

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

In the Matter of the Claim of

JOHN D. WILLIAMS  
67 South Munn Avenue  
East Orange, New Jersey

Claim No. SOV-40,092

Decision No. SOV-4

Under the International Claims Settlement  
Act of 1949, as amended

Counsel for Claimant:

ROY T. AMBERT, Esquire  
160 Broadway  
New York 38, New York

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 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 11 1956

*Whitney Gilliland*  
Whitney Gilliland, Chairman

*Pearl Carter Face*  
Pearl Carter Face, Commissioner

*Henry J. Clay*  
Henry J. Clay, Commissioner

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Richard J. McGowan, broker, with full recourse against the partnership. Nine of the drafts were transferred and delivered to Richard J. McGowan, three to the Bronx National Bank of the City of New York, and three to the Standard Bank of South Africa Limited, (hereinafter designated as "transferees") together with the bills of lading covering the shipments. By virtue of these transactions the transferees became owners and holders of the respective drafts and bills of lading so negotiated to them.

It further appears that all of the said drafts were subsequently endorsed by the transferees to the order of the Bank for Foreign Trade at Odessa, Russia and delivered to said bank with the accompanying documents for the benefit and account of the transferees and upon agreement that the said bank would pay over the proceeds, upon collection, to such transferees; that the said bank did collect the amount of the drafts, but failed and refused to pay the proceeds to the transferees.

The transferees, thereupon, invoked their rights of recourse against the partnership. The latter paid the amount due on the drafts to the transferees on the basis of its liability under its endorsement and the transferees assigned their respective claims against the Russian Bank for Foreign Trade not to the partnership, but to John Yrigoyen. There is nothing in the record to indicate that these assignments were conditional and it must, therefore, be presumed that they were absolute.

Mr. Yrigoyen, thereafter, (as plaintiff), instituted suit in the Supreme Court of the State of New York against the Russian Bank for Foreign Trade, to recover damages for said Bank's failure to remit the proceeds which it had collected on account of the aforementioned drafts. The date when such suit was instituted does not appear in the record but it was evidently commenced prior to December 17, 1917.

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In connection with the suit, certain funds standing to the credit of the Russian Bank for Foreign Trade in the National City Bank were attached prior to November 16, 1933 under a Warrant of Attachment. So far as can be determined from the evidence, the action was never prosecuted to judgment because of certain difficulties Mr. Yrigoyen encountered in obtaining necessary proof. At least, as of 1944, the action was still pending.

It should here be emphasized that the foregoing recitals are based on statements made by claimant and his attorney, and are not corroborated by any documentary evidence.

After the institution of the aforementioned suit, Mr. Yrigoyen executed an instrument, acknowledged on the 17th of December, 1917, which recites that the claims of the transferees were assigned to him; that he took such assignments in his own name, but for the benefit of himself and John D. Williams (claimant herein). By such instrument he assigned to the claimant herein ". . . an undivided one-half interest in and to said claims against the Russian Bank for Foreign Trade, and I hereby declare that John D. Williams shall be entitled to one-half of the proceeds of the suit brought by me against the Russian Bank for Foreign Trade, now pending in the New York Supreme Court, New York County, when the same shall be collected." (Underscoring supplied).

John Yrigoyen concededly, was never a national of the United States. In a letter addressed to the Department of State and dated July 12, 1944, Mr. Ambert, claimant's attorney, stated, "Mr. Yrigoyen was born in Guatemala and has always been a citizen of that country." This letter also contains a statement that the partnership was dissolved in 1919.

Consideration must be given to the question of whether this claim comes within the purview of section 305(a)(1) of the International Claims Settlement Act of 1949, as amended, which provides as follows:

- (a) The Commission shall receive and determine in accordance with applicable substantive law,

including international law, the validity and amounts of -

"(1) claims of nationals of the United States against a Russian national originally accruing in favor of a national of the United States with respect to which a judgment was entered in, or a warrant of attachment issued from, any court of the United States or of a State of the United States in favor of a national of the United States, with which judgment or warrant of attachment a lien was 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. . ." (Underscoring supplied).

The claimant alleges that he is a United States citizen by birth. Claimant's counsel contends, in effect, that while John Yrigoyen was not a national of the United States, the claimant's equitable interest in the lien obtained through attachment proceedings is sufficient to bring his claim for the one-half share within the scope of the Act. The Commission finds, however, that at the time any lien was acquired by the levy of the Warrant of Attachment the claim belonged to Mr. Yrigoyen, alone, and claimant's rights were thereafter fixed by and limited to the "assignment" executed by Mr. Yrigoyen on December 17, 1917, solely to one-half of the proceeds to be collected by Mr. Yrigoyen, arising out of the suit theretofore instituted by Mr. Yrigoyen against the said bank "when the same shall be collected".

By virtue of the assignments to Mr. Yrigoyen from the transferees the former acquired all of the right, title, and interest in and to the claim against the Russian Bank for Foreign Trade. When Mr. Yrigoyen instituted suit against the said Bank he was sole owner of the claim and the real party in interest. (Sec. 210 New York Civil Practice Act). The consideration paid, the purpose of the assignment and the use to

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be made of any property collected, is immaterial. (Spencer v. Standard Chemicals & Metals Corporation, 237 N. Y. 479; Titus v. Wallick, 306 U. S. 282).

