

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

IN THE MATTER OF THE CLAIM OF

PAULINE V. BROWER
Herndon
Pennsylvania

Against the Government of Hungary

Under the International Claims Settlement
Act of 1949, as amended

Claim No. HUNG-20,190

Decision No. HUNG-1438

GPO 16-72128-1

FINAL DECISION

The Commission issued its Proposed Decision on this claim on October 2, 1958 , a copy of which was duly served upon the claimant(~~BY~~). 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.

Dated at Washington, D. C.

APR 18 1958

Whitney Hilliland
Paul Pace
Robert L. Kunzig
COMMISSIONERS

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FOREIGN CLAIMS SETTLEMENT COMMISSION
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IN THE MATTER OF THE CLAIM OF

PAULINE V. BROWER
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Pennsylvania

Claim No. HUNG-20,190

Decision No. HUNG- 438

Under the International Claims Settlement
Act of 1949, as amended

GPO 16-72126-1

PROPOSED DECISION

This is a claim against the Government of Hungary under Section 303 of the International Claims Settlement Act of 1949, as Amended, by PAULINE V. BROWER, a national of the United States since her birth in the United States on February 10, 1899, based upon ownership of a bond of the issue known as Rima Steel Corporation (Rimamurany-Salgotarjan Iron Works Company, Ltd.) 7% Closed First Mortgage Thirty-Year Sinking Fund Gold Bond, due February 1, 1955, in the principal amount of \$1,000.00.

Bonds of this issue were secured by a mortgage on all of the real property of Rima Steel Corporation in Hungary, including buildings, equipment, fixtures, and appurtenances. There is no evidence or any allegation of any guaranty of payment of principal or interest by the Government of Hungary, although Rima Steel Corporation presumably was nationalized under the provisions of Hungarian Law 1948:XXV of April 26, 1948, under which the State acquired ownership of certain enterprises as of March 26, 1948.

Section 303 of the Act provides, in pertinent part, for the receipt and determination of claims of nationals of the United States against the Government of Hungary arising out of the failure to --

(1) restore or pay compensation for property of nationals of the United States as required by....articles 26 and 27 of the treaty of peace with Hungary....;

(2) pay effective compensation for the nationalization, compulsory liquidation, or other taking, prior to the effective date of this title, of property of nationals of the United States in...Hungary...; and

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(3) meet obligations expressed in currency of the United States arising out of contractual or other rights acquired by nationals of the United States prior to...September 1, 1939, in the case of Hungary..., and which became payable prior to September 15, 1947.

Inasmuch as the basis of the claim is a failure to meet obligations expressed in currency of the United States arising out of contractual rights, attention is focused immediately upon subsection 303(3) above. The Commission has concluded, however, that a claim may not be considered compensable under subsection 303(3) of the Act unless it is based upon an obligation of the government concerned. (See Decision No. HUNG-347, In the Matter of the Claim of Margaret Farrell Wotton, Claim No. HUNG-21,540, denied for lack of governmental obligation in connection with bonds issued by the Hungarian-Italian Bank, Limited.)

It may well be argued that the liabilities of Rima Steel Corporation were assumed by the Government of Hungary as a concomitance of nationalization. Even were this true, it would have occurred too late to support an award in a claim against Hungary under subsection 303(3). It may be possible to read that subsection in such a manner as to include a contractual right acquired by a national of the United States prior to September 1, 1939, and becoming payable prior to September 15, 1947, so long as it subsequently became an obligation of the Hungarian Government; but that interpretation is repugnant to the history of the legislation with its frequent descriptions of the types of claims covered by the three subsections of Section 303 as war damage claims, nationalization claims, and prewar governmental debt claims. Such delineation leaves no doubt that in the last mentioned category the legislators contemplated only claims based upon the failure of the Hungarian Government to meet obligations which it owed to the United States nationals on September 1, 1939, and did not include nongovernmental prewar obligations later assumed by the Government.

Since the record reveals no obligation of the Hungarian Government to the claimant as early as September 1, 1939, the claim may not be considered compensable under subsection 303(3).

The claim appears likewise to be noncompensable under the remaining subsections of Section 303 of the Act. It involves no element of war damage

or failure to restore or pay compensation as required by the treaty of peace within the meaning of subsection 303(1); and as a claim for nonpayment of contractual debt, we find it to be outside the scope of subsection 303(2).

Nationalization of Rima Steel Corporation was not a nationalization or taking of the property of the claimant, as it may have been had she been a stockholder rather than a bondholder. As the owner of a bond, her relationship to the corporation was that of a creditor rather than an owner; and a change in that relationship by reason of governmental interference does not give rise to a compensable claim under subsection 303(2), as held in Decision No. HUNG-662, In the Matter of the Claim of Kreutoll Realization Company, Ltd., Claim No. HUNG-21,800.

Subsequent to the nationalization of the corporation, by Decree 13110/1948 (XII.24) Korm., certain claims against nationalized enterprises were made unenforceable "until further regulation." While this action was less than an outright cancellation of the corporation's indebtedness, it might be contended that it had much the same effect; but even if considered a taking by the Hungarian Government of claimant's property in the form of a credit, it cannot give rise to a claim under subsection 303(2) of the Act, in view of manifest Congressional intention to the contrary.

As previously indicated, it was the intention of Congress to include certain debt claims within the scope of the Act, but only those characterized as "prewar" governmental obligations. Claims under subsection 303(2) are limited in time only to those arising before August 9, 1955, the effective date of the Act. Therefore, it was not within the contemplation of Congress that claims arising out of contractual rights should be entertained under subsection 303(2), but only under subsection 303(3), which is the only provision containing the prewar limiting dates.

Our conclusion is not altered by the fact that the indebtedness was secured by mortgage upon property of the corporation which was taken by the State in the course of nationalization of the enterprise. In sum, claimant presents a debt claim, arising out of contract, which fails under subsection 303(3) because the Hungarian Government was not obligated thereunder prior

to September 1, 1939. The additional element of governmental taking of the mortgaged property was certainly against the interest of the bondholders, since it left them unable to proceed against the security for the debt, but it does not alter the nature of the claim. It remains a type of claim which may be found compensable only under subsection 303(3), if at all.

In enacting this legislation, Congress was providing for the disbursement of funds realized from Hungarian assets seized in this country during World War II. It is apparent from a study of the legislative history that the first concern of Congress was the war damage claims which should have been paid to United States nationals under the treaty of peace; and Congress was fully aware of the fact that the fund was insufficient to fulfill even this purpose. Those whose property was taken by post-war nationalization measures were included also among eligible claimants; and lastly, certain prewar debt claimants were added, but only those coming within the narrow confines of the limitations carefully set forth in subsection 303(3). It was obviously not intended by Congress that a prewar debt claimant not coming within those limitations should have access to the fund through another subsection not so restricted, by reason of governmental taking of the security for the indebtedness, in the form of property which was not that of the creditor, but of the debtor.

It is the conclusion of the Commission that debt claims arising out of contract, failing to fulfill the specific requirements of subsection 303(3), are not to be entertained under other provisions of the Act.

Accordingly, the claim is denied.

Dated at Washington, D. C.

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FOR THE COMMISSION:

Donald G. Benn
Donald G. Benn, Director
Balkan Claims Division

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Commissioner Pace dissents.