

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

IN THE MATTER OF THE CLAIM OF

DONALD J. CHADD

Claim No. V-0034

Decision No. V-0413

Oral Hearing held on October 16, 1985

FINAL DECISION

This claim in the amount of \$191,644.44 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 two airplanes, a spare airplane engine and various other spare airplane parts, various hand tools, a boat and outboard motor, clothing, jewelry, and other household property, and 2,200,000 piasters in cash.

By Proposed Decision issued June 26, 1985, the Commission made an award to claimant in the principal sum of \$55,500 based upon the following findings of value:

1. Two airplanes-\$40,000
2. Spare airplane engine and parts-\$10,000
3. Tools-\$500
4. Boat and outboard motor-\$2,000
5. Clothing, jewelry and household property \$2,000
6. Cash-\$1,000

Claimant objected to the valuation placed upon his losses as to all items with the exception of the boat and outboard motor. Claimant requested an oral hearing which was conducted on October 16, 1985 at which time claimant was represented for the purpose of conducting the hearing only by Lewis Michael Thrasher, Esquire. Claimant submitted additional documents and testified under oath.

The Commission has reviewed the entire record, including all evidence submitted before and after the Proposed Decision as well as the testimony of claimant. The Commission concludes that the record is not sufficient to warrant an increase in the Commission's award.

The claimant is entitled to the value of his property as of May 1, 1975. In support of his claim, claimant previously submitted an aircraft price digest as of the winter of 1980/81. Although the consumer price index in the United States had increased over 50% between 1975 and 1980/81, the Commission looked to this price digest for guidance in valuing claimant's aircraft and spare parts. The models of the Navion aircraft for which claim was asserted had retail values in 1980/81 of \$11,500 and \$12,000, respectively. The Commission took into consideration the replacement of the engine by a more powerful engine, valued in the same index at \$9,656 and found that claimant's aircraft were worth \$20,000 apiece on the date of loss. In arriving at such a value based upon the already inflated values of 1980/81, the Commission concludes it was being most generous in its valuation of these planes.

Claimant has submitted a letter from the American Navion Society dated September 10, 1985 providing a price range as of 1985 for a Navion aircraft as being from \$10,000 to \$60,000. Claimant has also submitted a 1985 aircraft engine price list and the Commission notes that a rebuilt 520 HP engine had increased in value between 1980/81 and 1985 from \$9,656 to \$13,324 or an increase of 38%. As to the condition of the aircraft, claimant testified that he would not describe them as in excellent condition but "maybe good" condition and that they were not airworthy, as extensive inspections requiring dismantling of much of the aircraft would be required to seek airworthy approval. The Commission also notes that in a letter dated March 5, 1985 from claimant's counsel, it was stated that the modification of

one of the airplanes was only 90% complete. In valuing these aircraft at \$20,000 apiece as of 1975, a figure well within the range of the maximum and minimum value for such a plane in 1985, the Commission finds there is nothing in the record to indicate that it undervalued the two aircraft, but on the contrary, based upon the record including the 1980/81 price list and the 1985 price estimate, the Commission remains in the view that it was most generous in these awards.

Claimant has submitted a list prepared in 1985 of aircraft spare parts, including three engines, one of 520 HP and two of 185 HP, which list the American Navion Society has valued as of 1985 at approximately \$58,000. Two major concerns undercut the probative value of this list. The list provides the cost of replacement parts as of 1985 whereas the award must be based upon the actual value as of 1975. As to the spare parts for which claim is made, there appear to be two sources from which they were obtained. Some were obtained from the aircraft themselves when the parts were removed to be replaced by other parts and the rest were purchased with the aircraft. In this regard, the documentary evidence concerning the purchase of one of the aircraft lists the aircraft and what is described as "a lot of accessories" which claimant referred to as being spare parts. The entire cost of the aircraft and the spare parts totalled approximately \$1,000.

The second concern is that the 1985 valuation is based upon a list prepared by the claimant in 1985 and the list varies substantially and materially from a list prepared by the claimant at the time of the fall of Saigon. A copy of this list, previously submitted by the claimant, appears first to have been dated April 10, 1975 which date is crossed off and the date of 11 August 1975 placed thereon. This list makes no reference to a 520 HP engine and lists only one 185 HP engine. This list was

prepared at or about the time of loss when it must be assumed claimant's recollection was more reliable than his recollections ten years after the loss. ¹

On this state of the record, the Commission concludes that claimant has not established a higher value for aircraft spare parts than was previously found by the Commission.

