

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

IN THE MATTER OF THE CLAIM OF

CHARLES B. MURGENTHAU
888 Park Avenue
New York 21, New York

Claim No. SOV- 41,077

Decision No. SOV- 2848

Under the International Claims Settlement
Act of 1949, as amended

GPO 16-78126-1

Counsel for Claimant:

NORDLINGER, RIEGELMAN, BENETAR & CHARNEY
420 Lexington Avenue
New York 17, New York

FINAL DECISION

The Commission issued its Proposed Decision on this claim on
September 17, 1958, a 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.

Washington 25, D. C.

OCT 29 1958

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Lead Carter Pace
Robert L. King

COMMISSIONERS

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

IN THE MATTER OF THE CLAIM OF

CHARLES B. MERGENTIME
888 Park Avenue
New York 21, New York

Under the International Claims Settlement
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GPO 16-72126-1

Counsel for Claimant:

NORDLINGER, RIEGELMAN, BENETAR & CHARNEY
420 Lexington Avenue
New York 17, New York

PROPOSED DECISION

This is a claim for \$31,918.50 by Charles B. Mergentime against the Soviet Government under Section 305(a)(2) of the International Claims Settlement Act of 1949, as amended.

Claimant asserts, in substance, that his claim represents an undivided one-half interest in a claim which originally arose on or about December 27, 1917 in favor of Max Straus, now deceased, and that he (claimant) obtained title to said interest by inheritance.

The instant claim is computed by claimant as follows:

(a) \$16,918.50 being one-half of the total purchase price paid by Max Straus to Guaranty Trust Company of New York for seventeen (17) "drafts" in the aggregate face amount of 110,000 rubles. Thirteen (13) of said "drafts" in the aggregate face amount of 85,000 rubles were drawn on the Russo-Asiatic Bank, Petrograd, three (3) in the aggregate face amount of 20,000 rubles were drawn on the Banque de Commerce de Volga-Kama, Petrograd, and one (1) in the amount of 5,000 rubles was drawn on the Banque de Commerce de L'Azoff Don, Petrograd. These instruments were

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drawn and issued by Guaranty Trust Company of New York at various times commencing March 14, 1916 and terminating January 5, 1917 to Max Straus (payee) or order, and bore the following notation "Check against our credit."

(b) \$15,000 being one-half of the cost of 100,000 Imperial (Russian) rubles purchased by Max Straus prior to the March 1917 Russian revolution.

As to item (a) above, claimant asserts that after the Russian revolution of November 1917, which resulted in the formation of the Russian Federated Soviet Republic, the banks upon which the "drafts" had been drawn were seized and nationalized, their assets and liabilities taken over (by the Soviet Government) and the obligation to pay these "drafts" was thereby assumed by that Government; that following the compulsory merger of private banks into the State Bank of Russia, a further series of (Soviet) decrees destroyed the entire obligation.

It appears that these instruments were never presented for payment. Claimant asserts that "Communication between Russia and the United States had been unreliable and very bad during the period of Russia's decline in the World War and then completely disrupted during Russia's internal disturbance", that "Mr. Straus did not anticipate the collapse of the Russian Government or that contractual obligations of the drawee bank would be nullified by the Soviet Government and was holding the "drafts" until communications were made safe."

As to item (b) above, claimant asserts that Max Straus retained the rubles awaiting favorable conditions to transfer funds; that shipment of rubles abroad was prohibited by the Federal Reserve Bank on the fall of the Kerensky Government (November 1917), and that after this latter revolution, the Soviet Government "repudiated" all of the outstanding (ruble currency) issues.

Section 305(a)(2) of the International Claims Settlement Act of 1949, as amended, 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.

Since the aforementioned instruments, designated as "drafts", were drawn on banks, payable on demand, they come within the definition of checks (Uniform Negotiable Instruments Act, Section 185). However, whether they be drafts or checks, they are, nevertheless, "bills of exchange" under Sections 126 and 185 of said Act. In either event, such instruments do not operate as an assignment of the funds in the hands of the drawees available for their payment and the drawees are not liable thereon unless and until they accept the same, or, in case of checks, unless and until they accept or certify them. (Uniform Negotiable Instruments Act, Sections 127, 189.)

Inasmuch as the instruments in question were neither presented for payment nor accepted or certified by the drawees, or by their successors, the Soviet-owned and controlled State Bank, liability for their non-payment may not be attributed to the Soviet Government. That part of the claim based on the "drafts" must, therefore, be and hereby is denied.

That part of the claim based on ownership of Imperial (Russian) rubles must also be and hereby is denied for the reasons set forth in the attached Decision No. 9, In the Matter of the Claim of Walter J. Zuk (SOV-40,492).

In view of the foregoing, other elements bearing on the validity of the claim have not been considered.

Dated at Washington, D. C.

SEP 17 1958

FOR THE COMMISSION:



Joseph Stein
Director, Soviet Claims Division

Handwritten initials:
EJK
MJS
JHM