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

IN THE MATTER OF THE CLAIM OF

ALBERT FLEGENHEIMER
300 Central Park West
New York 24, New York

Claim No. IT-10,555

Decision No. IT-877

Under the International Claims Settlement Act of 1949, as amended

GPO 942329

Attorney for Claimant:

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FINAL DECISION

This is a claim for $8,000,000 filed by Albert Flegenheimer against the Government of Italy under Section 304 of the International Claims Settlement Act of 1949, as amended, 1/ for loss of 47,907 shares of stock of the Societa' Finanzeria Industriale Veneta, an Italian corporation, on or about March 18, 1941, as a result of an asserted sale thereof in which force or duress had allegedly been exerted by a representative of the Italian Government.

In a proposed decision dated December 30, 1958, the claim was held to be not compensable under Section 304 of the Act for the following reasons: claimant failed satisfactorily to establish his United States nationality and therefore failed to qualify as an eligible claimant; provision for such claim was made in the Treaty of Peace with Italy 2/; and, lack of proof that any force or duress

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1/ 22 U.S.C. 1641 (c); hereinafter referred to as "the Act".

2/ 61 Stat. 1245 et seq., (T.I.A.S. 1648) February 10, 1947.

was exerted directly or indirectly by the Government of Italy, its representatives or agents.

Claimant objected to the proposed decision, and argument was held before the Commission on April 17, 1959, as requested by the claimant, on the nationality and Peace Treaty issues only.

It is contended by the claimant, first, that he has been a citizen of the United States since birth and is, therefore, a national of the United States within the meaning of the Act.

For the purpose of this decision and for such purpose alone, we shall accept this contention.

It is contended by the claimant, secondly, that provision was not made with respect to his claim in the Treaty of Peace with Italy and, accordingly, the claim must be determined under Section 304 of the Act. This contention is thus the sole issue presently before the Commission.

For the reasons hereinafter indicated, we can not accept this contention. It is the opinion of the Commission that the law and the overwhelming weight of logic prove conclusively that provision for such claim was made in the Treaty of Peace with Italy, and therefore the claim of Albert Flegenheimer before the Foreign Claims Settlement Commission of the United States must be denied.

This Commission operates under clear Congressional mandate evidenced in the Act; a domestic law to be administered by a domestic Governmental agency. Section 304, although it references the Memorandum of Understanding, 3/ nowhere mentions by specific word

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3/ Art. II, Memorandum of Understanding between the Government of the United States and the Government of Italy regarding Italian assets in the United States of America and certain claims of United States nationals, 61 Stat. 3988, (T.I.A.S. 1757); dated August 14, 1947 (commonly known as "Lombardo Agreement").

any Conciliation Commission. Nor does the Act even suggest the possibility that the Foreign Claims Settlement Commission would be bound by any decisions of such an international tribunal.

The Act gives the Commission the right and the duty to receive and determine claims of nationals of the United States against the Government of Italy ..... with respect to which <u>provision was not made in the Treaty of Peace with Italy</u>. 4/

It becomes our duty, then, to determine whether provision for this claim was made in the Treaty of Peace. We think it clear that it was.

The Treaty requires that the Italian Government shall invalidate transfers involving property, rights and interests of any description belonging to United Nations nationals, where such transfers resulted from force or duress exerted by Axis Governments or their agencies during the war. 5/

The key word in the crucial sentence of the Act is obviously "provision" ..... i.e., whether the claim was <u>provided for</u>. Simple statutory rules of construction would first suggest examining the normal dictionary meaning of a word. One could search any dictionary <u>ad infinitum</u> without finding "provided for" defined as synonymous with "satisfied".

Claimant in his argument begins by using the words "provided for", but thereafter abandons them and substitutes the word "satisfied". If this Commission is to have jurisdiction over all claims not satisfied by the Italian government, it requires only one small step further to argue all claims not satisfied in full. Indeed claimant makes this exact point.

4/ Section 304.

5/ Art. 78, par. 3.

This would mean that any claimant believing his Italian award to be too small, or receiving two-thirds and desiring to get the remaining third, 6/ could appear before the Foreign Claims Settlement Commission and be "satisfied in full". Merely to state this proposition illustrates its manifest absurdity.

