

FOREIGN CLAIMS SETTLEMENT COMMISSION  
OF THE UNITED STATES  
WASHINGTON, D.C. 20579

IN THE MATTER OF THE CLAIM OF

LILLA MILLER BYRUM

Under the International Claims Settlement  
Act of 1949, as amended

Claim No. CN-2-058

Decision No. CN-2-052

Counsel for Claimant: Stuart G. Anderson, Jr., Esquire

FINAL DECISION

This claim against the People's Republic of China (hereinafter "PRC"), under the China Claims Agreement of 1979 and Section 4 of Title I of the International Claims Settlement Act of 1949, is based on a loss resulting from the nationalization, confiscation, or other taking of property in China.

A Proposed Decision was issued on October 10, 1979 denying the portion of this claim for losses sustained in connection with the ownership of shares of stock and debentures of certain corporations for lack of sufficient evidence to establish that the corporations were nationalized or otherwise taken by the PRC between November 6, 1966 and May 11, 1979. The portion of this claim for personal property and other tangible objects was not specifically discussed in the Proposed Decision denying this claim. However, it is noted that the Proposed Decision cites the full dollar amount claimed (\$315,000.00) including the personal property and denied the entire claim, and that no evidence was submitted regarding such property except the statement on the claim form that such property was claimed. A three page copy of a list of items in eight numbered boxes was submitted with the claim form but not referred to nor identified in any way. The Commission concludes that the Proposed Decision denied the entire claim. Claimant filed an objection thereto and requested an Oral Hearing before the Commission. An Oral Hearing was scheduled for

January 27, 1981 and notice thereof was sent to counsel of record on December 16, 1980. Neither claimant nor counsel of record appeared for the Oral Hearing nor was the Commission advised that they would not appear. A member of the staff of the Commission was contacted by an associate of the counsel of record on February 11, 1981 who indicated that they had just realized that they had missed the scheduled Oral Hearing and asked if they could request that it be rescheduled. Counsel was advised that the evidence of record in the claim would be considered by the Commission in a hearing on the record in conformance with the provisions of the notice of Oral Hearing in the event that the claimant does not appear for a scheduled hearing. Counsel did not pursue the matter of rescheduling the Oral Hearing and expressed doubt that a taking had occurred that would have given rise to a compensable claim.

The objection of claimant notes that the Commission failed to specifically address the issue of the tangible personal property but makes no mention of the denial of the portion of the claim regarding the securities. Apparently, claimant has abandoned that portion of the claim. However, in that regard, two of the companies in which ownership of shares or debentures was alleged were found in the first China Claims Program to have been nationalized in 1950 and 1952 (as pointed out in the Proposed Decision), and a third, Asia Realty Company was, according to press reports from the PRC reported in the Survey of China Mainland Press, nationalized on or before January 4, 1951. As to the other two companies (Canton Insurance Office, Ltd. and Shanghai Municipal Council), there is no evidence to indicate that they were nationalized subsequent to November 6, 1966.

In regard to the tangible personal property and other tangible objects, claimant alleges that she inherited them by will from Minnie Macbeth Lent and Annie Macbeth. Claimant submitted certified copies of the Wills of the two referenced individuals but no proof of their deaths nor of the distribution of their estates.

The claimant has submitted a large volume of evidence in the form of photocopies of letters, lists of items in eight numbered boxes, and other materials. The evidence appears to indicate that the personal effects of Minnie Macbeth Lent, an ex-employee of the bank, were stored by the manager of the Chartered Bank, Shanghai, in his garage in eight boxes along with property of other ex-employees, rather than turning the property over to the Government officials in 1956, when other bank assets were released to the PRC. The copies of an apparent series of correspondence submitted are not complete; however, they appear to indicate that in 1978 the bank manager offered to inventory and ship the eight cases of personal effects of Ms. Lent to Mr. Anderson, counsel of record herein, who was handling her estate. The claimant asserts, but has not submitted evidence to establish, that these personal effects were seized by the PRC when the inventory was submitted to the customs officials for approval of exportation. One letter from the bank in Shanghai, dated August 2, 1979, indicates that Mrs. Byrum's ownership of the property has been noted.

It is remarkable that apparently the personal effects of Ms. Lent were preserved following the ascension to power of the present government on October 1, 1949 and throughout the turmoil thereafter in the PRC. Indeed, her ownership and now that of her alleged successor in interest have apparently been acknowledged by the manager of the Chartered Bank, Shanghai. From the evidence that has been submitted with regard to the attempts to ship these personal effects to the United States, it appears, also, that the PRC may acknowledge the ownership of these personal effects by someone in the United States, but that the customs laws of the PRC may prohibit shipment of some of the items outside the boundaries of China. However, the evidence does not establish that the PRC has denied the private ownership of such personal effects in order to constitute a taking thereof. It appears that the PRC has by their custom laws evidenced a proper and accepted exercise of their sovereign rights in controlling the removal of certain tangible items from their nation-state.