It follows that the Warrant of Attachment was not issued in favor of a national of the United States and that any lien which resulted from such a levy was not obtained by a national of the United States. These requirements are essential, among other things, in order for a claim to come within the purview of section 305(a)(1) of the International Claims Settlement Act of 1949, as amended.

In view of the foregoing, this claim must therefore be and hereby is denied under section 305(a)(1) of the aforementioned Act.

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".

AUG 1 1956

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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

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

IN THE MATTER OF THE CLAIM OF

JOHN D. WILLIAMS  
67 South Munn Avenue  
East Orange, New Jersey

Claim No. SOV- 40,092

Decision No. SOV- 4a

Under the International Claims Settlement  
Act of 1949, as amended

Counsel for Claimant:

ROY T. AMBERT  
160 Broadway  
New York 38, New York

FINAL DECISION

The Commission issued its Proposed Decision on this claim on  
October 30, 1957 , 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.

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mrs  
JAN 7- 1958  
*[Handwritten initials]*

*Whitney Hilliland*  
*Earl Pace*  
*Henry S. Clay*  
COMMISSIONERS

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

IN THE MATTER OF THE CLAIM OF

JOHN D. WILLIAMS  
67 South Munn Avenue  
East Orange, New Jersey

Claim No. SOV-40,092

Decision No. SOV-4a

Under the International Claims Settlement  
Act of 1949, as amended

gpo 16-72128-1

Counsel for Claimant:

ROY T. AMBERT  
160 Broadway  
New York 38, New York

SUPPLEMENTAL PROPOSED DECISION

The above-captioned claim was heretofore considered by the Commission 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 under that Section for the reasons stated in the Commission's Proposed Decision dated August 1, 1956 without prejudice, however, to further consideration under Section 305(a)(2) of the Act. The Proposed Decision was affirmed by the Commission's Order dated October 11, 1956.

The question now before the Commission is whether the claim is compensable under Section 305(a)(2) of the Act, 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."

Upon further consideration, the Commission finds that the claimant is a national of the United States since his birth in Orange, New Jersey, on August 8, 1887; that in 1914 while he was engaged in partnership with

one John Yrigoyen under the firm name of John D. Williams & Company, the Russian Bank of Foreign Trade, by virtue of the transactions described in the aforementioned Proposed Decision, became indebted to said Mr. Yrigoyen in the amount of \$11,460.50; and that Mr. Yrigoyen assigned a one-half interest therein to claimant.

The Commission finds that by decree dated December 27, 1917, the Soviet Government nationalized, without compensation, all Russian banks and expropriated their property. Subsequently, the Soviet Government on March 4, 1919 issued a decree which annulled all obligations of nationalized enterprises which arose prior to such nationalization. As a result thereof creditors of such banks were barred from enforcing their legal rights. The Commission finds that these actions on the part of the Soviet Government constituted an outright confiscation of property and gave rise to claims against that Government by creditors adversely affected thereby.

A W A R D

On the above evidence and grounds and upon the entire record this claim is allowed under Section 305(a)(2) of the Act and an award is hereby made to JOHN D. WILLIAMS, in the amount of Five thousand seven hundred thirty dollars and twenty-five cents (\$5,730.25), plus interest thereon at the rate of 6% per annum from December 30, 1917, the date of nationalization, to November 16, 1933, the date of the Litvinov Assignment (Section 301(6) of the Act), in the amount of Five thousand four hundred sixty-one dollars and ninety cents (\$5,461.90). No determination is made with respect to interest for any period subsequent to November 16, 1933.

Payment of this award in whole or in part shall not be construed to have divested claimant or the Government of the United States in his behalf, of any rights against the Government of the Soviet Union for the unpaid balance, if any, of the claim.

Dated at Washington, D. C.

OCT 30 1957

FOR THE COMMISSION:



Joseph Stein, Director  
Soviet Claims Division

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

In the Matter of the Claim of  
John D. Williams

Under the International Claims  
Settlement Act of 1949, as amended

C L A I M   N o.   SOV-40,092  
Decision No.   SOV-4a

EXECUTIVE DIRECTOR'S STATEMENT

No information of sufficient merit to cast doubt on the accuracy of the Proposed Decision on this claim has been brought to the attention of the Executive Director during the period of general notice provided by posting.

*Robert A. Kennedy*

Robert A. Kennedy  
Executive Director

Dated: December 19, 1957

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

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JOHN D. WILLIAMS  
67 South Munn Avenue  
East Orange, New Jersey

Claim No. SOV-40,092

Under the International Claims Settlement  
Act of 1949, as amended

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GENERAL COUNSEL'S STATEMENT

No information of sufficient merit to cast doubt on the accuracy of the Proposed Decision on this claim has been brought to the attention of the General Counsel during the period of general notice provided by posting.



Andrew T. McGuire  
General Counsel

Dated: 10/8/56