If Congress had intended "provided for" to mean "satisfied", it could easily have employed the latter word. Or if Congress had intended "provided for" to mean "paid", this word also was available. It is significant that Congressional draftsmen chose not to use either "satisfied" or "paid".

In brief, claimant is saying that this Commission must take jurisdiction whenever the Conciliation Commission refuses to take jurisdiction itself. We cannot agree that any such basic control over a United States Commission is inherent in the powers of such an international tribunal. Resulting inequities could easily destroy the entire claims program enacted by Congress.

The traditional philosophy of claims programs in the United States envisions strict deadlines for all programs. Congress sets a specific span of time in which the United States tribunal is to complete its work. Payment is intended to go to the basic claimants, not to their grandchildren or great-grandchildren. This Commission has been ever conscious of this fundamental philosophy, and has in fact completed all its programs on time -- as directed by Congress. The Italian program must be completed August 9, 1959.

6/ Art. 78, par. 4 (a), Treaty of Peace, provides for the payment by the Government of Italy of only two-thirds of the loss suffered.

Article 83 of the Treaty establishing the Conciliation Commission makes no reference to the time in which all applications before it must be completed. There is thus no deadline whatsoever on the work of the Conciliation Commission.

It might well be queried how the Congressional policy of finality in United States claims programs could ever be carried out, if the Foreign Claims Settlement Commission was required to take jurisdiction of every case after jurisdiction was refused by the Conciliation Commission -- bearing in mind the lack of any time limit on the work of the Conciliation Commission.

Further in the interest of finality, Congress has denied claimants the privilege of court review. 7/

Can it seriously be argued that Congress would deny judicial review by United States courts in the interest of finality, and at the same time permit substantial control over a United States Commission by an international tribunal? And even more unusual, -- by an international tribunal with no deadline on its program?

Carrying claimant's contention further, if those who "never had their day in court" because the door was shut by the Conciliation Commission on ineligibility grounds are to be heard by the Foreign Claims Settlement Commission, what should be done with claimants who were turned down by the Italian Minister of the Treasury or by the Italian Interministerial Commission 8/ on the same grounds? Clearly, these cases, too, would have to be heard by the Foreign Claims Settlement Commission.

7/ Section 314.

8/ Created pursuant to letter dated August 14, 1947, -- a part of the Memorandum of Understanding, supra.

Thus a cabinet official or agency, subservient to a foreign prime minister, and subject to all the vagaries of national and international politics would have a powerful control over an independent United States Commission.

What of those cases denied in Italy on the merits? To achieve consistency, wouldn't these, also, have to be then heard by the Foreign Claims Settlement Commission?

Claimant contends the legislative history of Section 304 of the Act shows that Congress intended that this Commission must accept claims of United States citizens which have been rejected by the Conciliation Commission on the ground of the alleged ineligibility of the claim.

Congress intended the Foreign Claims Settlement Commission to be independent. It was created free from executive, legislative or judicial control. Certainly Congress didn't intend an independent United States quasi-judicial commission to be subservient to an international tribunal, or worse, to a foreign official. The end result of claimant's contention would be administrative and judicial chaos. 2/

Nor can we ignore Congressional approval of a $5,000,000 settlement fund. In analyzing Congressional intent, we might not be remiss in querying whether Congress had in mind payment of claims

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2/ In addition, the possible surplusage of funds (Memorandum of Understanding, 8 U.S.T. 1725, (T.I.A.S. 3924) dated October 22, 1957) to be used by the Conciliation Commission to pay claims of American nationals under the Treaty may well result in future reexamination of American claims which have already been denied. Such action would add further confusion if the Foreign Claims Settlement Commission would have to await final decision of the Conciliation Commission.

in the present category, one single claim of which is for $8,000,000 alone.

If any further proof of intent were needed, said proof would lie in the clear language of the Memorandum of Understanding stating:

> "the sum of $5,000,000 ..... to be utilized in such manner as the Government of the United States ..... may deem appropriate ....." 10/

Such language suggests anything but subservience to a foreign tribunal.

Finally, it is strange, to say the least, for claimant to urge this Commission to accept the judicial determination of the Conciliation Commission re ineligibility, and ignore the basis of such decision ..... i.e., lack of American citizenship. Claimant has strongly asserted his American citizenship before the Foreign Claims Settlement Commission, and at the same time demands that we accept the decision of the Conciliation Commission which denied his claim on that precise ground. Claimant has here achieved a true masterpiece of inconsistency.

