

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

IN THE MATTER OF THE CLAIM OF

ALEXANDER HINCHUK & COMPANY
410 West 110th Street
New York 25, New York

Claim No. SOV-41,057

Decision No. SOV-1953

Under the International Claims Settlement
Act of 1949, as amended

gpo 16-72120-1

Counsel for Claimant:

EDWARD E. MITCHELL
401 Broadway
New York 13, New York

FINAL DECISION

The Commission issued its Proposed Decision on this claim on May 22, 1957 and a certified copy thereof was duly served upon the attorney for the claimant.

The claimant objected to the Proposed Decision as ". . . each and every part thereof is against the weight of the evidence and contrary to the facts and contrary to law and equity." A hearing was requested for the purpose of presenting evidence and making an oral argument.

At a hearing held on October 9, 1957, the claimant asserted that the Proposed Decision, for a denial of the claim because he was not a national of the United States at the time the claim arose in his favor, should be reversed for the following reasons:

- (1) Section 305(a)(2) of the International Claims Settlement Act of 1949, as amended, does not require that the person in whose favor the claim originally arose be a national of the United States at that time, and

- (2) Even assuming that the aforesaid section 305(a)(2) does require that the claim originally accrue in favor of a United States national, the claimant, for the purpose of this statute, should be considered to have been a national of the United States at that time, for he had previously filed a Declaration of Intention to become a citizen of the United States.

As to the first alleged error, the said section 305(a)(2) provides that "The Commission shall receive and determine in accordance with applicable substantive law, including international law, the validity and amounts of claims, arising prior to November 16, 1933, of nationals of the United States against the Soviet Government."

(Underscoring supplied) Attention is invited to the statement that ". . . the Government of the United States, as a rule, declines to support claims that have not belonged to claimants of one of these classes from the date the claim arose to the date of its settlement."^{1/}

The following provision is contained in Article 15(a) of the draft convention of The Law of Responsibility of States for Damages Done in Their Territory to the Person or Property of Foreigners, prepared by the Research in International Law at Harvard Law School:

"A state is responsible to another state which claims in behalf of one of its nationals only in so far as a beneficial interest in the claim has been continuously in one of its nationals down to the time of the presentation of the claim."^{2/}

Solicitor Hyde of the Department of State declared that "it is no doubt the general practice of nations not to espouse a private claim against another nation unless in point of origin it possesses the nationality of the claimant nation."^{3/} The custom of requiring that a claim be continuously owned by a national of the espousing nation is sufficiently well established by the nations of the world to be recognized as a principle of international law.

Assuming that this section of the statute is ambiguous, recourse

^{1/} Vol. V, Hackworth, Digest of International Law, p. 804.
^{2/} Supra, p. 804.
^{3/} Supra, p. 807.

may be had to the Congressional hearings for the purpose of clarification.

A report of the Committee on Foreign Affairs contains the following:

"D. Persons Eligible to Receive Awards Under This Bill

- "2. Expropriation and Russian claims -- A claimant must have been a United States national continuously since the date of the loss. All Russian claims must have arisen prior to November 16, 1933." ^{4/}

In testifying before the Committee on Foreign Affairs, House of Representatives, on April 19, 1955, Mr. Griffin of the Department of State declared "In other words, in general, a claimant would not be entitled to share in these funds unless he was a citizen at the time the claim arose. That would be true with respect to claims (a) against the Union of the Soviet Socialist Republics for payment out of the Litvinov Assignment fund . . ." ^{5/} Clearly, the Congress intended that a claim against the Soviet Government under section 305(a)(2) would not be valid unless it had been continuously owned by United States nationals.

As to the second alleged error, attention is invited to the statement that "A declaration of intention to become a citizen of the United States does not clothe the declarant with citizenship nor does it confer upon him the right to seek the diplomatic protection of the Government of the United States with respect to injuries suffered by him at the hands of foreign governments." ^{6/} No cases were cited in support of the proposition offered by the claimant that he enjoyed a de facto United States citizenship from October 11, 1915 when he filed a Declaration of Intention until the naturalization proceedings were finalized on March 10, 1921 which was subsequent to the time the claim originally arose, and that the granting of citizenship was retroactive to the filing of the Declaration of Intention. The Report of the Committee on Foreign Relations on H.R. 6382 (A Bill to Amend the International Claims Settlement Act of 1949, as Amended, and For Other

4/ House Report No. 624 - 84th Congress, 1st Session, p. 5.

5/ Hearings Before the Committee on Foreign Affairs, House of Representatives, Eighty-Fourth Congress, First Session on draft legislation, p. 110.

6/ Vol. V, Hackworth, Digest of International Law, p. 815.

Purposes) provides, in part, as follows:

"The committee has carefully considered the arguments advanced in support of the proposed extension of eligibility which, if adopted, would mark the first time in the claims history of the United States that a declaration of intention was equated with citizenship. After weighing all pertinent factors, the committee has concluded that such a precedent is not desirable. While sympathetic to the plight of those unfortunate individuals who were not American citizens when they sustained war losses, the committee has had to keep uppermost in view the interest of those individuals who did possess American nationality at the time of loss. It is these persons who have a paramount claim to any funds which may be available. Even without the addition of the class here questioned, the funds will be insufficient to meet the claims of otherwise qualified claimants, except possibly in the case of the Bulgarian and Italian assets." 7/

As the errors alleged by the claimant are clearly without merit and as the general notice of the Proposed Decision has 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.

Dated at Washington, D. C.

OCT 24 1957

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[Signature]*

*Whitney Gilliland
Henry S. Clay*

COMMISSIONERS

7/ Senate Report No. 1050, 84th Congress, 1st Session, p. 9.

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EDWARD E. MITCHELL
401 Broadway
New York 13, New York

PROPOSED DECISION

This claim by Alexander Hinchuk & Company against the Soviet Government under Section 305(a)(2) of the International Claims Settlement Act of 1949, as amended, is based upon a loss sustained by the claimant as the owner of pharmaceutical supplies which were confiscated by that Government in 1917.

Section 305(a)(2) of the Act provides for the receipt and determination by the Commission, in accordance with applicable substantive law including international law, of the validity and amounts of claims of nationals of the United States against the Soviet Government, provided such claims arose prior to November 16, 1933.

Under a well-established principle of international law, a claim must be owned by a national of the United States (not necessarily the same one) at the time it arose and continuously thereafter.

Alexander N. Hinchuk has informed the Commission that he was the sole owner and did business under the name of Alexander Hinchuk & Co. and that he became a naturalized citizen of the United States on March 10, 1921.

As this claim arose in 1917 in favor of Alexander Hinchuk, it did not arise in favor of a national of the United States; therefore, it must be and hereby is denied.

Other elements bearing upon the validity of the claim have not been considered.

Dated at Washington, D. C.

MAY 22 1957

FOR THE COMMISSION:



Joseph Stein
Director, Soviet Claims Division

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