

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

IN THE MATTER OF THE CLAIM OF

FELICETTA C. MANNELLA  
CONCETTA MANELLA  
MARIA L. MANELLA  
ERNESTO F. N. MANELLA

Claim No. IT-2-118

Decision No. IT-2-110

Under the International Claims Settlement  
Act of 1949, as amended

Appeal and objections from a Proposed Decision entered on February 17, 1971

Hearing on the record held on April 28, 1971

FINAL DECISION

This claim for \$11,338.00 against the Government of Italy, under Section 304(b), Title III, of the International Claims Settlement Act of 1949, as amended, is based upon the asserted damage to real and personal property located in Aquila, Italy. The claim was denied by Proposed Decision dated February 17, 1971, for the reason that inasmuch as the loss occurred within the territorial limits of Italy, the claim is outside of the purview of the Act, supra.

FELICETTA C. MANNELLA, individually and also on behalf of her co-claimants, filed objections to the Proposed Decision of February 17, 1971, and in essence argues that inasmuch as their claim was rejected by the Conciliation Commission in Rome, Italy, as a claim under Section 78 of the Treaty of Peace with Italy, this Commission must take jurisdiction.

In the Proposed Decision of February 17, 1971, it is set forth in detail that under Section 304(b) of the Act, supra, the Commission is given jurisdiction to determine claims of nationals of the United States

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against the Government of Italy for which no provision was made in the treaty of peace.

The key word of the Act is obviously "provision", i.e. whether the claim was provided for. The record contains a letter dated October 18, 1955, from the American Embassy, Treaty Claims Section, in Rome, Italy, which shows that the claimant filed a claim under Section 78 of the treaty of peace which, however, was rejected because the claimant failed to prove that her dominant nationality was American. In other words, the claim was not satisfied because the claimant failed to establish that her dominant nationality was American, although the treaty of peace had provisions for satisfaction of the claim because the loss occurred in Aquila, a place within the territorial limites of Italy. If this Commission is to have jurisdiction over all claims not satisfied by the Government of Italy under Section 78 of the treaty of peace, it requires only one small step further to argue that all claims not satisfied in full come within the jurisdiction of the Commission. Merely to state this proposition illustrates its manifest absurdity.

In brief, the claimant argues that this Commission must take jurisdiction whenever the Conciliation Commission refused to take jurisdiction on any procedural or legal ground. This Commission disagrees and holds that the claim made by the claimants before the Conciliation Commission whether satisfied or rejected by that Commission was "provided for" within the meaning of the terms as contained in Section 304 of the Act, and concludes that this Commission has no jurisdiction in this claim. It is noted that the Commission previously so held in the Claim of Albert Flegenheimer, Claim No. IT-10555 (FCSC Dec. & Ann. 286 (1968)), decided in the first Italian Claims Program under Section 304(a) of the Act.


It is further noted that under Section 304(b) of the Act, supra, this Commission's jurisdiction is limited to those claims which are owned by persons who failed to file claims under Subsection (a) of this Section, or if filed, failed to file within the limit of time required therefor. The claimants did file a claim under Subsection (a) of this Section, Claim No. IT-10,110, which was denied for the reason that the claimants' remedy had been provided for in Article 78 of the treaty of peace with Italy.

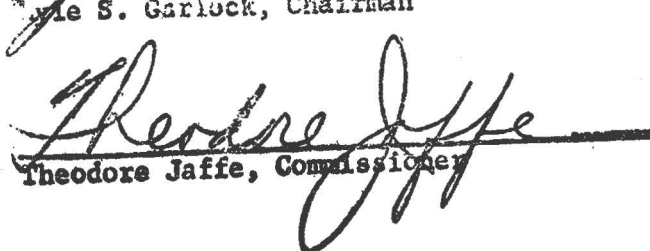
Therefore, the Commission concludes that it has no jurisdiction to entertain and determine this claim based upon the identical loss claimed in the timely filed claim, Claim No. IT-10,110. Accordingly, it is

ORDERED that the Proposed Decision of February 17, 1971, denying this claim, be affirmed.

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

**MAY 12 1971**

  
Lyle S. Garlock, Chairman

  
Theodore Jaffe, Commissioner

FOREIGN CLAIMS SETTLEMENT COMMISSION  
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IN THE MATTER OF THE CLAIM OF

FELICETTA C. MANNELLA  
CONCETTA MANELLA  
MARIA L. MANELLA  
ERNESTO F. N. MANELLA

Claim No. IT-2- 118

Decision No. IT-2- 110

Under the International Claims Settlement  
Act of 1949, as amended

PROPOSED DECISION

This claim for \$11,338.00 against the Government of Italy, under Section 304(b), Title III, of the International Claims Settlement Act of 1949, as amended, is based upon the asserted damage to real and personal property located in Aquila, Italy. Claimant, FELICETTA C. MANNELLA, states that she has been a national of the United States since her birth in Philadelphia, Pennsylvania in 1905 and that her children, the other claimants herein, have been nationals of the United States by derivation since their birth.