Thus the clear and obvious meaning of the language of the Act, careful analysis of Congressional intent, and the application of simple logic all militate against acceptance of claimant's theory of the case.

We hold that the claim of Albert Flegenheimer, whether paid or rejected by the Conciliation Commission, has been "provided for" within the meaning of the term as contained in Section 304 of

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10/ Art. II, Memorandum of Understanding, 61 Stat. 3988, (T.I.A.S. 1757).

the Act. Therefore, the Foreign Claims Settlement Commission has no jurisdiction in this case.

For the foregoing reasons, this claim must be, and hereby is denied.

The Commission finds it unnecessary to make determinations with respect to other contentions of this claimant.

Dated at Washington, D.C.

MAY 11 1959

Whitney Gillilland

Pearl Pace

Robert L. Kunzig

Commissioners

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

IN THE MATTER OF THE CLAIM OF

ALBERT FLEGENHEIMER
300 Central Park West
New York 24, N. Y.

Under the International Claims Settlement
Act of 1949, as amended

Claim No. IT-10,555

Decision No. IT- 877

GPO 942329

Attorney for Claimant:

ABRAHAM KAUFMAN, Esquire
55 Liberty Street
New York 5, N. Y.

PROPOSED DECISION

This is a claim for $8,000,000 filed by Albert Flegenheimer for loss of 47,907 shares of stock of the Societa' Finanzeria Industriale Veneta, an Italian corporation, on or about March 18, 1941, as a result of an asserted sale thereof in which force or duress is alleged to have had been exerted by a representative of the Italian Government, during World War II.

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

Based on the evidence and data before it, the Commission is of the opinion that the claimant has failed to establish his

United States nationality, and therefore fails to qualify as an eligible claimant under the above-recited section of the Act.

The Commission has determined that the clause "with respect to which provision was not made in the Treaty of Peace" should be construed to include, among other things, claims of nationals of the United States for losses or damages sustained outside of the geographical boundaries of Italy proper, attributable to the action of Italian authorities in the conduct of their military activities between June 10, 1940 and September 15, 1947.

Claimant was the possessor of personal property, i.e., certificates of shares of stock, which had been deposited in his name in a bank of Italy. While the records before the Commission show an absence of evidence that the certificates were sequestered by the Italian Government, its representatives or agents, it may be inferred from statements appearing of record that the certificates had been placed in escrow in an Italian bank by a private "creditor" of the claimant. Therefore, the situs of the personal property would have been within the geographical boundaries of Italy and covered by the provisions of Article 78 and related provisions of the Memorandum of Understanding, and would not fall within the provisions of Section 304 of the above-referred to Act.

Albert Flegenheimer asserts that he was forced to sell 47,907 shares of stock which he acquired in 1929 in a holding company incorporated in Italy, at a price greatly below the actual value of his interest at the time of sale to an agent or representative of the Italian Government.

It is revealed by the records that the claimant and the purchasers of the stock entered into negotiations for its sale prior to April 1940. Said negotiations continued until March 1941 when the claimant agreed to accept $5.80 per share for his holdings. The contract was consummated in June 1941 when the Banca Popolare

effected the transfer of said shares to the purchasers for the agreed price, or a total of $277,860.60 and arrangements were made for the deposit of the proceeds of the sale to claimant's account with his New York bank.

Article 78, Paragraph 3 of the Treaty of Peace provides that

> "The Italian Government shall invalidate transfers involving property, rights and interests of any description, belonging to United Nations nationals, where such transfers resulted from force or duress exerted by the Axis Governments or their agencies during the war".

The claimant has alleged that pressure to dispose of his shares of stock had been brought by one Dr. Montesi, a former business associate, who was the purchaser of the majority of the stock, prior to April 1940 and that claimant had agreed to sell because of his fear that as a member of the Jewish race, he might possibly be interned. He also asserts that Dr. Montesi was an adviser of the then head of the Italian Government and was acting in a representative capacity of such Government.

Duress is the deprivation of the exercise of one's own will either through threats or fear made by the person claiming the benefit of the contract, for the purpose of obtaining such contract.

The Commission is unable to reconcile claimant's allegations of duress through fear with the facts before it. The claimant asserts that negotiations for the sale of the stock were entered into prior to April 1940.