Claimant stated he had a full set of mechanic's tools and a set of micrometers which he valued at \$1,500 at the time of loss and stated could not be purchased for that amount today. The Commission has consulted a 1975 edition of the Sears, Roebuck Catalog and finds that the price of a mechanic's tool set varied between \$74 and \$379, the latter being for a 220 piece set. The most expensive set of micrometers could be purchased for \$85. Assuming the most expensive of these sets listed, they could have been purchased new in 1975 for \$465 and, therefore, the Commission finds no basis to conclude that its valuation of \$500 in anyway undervalued claimant's tools and, indeed, it appears to the Commission that its award was generous.

As to the claim for clothing, jewelry and household property, claimant at no time has provided the Commission with any itemization or description of the items of property lost, much less any evidence of the value thereof. Based upon this record, the Commission finds no basis to increase this value.

Claimant objects to the award of \$1,000 for the loss of cash which he asserts was in his premises. The loss of this cash is unsupported by any evidence other than claimant's assertion and the Commission was of the view that without some supporting evidence of circumstances to verify the loss of cash that an award in excess of \$1,000 was not warranted. Claimant objects to the Commission using an exchange rate of 755 piasters to the

¹ Claimant's recollection also was that he had paid \$40,000 for each of the two aircraft. The document evidencing the purchase of one of the aircraft and correspondence related thereto demonstrate that, in fact, claimant paid only \$1,000 for the aircraft and spare parts.

dollar in determining the value of cash. This was, however, the last official exchange rate of the piaster to the dollar. Furthermore, in his testimony, claimant stated that as of the end of April 1975, the piaster for all practical purposes was valueless, claimant testifying that at the time of the fall of Saigon it would take a million piasters to purchase a dollar. The actual value in dollars therefore of the piasters left in claimant's premises is the value which could be obtained in dollars for those piasters at the date of the fall of Saigon. As in fact the piaster had little, if any, value on that date, the Commission's use of the last official exchange rate of 755 piasters to the dollar was clearly beneficial to the claimant.

Claimant also asserts claim for a number of piasters which he brought with him to the United States from Vietnam. As these piasters clearly were not taken by the new government in Vietnam, it cannot be the basis of claim. Claimant states he believes he has a claim against the United States Government because that government had sold him the piasters, however, the Commission's authority under the present statute is to consider claims against Vietnam not to consider claims against the United States Government.

Claimant objects to the Commission having awarded simple interest rather than compound interest and the rate used by the Commission. In awarding simple interest, the Commission has followed a well established rule of international law as stated by Whiteman in her extensive work on damages in international law.

"There are few rules within the scope on the subject of damages in international law that are better settled than the one that compound interest is not allowable."
III Whiteman, Damages in International Law at page 1997.

The interest rate between the date the property was taken and some future date when an agreement is reached with the Government of Vietnam during a period of fluctuating interest rates is

always a matter of some speculation and the Commission finds no basis to change the 6% rate which it has established applicable to all claimants in this program.

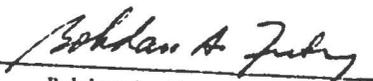
The Commission recognizes the difficulty presented to all claimants in this program to document their losses in particular light of the circumstances under which most claimants were required to leave Vietnam on short notice. The Commission has recognized that in this claim. The only documentary evidence establishing the ownership of any property consists of the documents relating of the sale of one airplane and spare parts to the claimant for \$1,000. The Commission has accepted the claimant's assertions of the purchase of the second airplane, the reconditioning of two airplanes, the existence of certain spare parts and the existence of the rest of the property for which claimant has made claim. The Commission recognizes the difficulty of discerning precisely values of property in 1975. As reviewed here and above in this decision, it is clearly arguable that the Commission has overvalued the two airplanes. The record is not at all clear concerning what spare parts, in fact, were in existence and the value thereof in 1975. However, a review of the entire record indicates to the Commission that its award in the principal sum of \$55,500 is fair and reasonable based upon the record presented to it and the Commission, therefore, restates such award as its final determination of this claim.

A W A R D

Claimant DONALD J. CHADD is therefore entitled to an award in the principal amount of Fifty-Five Thousand Five Hundred Dollars (\$55,500.00), plus interest at the rate of 6% simple interest per annum from May 1, 1975, to the date of settlement.

