

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

IN THE MATTER OF THE CLAIM OF

J. GERARD CALLAHAN, JR.

Claim No. V-0026

Decision No. V-0412

PROPOSED DECISION

This claim in the amount of \$61,722.00 against the Government of the Socialist Republic of Vietnam under Title VII of the International Claims Settlement Act of 1949, as amended by Public Law 96-606 (94 Stat. 3534), is based upon the loss of household furniture and furnishings and other personal property in Saigon, and a shareholder interest in a hotel development project, also located in Saigon.

Claimant acquired United States nationality by birth in New York on September 22, 1941.

Under section 703 of Title VII of the International Claims Settlement Act of 1949, as amended, the Commission is given the following jurisdiction:

"The Commission shall receive and determine in accordance with applicable substantive law, including international law, the validity and amounts of claims by nationals of the United States against Vietnam arising on or after April 29, 1975, for losses incurred as a result of the nationalization, expropriation, or other taking of (or special measures directed against) property which, at the time of such nationalization, expropriation, or other taking, was owned wholly or partially, directly or indirectly, by nationals of the United States to whom no restoration or adequate compensation for such property has been made...."

The first portion of this claim is based on the loss of household furniture and furnishings and other personal property, including home electronic equipment, a custom-made dining room set, and a 1971 Peugeot automobile, owned by claimant during his residence in Saigon. According to the record, all of the property items except for the automobile were packed for shipment

out of South Vietnam but could not be shipped prior to the Communist takeover of the country at the end of April 1975. Likewise, the record indicates that the automobile remained in the country and was confiscated after the Communist takeover. As supporting documentation, claimant has submitted a 5-page listing of the property dated July 30, 1975, giving a description of each item and its asserted value, as well as three letters and other documents.

Based on its examination of the history of events in South Vietnam in March and April 1975, the Commission has held that in the absence of specific evidence, property left there by its owners prior to the takeover by Communist forces shall be presumed to have been nationalized, expropriated or otherwise taken, within the meaning of the present Act, as of May 1, 1975. See Claim of BETTY JANET MITCHELL, Claim No. V-0358, Decision No. V-0259 (1984).

Based on the foregoing, and having reviewed the evidence and information in the record, the Commission therefore finds that claimant J. GERARD CALLAHAN, JR. owned personal property which was nationalized, expropriated or otherwise take by Vietnam as of May 1, 1975. Accordingly, claimant is entitled to an award for the loss of the property as of that date.

Claimant asserts that the household property for which he has claimed had a value of \$22,276.00 at the time of loss, and that his Peugeot automobile then had a value of \$5,000. In support of these assertions, he has submitted the previously mentioned property listing, together with the statement that the value claimed for the automobile represents the purchase price he paid to its former owner, Mr. Nguyen Phouc, an official of the former South Vietnamese government, on an unspecified date.

In reviewing the property listing which claimant has submitted, the Commission notes that included among the items claimed are "four filled photo albums containing wedding pictures and photos taken during ten years aboard," assertedly worth

\$2,000; "business records and papers," assertedly worth \$500; and "miscellaneous property not included . . . due to oversight," assertedly worth \$500. However, there is nothing in the record to show that the property falling within these categories would have had those asserted values once it was in the hands of the Vietnamese Communist authorities. Furthermore, although claimant has mentioned that he lived in Vietnam for over eight years, the figures shown on his property listing, particularly those for such things as electronic equipment, books, kitchen appliances, glassware and dishes, and clothing, seem to represent the costs of those items as if they had been newly purchased in 1975. No adjustment for depreciation appears to be included. In addition, the Commission notes with regard to claimant's automobile that according to the May 1975 N.A.D.A. Official Used Car Guide (Eastern Edition), the average retail value of such a vehicle in the United States ranged from about \$1,500 to \$2,000 at that time. Claimant contends that these figures are too low, and that the \$5,000 value figure he has asserted is justified, because of the "significant import duties of 100%" placed on automobiles in South Vietnam, but he has submitted no support for this contention.