Under Section 304(b), Title III, of the International Claims Settlement Act of 1949 (69 Stat. 570 (1955)); 22 U.S.C. §§1641-1641q (1964)), as amended by Section 11 of Public Law 90-421, approved on July 24, 1968 (82 Stat. 420 (1968)), the Commission is given jurisdiction as follows:

The Commission shall receive and determine, or redetermine, as the case may be, in accordance with applicable substantive law, including international law, the validity and amounts of claims owned by persons who were eligible to file claims under the first sentence of subsection (a) of this section on the date

of enactment of this title, but failed to file such claims or, if they filed such claims, failed to file such claims within the limit of time required therefor: Provided, That no awards shall be made to persons who have received compensation in any amount pursuant to the treaty of peace with Italy, subsection (a) of this section, or section 202 of the War Claims Act of 1948, as amended.

The first sentence of Section 304(a) of the Act, supra, reads as follows:

The Commission shall receive and determine, in accordance with the Memorandum of Understanding and applicable substantive law, including international law, the validity and amount 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.

While the foregoing language of the statute is very broad and general in scope and contains no enumeration of the categories of claims which may be recognized thereunder, it does contain a general exclusion of some claims. Reducing section 304(a) to the base essentials, it states that the Commission shall determine, in accordance with the Memorandum of Understanding and applicable law, claims of nationals of the United States against the Government of Italy for which no provision was made in the treaty of peace.

Under article 78 of the treaty of peace (61 Stat. 1245) (1947), TIAS 1648, February 10, 1947) the Government of Italy undertook among other things, to restore all legal rights and interests in Italy of United Nations nationals as they existed on June 10, 1940; to return all property in Italy of the United Nations nationals as they existed on the date of said treaty; and in cases where the property could not be returned, or where, as a result of the war, a United Nations national had suffered a loss by reason of injury or damage to property in Italy, to grant

compensation in accordance with the terms of the treaty. The Conciliation Commission in Rome, Italy, was established and a procedure was provided for the adjudication of claims based upon property losses sustained in Italy proper.

The view that in the treaty of peace with Italy provisions were made for the compensation of losses which occurred within Italian territory, is also supported by the legislative history of H.R. 6382, the bill which upon enactment became Public Law 84-285, approved August 9, 1955 (22 U.S.C. §§1641-1641q (1964)), which added the original section 304 to the International Claims Settlement Act of 1949. In discussing the provisions of the proposed section 304 of the Act, the Senate Committee on Foreign Relations in its report stated as follows:

Similarly, the Government of Italy, in article 78 of the peace treaty with that country, undertook to compensate in Italian currency, those United States nationals who had sustained war damage to their property in Italy. The scope of this provision is limited to those claims which arose in Italian territory, and does not extend to claims arising on the high seas and other type of claims . . . (S. Rep. No. 1050, 84 Cong., 1st Sess. 2)

The issue under consideration is further clarified by the report of the House Committee on Foreign Affairs which states:

The Italian Government has paid the United States a sum of \$5 million to cover the settlement in full of war claims not covered by the peace treaty with Italy in 1947. Such claims include those that arose from Italian action outside of Italy, including the high seas. (H.R. No. 624, 84th Cong., 1st Sess. 4)

From the foregoing it is clear that provisions were made in the treaty of peace with Italy for claims based upon loss or damage to property located within the territorial limits of Italy. It is noted that the identical position was taken by the Commission in administering the first claims program against the Government


of Italy under section 304(a) of the Act. (See the Claim of Ovidio Antonio Bonamino, Claim No. IT-10,073; 10 FCSC Semiann. Rep. 146 (Jan.-June 1959). Therefore, the Commission concludes that claims made for loss or damage which occurred within the territorial limits of Italy are not within the purview of Section 304(b) of the Act.

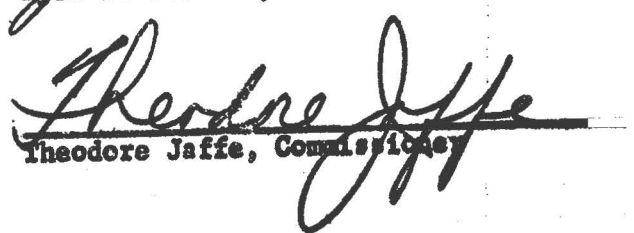
Accordingly, for the reasons set forth above, this claim which is based upon damage to property in Aquila, Italy must be and it is hereby denied.

The Commission finds it unnecessary to make determinations with respect to other elements of this claim.

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

FEB 17 1971

  
Lyle S. Garlock, Chairman

  
Theodore Jaffe, 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,)