The records reveal that claimant left the European continent in 1938 and has been a resident of Canada and the United States since that time.

It would therefore appear that by his removal from the area of asserted persecution, he regained the freedom of exercising his free will and was in a position to repudiate the provisions of

the contract, since a contract entered into under duress is generally considered to be voidable, rather than void. However, such contracts are capable of being ratified after the removal of the duress, and such ratification results if the party entering into the contract under duress, accepts the benefits thereof, remains silent or acquiesces in the contract for any considerable length of time after the opportunity to void it or have it annulled.

The Commission is of the opinion that by his acceptance of the proceeds of the sale, deposited to his account in a New York bank, the claimant had ratified the contract after removal of the alleged duress.

The assertion that pressure was brought to bear on the claimant by and on behalf of one of the purchasers, who assertedly was a representative of the Government, fails for lack of proof that any force or duress was exerted directly or indirectly by the Government of Italy, its representatives or agents.

Article IV, Section 17 (a) of the First Memorandum of Understanding provides as follows:

> "The Government of Italy, recognizing the existence of legitimate claims of the Government of the United States of America, or of United States nationals against the Government of Italy or Italian nationals, arising out of contracts or other obligations incurred prior to December 8, 1941, agrees that it will make every effort to settle at as early date as possible, and to facilitate to the extent possible the payment of debts or other claims referred to hereinabove."

The claimant has established that a contract for the sale of this property was negotiated and executed by and between private parties; and as a result of such agreement the subject shares of stock were transferred to the purchasers and the proceeds deposited to the account of the claimant. It is further noted that the contract was fully executed on June 6, 1941, a date prior to that set forth in the above-referred to Article IV, or the date on which the United States entered into the war

against Italy, and clearly provision is made for such prewar contracts in the quoted section.

Under Article 78, Paragraph 1 of the Treaty of Peace, Italy was required to restore all legal rights and interests in Italy of nationals of the United States as they existed on June 10, 1940 and to return all property in Italy of nationals of the United States. It was also provided in Paragraph 2 of Article 78 of the Treaty that the Italian Government would return all such property rights and do so free of all encumbrances, and would nullify all measures, including seizure, sequestration or control taken by it against property of United States nationals between June 10, 1940 and the coming in force of the Treaty of Peace.

In order to clarify these provisions and to insure United States nationals of a maximum of protection for the return of their property in Italy and the ceded territories or reimbursement for damage to or loss thereof, the two governments entered into the Memoranda of Understanding.

In Paragraph 16 (a) of the Memorandum of Understanding it was provided that the Government of Italy would expedite arrangements then being undertaken or necessary to be undertaken for the desequestration or release of any unusual controls of the property or interests in property in Italy of nationals of the United States of America "including the cancellations of any control, contracts, including contracts for the sale of capital assets or a part thereof, agreements, or arrangements undertaken during the period of control, in accordance with the request, or at the direction of the Government of Italy, its agencies or officials, which are not deemed to have been in the best interests of such property or interests".

In order to cover the possibility of cases arising as a result of action taken in Italy on or after June 10, 1940 with respect to property or interests in property in Italy belonging to a national of the United States of America, Sections 16 (a) and (b) of the Memorandum of Understanding were adopted.

It is apparent that by the inclusion of Paragraph 16 (b) in the Memorandum of Understanding the Government of Italy agreed that with respect to property or interests in property of United States nationals whose property or interests were not covered by Section 16 (a) it would accord such property or interest identical treatment with that provided in Section 16 (a), regardless of whether or not the action had been taken by the Italian Government itself.

The Commission is of the opinion that the private contractual relationship existed between the claimant and the purchasers of the shares of stock and that as such would fall under the above-quoted provisions of the Treaty of Peace and the Memorandum of Understanding, particularly Section 16 (b) thereof, and not within the purview of Section 304 of the International Claims Settlement Act of 1949, as amended.

Therefore, even if the question of the citizenship of the claimant had been favorably resolved, the subject claim must be and hereby is denied for the reasons set forth above.

Other factors which may be deemed pertinent or relevant to this claim have not been considered.

Dated at Washington, D. C.

FOR THE COMMISSION:

DEC 30 1958

J. Noble Richards, Director
Italian Claims Division

JT-10,555