

M
8/8

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

IN THE MATTER OF THE CLAIM OF

PETES ALLEN, a/k/a
PETES FOTOPOULOS
444 N.W. 9th Street
Oklahoma City, Oklahoma

Claim No. IT-10,640

Decision No. IT-81

Under the International Claims Settlement
Act of 1949, as amended

GPO 16-72126-1

FINAL DECISION

The Commission issued its Proposed Decision on this claim on January 16, 1957, a certified copy of which was duly served upon the claimant. Full consideration having been given to the objections of the claimant, filed within the twenty-day period after such service which has now expired, and general notice of the Proposed Decision having been given by posting for thirty days, it is

ORDERED that such Proposed Decision be and the same is hereby entered as the Final Decision on this claim.

Washington 25, D. C.

APR 3 1957

Whitney Gilliland

Paul Carter Pace

Henry I. Clay

COMMISSIONERS

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

JB

In the Matter of the Claim of

PETES ALLEN , a/k/a/
PETES FOTOPOULOS
444 NW 9th Street
Oklahoma City, Oklahoma

Claim No. IT-10,640

Decision No. It-81

Under Section 304 of the International
Claims Settlement Act of 1949, as amended

PROPOSED DECISION

This is a claim against the Government of Italy, under Section 304, of the International Claims Settlement Act of 1949, as amended.

Section 304 of the aforesaid Act provides for the receipt and determination by the Commission, in accordance with the Memorandum of Understanding and applicable substantive law, including international law, of the validity and amounts of claims of nationals of the United States against the Government of Italy, arising out of the war in which Italy was engaged from June 10, 1940 to September 15, 1947, and with respect to which provision was not made in the treaty of peace with Italy. The claimant herein alleges that he became a citizen of the United States on January 14, 1944 in Oklahoma City, Oklahoma; claimant further alleges that the damage or loss to his property occurred on June 8, 1943.

Under a well established principle of international law, eligibility for compensation requires that the property which was the subject of damage or loss must have been owned by a United States national at the time the damage or loss occurred and that the claim arising as a result of such damage or loss, must have been continuously owned thereafter by a United States national or nationals.

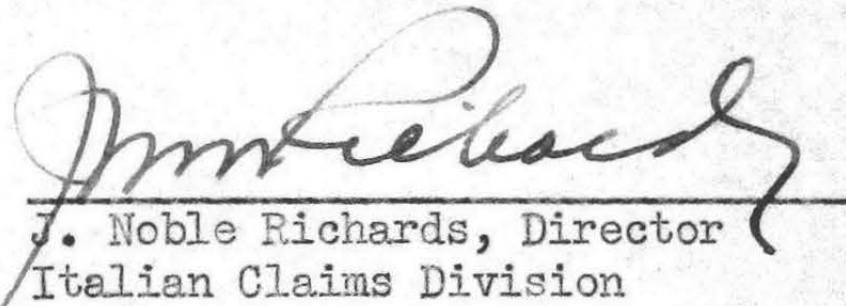
The Commission's records disclose that the claimant was not a national of the United States at the time the loss or damage to his property occurred.

For the foregoing reason, the claim must be, and is hereby, denied. Other elements bearing upon eligibility have not been considered.

Dated at Washington, D. C.

JAN 16 1957

FOR THE COMMISSION:


J. Noble Richards, Director
Italian Claims Division