

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

IN THE MATTER OF THE CLAIM OF

SALLY ZAHARIA
322 Central Park, W.
New York 25, New York

Claim No. RUM-30,120

Decision No. RUM-387

Against the Government of Rumania
Under the International Claims Settlement
Act of 1949, as amended

Counsel for Claimant:

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New York 4, New York

FINAL DECISION

The Commission issued its Proposed Decision on this claim on **April 2, 1958**, a certified copy of which was duly served upon the claimant(s). 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 the claim, and it is further

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

Dated at Washington, D. C.

MAY 28 1958

Whitney Hilliard

Paul Pace

Henry S. Clay

COMMISSIONERS

JSB

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GPO 16-72126-1

Counsel for Claimant:

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PROPOSED DECISION

This is a claim under Section 303(2) of the International Claims Settlement Act of 1949, as amended, for \$199,118.99 by SALLY ZAHARIA, a national of the United States since her naturalization in the United States on July 19, 1945, for nationalization of two houses in Braila, Rumania; a barge, plus loss of rental income from the barge, and the costs of preparing the claim.

The Commission finds that the claimant owned a one-third interest in two houses which was nationalized without compensation by the Government of Rumania pursuant to Decree No. 92 of April 20, 1950 (Official Gazette No. 36). The Commission further finds that the value of the property taken was three thousand six hundred sixty-six dollars and sixty-seven cents (\$3,666.67) and concludes that claimant is entitled to an award under Section 303(2) of the Act.

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T.D.

The claimant further seeks compensation for the loss of the barge "Lonciu" which was sunk by Russian gun-fire in the mouth of the Dnieper River on December 22, 1943 prior to the date on which claimant became a national of the United States. Claimant alleges that said barge was nationalized pursuant to Law No. 119 of June 11, 1948.

Section 303(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 amount of claims of nationals of the United States against the Government of Rumania, among others, arising out of the failure of such government to pay effective compensation for the nationalization, compulsory liquidation, or other taking, prior to August 9, 1955, of the property in Rumania of nationals of the United States. The Commission has consistently held that one of the prerequisites under the Act is a showing that the property concerned was in Rumania at the time of the loss.

The Commission finds that it has not been established that the barge was in Rumania at the time of the loss within the contemplation of Section 303(2) of the Act.

Moreover, under well established principles of international law, unless otherwise provided by treaty, in order for a claim espoused by the United States to be compensable, the property upon which it is based must have been owned by a national or nationals of the United States at the time of the loss, and the claim which arose from such loss must have been owned by a United States national or nationals thereafter.

The Commission further finds that it has not been established that the claim for the loss of the barge arose against the Government of Rumania within the meaning of the statute

or that the claim was owned by a national of the United States at the time it allegedly arose against the Government of Rumania.

If the claim be viewed as one for war damages, Section 303(1) of the Act would apply. That Section authorizes, inter alia, receipt and determination of claims of United States nationals for failure of the Government of Rumania to restore or pay compensation for property of nationals of the United States as required by Articles 24 and 25 of the Treaty of Peace with Rumania. Article 24 provides for the restoration of rights and return of property of United Nations and their nationals and for the payment of compensation to United Nations whose property suffered war damage or cannot be returned, and United Nations nationality is made to depend either upon nationality in any one of the United Nations on September 12, 1944, the date of the armistice with Rumania, or upon having been treated as an enemy under the laws enforced in Rumania during the war. Article 25 requires the restoration of, or compensation for, property which was the subject of measures of sequestration, confiscation or control on account of racial origin or religion of persons under Rumanian jurisdiction.

However, claims under Section 303(1) of the International Claims Settlement Act are restricted by the language of the Act itself to those owned by United States nationals. As to such claims, the customary rule of international law as to the national character of the claim is modified by application of provisions of the Treaty and the Act, so that a claim arising under the Treaty may be found compensable under Section 303(1) if the property on which it is founded, or the claim arising from the loss of the property, was owned by a national or nationals of the United States on September 12, 1944, the date of the armistice with Rumania, and continuously thereafter. In the instant case, however, it is

found that it has not been established that the claim for the loss of the barge was owned by a United States national on September 12, 1944, and the claim may not, therefore, be considered compensable under Section 303(1). The claim for the loss of the barge is not compensable under Section 303(1) of the Act for the further reason that it has not been established that the property in question was in Rumania within the meaning of Articles 24 and 25 of the Treaty of Peace with Rumania.

For the foregoing reasons, the claim for the loss or nationalization of the barge "Lonciu" is denied.

The claim for the loss of rents is denied, for the reason that Section 303(3), the only provision of the Act authorizing the Commission to receive and determine claims based upon the failure of the Government of Rumania to meet contractual obligations, specifically requires, as one of the prerequisites to an award, that the obligation be "expressed in currency of the United States." Thus, claims based upon obligations expressed in currencies other than that of the United States, such as the portion of this claim based on loss of rent, are not compensable under Section 303(3) of the Act.

The Commission has consistently held that a claim for reimbursement of expense incurred in the preparation of a claim is not compensable under Section 303 of the Act and, therefore, that portion of the claim must be and hereby is denied.

A W A R D

Pursuant to the provisions of the International Claims Settlement Act of 1949, as amended, an award is hereby made to SALLY ZAHARIA in the amount of three thousand six hundred sixty-six dollars and sixty-seven cents (\$3,666.67) plus interest thereon at the rate of 6% per annum from April 20, 1950 to August 9, 1955,

the effective date of the Act, in the amount of one thousand one hundred sixty-six dollars and thirty-nine cents (\$1,166.39).

Payment of any part of this award shall not be construed to have divested the claimant herein, or the Government of the United States on her behalf, of any rights against the Government of Rumania for the unpaid balance of the claim, if any.

Dated at Washington, D. C.

APR 2 1958

FOR THE COMMISSION:

Donald G. Benn U.S.A.
Donald G. Benn, Director
Balkan Claims Division

Letty