Based upon the foregoing, and adjusting for depreciation of the clothing and the other, less durable, household property items, the Commission finds that the personal property items claimed herein would reasonably have had a total value of \$15,000 at the time of loss. As for the claimed automobile, the Commission further finds that its value was \$3,000 at the time of loss. Accordingly, claimant is entitled to a principal award of \$18,000.00 for these losses, dating from May 1, 1975.

The second portion of this claim is based on the loss of claimant's shareholder interest in a hotel development project in Saigon. According to the supporting documentation in the record, the project was begun in or about May 1974 by a corporation chartered in Hong Kong known as "Saigon International Hotel,

Ltd.," of which claimant owned 77.8% of the outstanding shares and which had been organized to carry out the construction of a Hyatt Regency Hotel on a government-owned site in Saigon. As for the loss of the project, claimant states that the project site and all of the other assets connected with the project were "confiscated in April-May, 1975."

Based upon the foregoing, and applying the reasoning followed in the Mitchell decision, supra, the Commission finds that claimant J. GERARD CALLAHAN, JR., owned a 77.8% interest in assets held by the corporation "Saigon International Hotel, Ltd.," in connection with its hotel construction project, and that this ownership interest was nationalized, expropriated or otherwise taken by Vietnam as of May 1, 1975. Accordingly, claimant is entitled to a further award for the loss of his interest in those assets as of that date.

At the time of filing, claimant asserted that the value of this ownership interest was \$34,446, deriving this figure by converting the par value of his 172,230 shares in the "International Hotel" corporation from Hong Kong dollars to United States dollars at the then-prevailing ratio of 5 to 1. However, in a letter dated January 14, 1985, he then amended the claim to assert a value of "approximately \$1,700,000,000" for his interest in the assets, based on figures shown in the corporation's financial statement for the accounting year ending November 30, 1974.

It is evident from the documentation in the record that the Saigon hotel, had it been built, would have been quite large and impressive. However, it is also evident that the project was still in its beginning stages when work on it ceased at the end of April 1975, as the documentation indicates that the hotel was not to be ready for occupancy until January 1977. Furthermore, claimant has stated that after the Communist takeover of South Vietnam the project site was converted to use as a military camp. This suggests that no substantial construction on the site had

yet begun, and this appears to be corroborated by Note 5 in the November 30, 1974, financial statement, which explains that the "Construction in Progress" component of the projects assets, in the U.S. dollar equivalent of \$152,955, "substantially represents the amount paid for the schematic design phase of the hotel." These designs evidently were not taken, as copies of several of them are included in the present record.

Therefore, insofar as is shown by the record the only assets of the "International Hotel" corporation actually taken by the successor Communist regime were its fixed assets consisting of its leasehold interest on the project site through April 29, 1977, for which \$60,000 had been paid in advance in July 1974, together with certain office equipment which was valued at about \$300 in the November 30, 1974 financial statement.

Based on the foregoing, and having considered the entire record, the Commission therefore finds that the total value of claimant's interest in the hotel project assets in question amounted to 77.8% of \$60,300, or \$46,913.40, as of the time of nationalization. Accordingly, claimant is entitled to a further principal award in this amount for the loss of his ownership interest, dating from May 1, 1975.

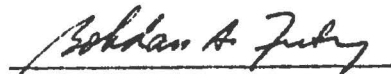
The Commission has concluded that awards granted under Public Law 96-606 for the nationalization or other taking of property, or interests therein, shall include interest at the rate of 6% simple interest per annum from the date of loss to the date of settlement.

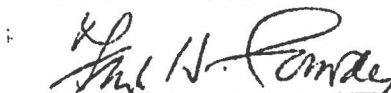
AWARD

Claimant J. GERARD CALLAHAN, JR. is therefore entitled to an award in the principal amount of Sixty-Four Thousand Nine Hundred Thirteen Dollars and Forty Cents (\$64,913.40), plus interest at the 6% simple interest per annum from May 1, 1975, to the date of settlement.

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

JUN 26 1985


Bohdan A. Futey, Chairman


Frank H. Conway, Commissioner


Joseph W. Brown, Commissioner

This is a true and correct copy of the decision of the Commission which was entered as the final decision.

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.)