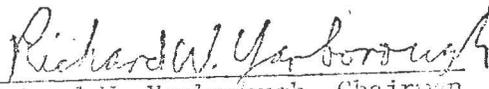
Evidence has been submitted with regard to an apparent art collection of Annie Macbeth in the form of a copy of a book entitled "Pictures From the Land of Sinn, the Collection of Miss Annie Macbeth" dated 1915. The existence of such a collection and the location thereof has not previously been mentioned, nor has its existence on or after November 6, 1966 been established. The only other submission in regard to this art collection is a copy of a letter from a professor of art history at the University of Kansas, dated February 16, 1979, which indicates that most art works were taken soon after the PRC was proclaimed in 1949 and that he doubts that there would be any way to account for such paintings which apparently were listed in a letter from Mr. Anderson to the professor, dated February 9, 1979.

As set forth in the Proposed Decision, the Commission does not have the authority under the second China Claims Program to find a claim compensable unless the evidence is sufficient to establish that the loss occurred between November 6, 1966 and May 11, 1979. After a careful review of the evidence of record in this claim the Commission finds that the evidence does not establish that a loss occurred during the requisite period of time.

Accordingly, the Commission concludes that the Proposed Decision dated October 10, 1979 denying this claim must be and is hereby affirmed as its final determination on all losses alleged by the claimant in this claim.

Dated at Washington, D.C.  
and entered as the Final  
Decision of the Commission.

APR 01 1981

  
Richard W. Yarborough, Chairman

  
Francis L. Jung, Commissioner

  
Francis T. Matern, Commissioner

This is a true and correct copy of the decision of the Commission which was entered as the final decision on APR 1 1981

  
Executive Director

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Counsel for claimant:

Stuart G. Anderson, Jr., Esq.

PROPOSED DECISION

This claim, in the amount of \$315,000 against the People's Republic of China, is based on losses sustained as a result of the nationalization of corporations in which claimant owned certain shares of stock and debentures. On the face of the Statement of Claim, it is stated that the property was taken subsequent to November 6, 1966 but no specific date has been asserted.

Under Section 4 of Title I of the International Claims Settlement Act of 1949, as amended, the Commission is given jurisdiction to receive, examine, adjudicate, and render final decisions with respect to claims of nationals of the United States included within the terms of any claims agreement concluded on and after March 10, 1954, between the Government of the United States and a foreign government (exclusive of governments against which the United States declared the existence of a state of war during World War II), arising out of the nationalization or other taking of property [22 U.S.C.A. Sec. 1623(a)]. In this section the Commission is directed to decide claims in accordance with provisions of the applicable claims agreement and the principles of international law.

On May 11, 1979, an agreement was concluded between the Governments of the United States of America and the People's Republic of China (hereinafter referred to as the PRC) settling claims of nationals of the United States against the PRC

arising from the nationalization, expropriation, intervention, or other taking of, or special measures directed against, property of nationals of the United States on or after October 1, 1949, and prior to the date on which the agreement was concluded.

Under the provisions of Title V of the International Claims Settlement Act of 1949 [78 Stat. 1110 (1964), 22 U.S.C. Sec. 1643-1643k (1964), as amended by Public Law 89-780, approved November 6, 1966, 80 Stat. 1365 (1966)], the Commission was given jurisdiction over claims of nationals of the United States against the Chinese Communist regime (the PRC) arising since October 1, 1949, for losses resulting from the nationalization, expropriation, intervention, or other taking of, or special measures directed against, property of nationals of the United States. In that program, the Commission considered claims that arose between October 1, 1949 and November 6, 1966, the date on which the program was authorized. That program was completed on July 6, 1972 pursuant to a statutory mandate in the enabling legislation.

The question presented by this claim is whether the Commission has the jurisdiction to consider claims that arose prior to November 6, 1966. On June 1, 1979, the Commission published notice in the Federal Register announcing that a new China Claims Program would be initiated under which it would consider claims by nationals of the United States against the PRC for losses that arose between November 6, 1966 and May 11, 1979. August 31, 1979 was established as the deadline for filing such claims.

