

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

IN THE MATTER OF THE CLAIM OF

FREDERICK J. HENKE
41 North Lyle Avenue
Tenafly, New Jersey

Under the International Claims Settlement
Act of 1949, as amended

Claim No. SOV-40,409

Decision No. SOV-6a

gpo 16-72196-1

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 1, 1956 for the reason stated in said Proposed Decision without prejudice, however, to further consideration under Section 305(a)(2) of the Act. Claimant filed objections thereto and after hearing thereon the Proposed Decision was affirmed by 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."

The Commission finds that the claimant is a national of the United States since his birth in the City of New York on June 17, 1875.

The record discloses that on November 21, 1917 a summons and complaint was filed in the office of the Clerk of the County of Kings, State of New York, in an action entitled Marine Transport Service Corporation, Plaintiff, against Nicholas Romanof, Defendant.

The action was based on breach of a written contract dated October 8, 1915 for the loading and shipping by plaintiff of cargo from the United States destined to Russia who was then at war with the Axis Powers. The cargo consisted in a large part of barbed wire and other material normally employed in war. The consignors and consignees were Imperial Russian Military or other agencies of that Government. The Commission therefore finds that the contract was made in connection with the prosecution by the Imperial Russian Government of World War I (1914-1918).

The Commission further finds that on November 26, 1917 an agreement was entered into by and between Albert J. Sharkey, president of Marine Transport Service Corporation (above-named plaintiff) and Frederick J. Henke (claimant herein), and that it was the intent of the Marine Transport Service Corporation, under said agreement, to transfer and convey to Frederick J. Henke a one-half interest in and to the claim upon which the aforementioned action was predicated.

The record further discloses that a judgment was entered in said action on March 20, 1918 against the Defendant therein, Nicholas Romanof (former Emperor of Russia) in the total amount of \$117,450.41, which remains wholly unpaid and unsatisfied.

Nicholas Romanof was dethroned in or about March 1917. By Soviet decree dated July 13, 1918 all of his property of every nature and description and wherever situated was nationalized without compensation and declared to be the property of the Soviet Government.

Subsequently, by Soviet decree dated July 28, 1918, all claims against the State "in connection with the Imperialist War of 1914-1918" were annulled.

As a result of the foregoing decrees, creditors were barred from enforcing their legal rights against Nicholas Romanof individually and/or against the Soviet Government, as successor to the Imperial Russian Government and its sovereign Nicholas Romanof, based on claims which, as in the instant case, were "connected" with World War I.

The Commission finds that these actions on the part of the Soviet Government constituted an outright confiscation of property and give rise to a claim under Section 305(a)(2) of the Act 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 FREDERICK J. HENKE, in the amount of Fifty-eight thousand seven hundred twenty-five dollars and twenty cents (\$58,725.20) plus interest thereon at the rate of 6% per annum from July 13, 1918, the date of the aforementioned decree of confiscation, to November 16, 1933, the date of the Litvinov Assignment (Section 301(6) of the Act), in the amount of Fifty-four thousand fifty-six dollars and fifty-five cents (\$54,056.55). 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.

NOV 18 1957

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FOR THE COMMISSION:



Joseph Stein, Director
Soviet Claims Division

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

In the Matter of the Claim of	:	
	:	
FREDERICK J. HENKE	:	
41 North Lyle Avenue	:	Claim No. SOV-40,409
Tenafly, New Jersey	:	
	:	Decision No. SOV-6
Under the International Claims Settlement	:	
Act of 1949, as amended	:	
	:	
	:	

PROPOSED DECISION OF THE COMMISSION

This claim, under section 305 of the International Claims Settlement Act of 1949, as amended, for \$58,725.25, plus interest, by Frederick J. Henke, is based upon a one-half interest in a judgment for the sum of \$117,450.41 obtained by the Marine Transport Service Corporation of New York, New York, against Nicholas Romanof on March 21, 1918, plus interest thereon, pursuant to a written agreement dated November 26, 1917 between Frederick J. Henke, claimant, and Albert G. Sharkey, then President of the Marine Transport Service Corporation.

It appears that Nicholas Romanof, individually and as Emperor of Russia, did transact business in the United States. It further appears that the Marine Transport Service Corporation did, because of an alleged breach of contract by Nicholas Romanof, individually, bring action against him in the Supreme Court in and for the County of Kings, State of New York. Certain personal property of the defendant located in the Borough of Brooklyn, County of Kings, was duly levied upon pursuant to a Warrant of Attachment. A Motion made by Coudert Brothers to vacate the Warrant of Attachment and the Order for Publication of the Summons on the grounds that the aforesaid action was against a sovereign was denied.

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A judgment was obtained on March 21, 1918 for damages in the amount of \$102,797.01 with interest of \$14,288.78 and costs of \$364.62. A Motion by the United States attorney for the Eastern District of New York to vacate the judgment on the grounds that it "was irregular, improper without foundation in law or evidence, and contrary thereto, and obtained in a manner misleading to the Court" was denied.

The claimant submitted the original of what appears to be an assignment of November 26, 1917 to him from Albert G. Sharkey of "a total to equal fifty percent of the total amount of said claim when the judgment is satisfied."

Section 305(a)(1) of the International Claims Settlement Act of 1949, as amended, provides, in part, that the Commission has jurisdiction to entertain claims with respect to which a judgment was entered in, or a warrant of attachment issued from any court of the United States or 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 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 Commission's records do not reflect that any property of the above judgment debtor was taken, collected, recovered or liquidated by the Government of the United States pursuant to the Litvinov Assignment. This fact is buttressed by a certified Transcript of Judgment which shows that execution on the judgment of \$117,450.41 was returned unsatisfied. It must be concluded, therefore, that this claim does not come within the purview of Section 305(a)(1) of the International Claims Settlement Act of 1949, as amended.

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."

Dated at Washington, D. C.

AUG 1 1956

JWM 7/30/56
GCM 7/31/56

Whitney Gilliland
Whitney Gilliland, Chairman

Pearl Carter Pace
Pearl Carter Pace, Commissioner

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

FREDERICK J. HENKE
41 North Lyle Avenue
Tenafly, New Jersey

Claim No. SOV- 40,409

Decision No. SOV- 6a

Under the International Claims Settlement
Act of 1949, as amended

FINAL DECISION

The Commission issued its Proposed Decision on this claim on November 13, 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.

JAN 1st 1958

Whitney Hilliland

Paul Lane

Henry S. Clay

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COMMISSIONERS

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