The period during which losses must have occurred for favorable action to be taken on claims in the second China Claims Program was established because the Congress of the United States had previously made provisions under Title V of the Act, supra, for the filing and adjudication of claims by nationals of the United States for property losses in China that arose between October 1, 1949 and November 6, 1966, and mandated a date by which such a claims program

must be completed. Accordingly, the Commission concluded that its jurisdiction over such claims expired on July 6, 1972 and that it no longer has the authority to accept and take favorable action on those claims. Congress having provided its remedy for the 1949-1966 claims, the Commission is not at liberty to provide another.

This situation is not unique in the programs that the Commission had been authorized to administer in the past. In 1955 the Commission was authorized to receive and consider claims of nationals of the United States against the Governments of Bulgaria, Hungary, and Rumania for losses resulting from the nationalization or other taking of property prior to August 9, 1955 [Title III of the International Claims Settlement Act of 1949, 69 Stat. 570 (1955), 22 U.S.C. Sec. 1641-1641q (1964)].

These programs preceded a claims settlement agreement with the countries and covered losses that arose prior to August 9, 1955, the date that the programs were authorized by the Congress. Subsequent to the completion of the programs on August 9, 1959, as mandated by the statute, claims agreements were concluded with each of the governments of Bulgaria, Hungary, and Rumania, covering losses that arose prior to the dates that the agreements with such governments entered into force, July 2, 1963; March 6, 1973; and March 30, 1960; respectively.

The Commission was unable to implement those claims agreements under Title I of the International Claims Settlement Act because the United States had declared the existence of a state of war against those countries during World War II. Thus, before the agreements could be implemented, legislation had to be enacted by the Congress. In each case the legislation enacted specifically limited the compensable claims to those that arose between August 9, 1955, and the dates on which the agreements were concluded. The Commission

was not authorized to consider and grant compensation on any claim that arose prior to August 9, 1955, [82 Stat. 422 (1968), 22 U.S.C. Sec. 1641b(4); 88 Stat. 1386 (1974), 22 U.S.C. Sec. 1641b(5)].

Following the legislative precedent in these second programs which precluded the favorable consideration of claims that arose during the period covered by the first programs, the Commission concludes that it does not have the jurisdiction to consider claims against the PRC that arose prior to November 6, 1966, and after May 11, 1979, the date of the agreement with the PRC.

The claimant states that he owned stock and/or debentures in the following companies:

1. Shanghai Power Company;
2. Canton Insurance Office, Ltd.;
3. Asia Realty Company;
4. Shanghai Municipal Council; and
5. Shanghai Waterworks Co., Ltd.

In the first program under Title V of the Act a claim was filed by the Shanghai Power Company, and the Commission found that the company qualified as a U.S. national; that it was nationalized on December 28, 1950; and granted an award to the company for the loss of its property. (Claim of Shanghai Power Company, Claim No. CN-416, Decision No. CN-499.) In that program, as in the current program, where a corporation qualifies as a U.S. national corporation, the Commission is precluded from taking favorable action on the claims of its stockholders.

In the first program claims were also filed based on ownership of stock and debentures of Shanghai Waterworks, and it was found that the property of that company was taken on or about November 21, 1952. (Claim of Helen Svensen, Claim No. CN-024, Decision No. CN-235.)

With respect to the other companies, there is no evidence to establish that the nationalization occurred between November 6, 1966 and May 11, 1979, or the value of the shares or debentures at the time of taking, if such was the case.

The Regulations of the Commission provide:

Claimant shall be the moving party and shall have the burden of proof on all issues involved in the determination of his claim. (FCSC Reg., 45 C.F.R. §531.6(d) (1977).)

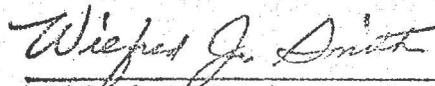
Based upon the foregoing, the Commission finds that the evidence of record in this claim is not sufficient to establish that the property or interest therein claimed was nationalized or otherwise taken by the PRC between November 6, 1966, and May 11, 1979.

Accordingly, the Commission concludes that this claim must be and it hereby is denied.

Dated at Washington, D.C.  
and entered as the Proposed  
Decision of the Commission

OCT 10 1979

  
Richard W. Yarborough, Chairman

  
Wilfred J. Smith, Commissioner

NOTICE: Pursuant to the Regulations of the Commission, if no objections are filed within 15 days after service or receipt of notice of this Proposed Decision, the decision will be entered as the Final Decision of the Commission upon the expiration of 30 days after such service or receipt of notice, unless the Commission otherwise orders. (FCSC Reg., 45 C.F.R. 531.5(e) and (g), as amended.)