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

NOV 19 1985


Bohdan A. Futey, Chairman


Frank H. Conway, Commissioner


Joseph W. Brown, Commissioner

FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
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IN THE MATTER OF THE CLAIM OF

DONALD J. CHADD

Claim No. V-0034

Decision No. V-0413

PROPOSED DECISION

This claim in the amount of \$191,644.44 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 two airplanes, a spare airplane engine and various other spare airplane parts, various hand tools, a boat and outboard motor, clothing, jewelry, and other household property, and 2,200,000 piasters in cash.

Claimant acquired United States nationality by birth in Nebraska on September 2, 1927.

Under section 703 of Title VII of the Act, 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 property involved in this claim is described as two airplanes, identified as "Ryan Navion" model 422 and model 1571; a spare engine, in working condition, for the airplanes, as well as various other spare airplane parts; various hand tools; a boat and outboard motor identified as a 1974 "American runabout" with an 85-horsepower Johnson motor; articles of clothing, jewelry, and other household property items; and 2,200,000 piasters in

cash. Claimant states that the airplanes, spare airplane engine and other spare airplane parts, and the hand tools were last located at the Tan Son Nhut Airport near Saigon and the boat and other property were located at his residence at 136 Yen Do Street in Saigon, and further states that all of the property was lost through confiscation or other taking by the Communist forces in South Vietnam after he was evacuated from the country on April 29, 1975. As supporting evidence he has submitted photographs of one of the airplanes and documentation relating to his ownership and modification of the two craft, as well as affidavits and other statements describing the boat and, to some extent, the other property items.

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 persons departing in the face of the invading 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 upon the foregoing, and having reviewed the record herein, the Commission therefore finds that claimant DONALD J. CHADD owned two airplanes, a spare airplane engine and other spare airplane parts, various hand tools, a boat and outboard motor, and household property including clothing, jewelry, furniture and furnishings, and cash, and further finds that all of this property was nationalized, expropriated or otherwise taken 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 his property had a total value of \$191,644.44 at the time of loss. In arriving at this total, he has asserted separate values for the individual property categories as follows:

Airplanes	\$145,200.00
Spare airplane engine	\$18,000.00
Other spare airplane parts	\$16,000.00
Hand tools	\$1,500.00
Boat and motor	\$2,000.00
Clothing and other household property	\$4,500.00
Cash	<u>\$4,444.44</u>
TOTAL \$191,644.44	

Turning first to the value of the two airplanes, claimant asserts that they were worth to \$72,600.00 each, based on an entry in the Aircraft Price Digest (Winter 1980-81) showing the "new list" price of a 1976 "H-Range Mst." Navion single-engine aircraft as having amounted to \$73,627.00. In addition, he has described at some length the improvements and modifications which he made on the airplanes during the early 1970's, including the installation of larger engines and fuel tanks and modification of the wings, landing gear and cockpits. As noted above, however, the record indicates that the two airplanes were respectively identified with the numbers "422" and "1571" and were further identified by the abbreviation and number combination "Nav 4." According to the price digest, these numbers indicate that the first of airplanes was built in 1946 and the second was built in 1948, and that as of the end of 1980 such an aircraft had a retail value, with average equipment, of about \$12,000.00.

Based upon the foregoing, and having considered all of the evidence submitted, the Commission finds that the subject airplanes would have had values of \$20,000.00 each as of the nationalization date of May 1, 1975. Thus, the two aircraft together had a value of \$40,000.00 at the time of loss.

Turning next to the spare airplane engine and other spare airplane parts which are claimed for, claimant asserts that these had respective values of \$18,000 and \$16,000 at the time of loss. However, the only support submitted for these assertions consists of the previously cited price digest, which contains an entry indicating that as of 1980 and 1981 an engine such as that in issue sold outright, in new condition, for \$18,908.00. Furthermore, the book indicates that a remanufactured engine of the same type could be obtained for approximately half that price, and claimant has indicated that the engine he owned was only in "good condition" at the time of loss, implying that it was not newly manufactured. As for the other spare airplane parts, he has submitted no specific descriptive information of any kind as to the nature or quantity of any of the items.

In light of the foregoing, the Commission finds that the record justifies a valuation of the airplane engine and other spare parts at a maximum of no more than \$10,000 as of the time of loss.

The next category of property to be considered is that involving claimant's hand tools, for which he has claimed a value of \$1,500.00. Here again, however, he has submitted nothing as to the specific nature or quantity of the property items, stating only that they were in "good condition."

Having considered the record, the Commission is willing to assume that the tools in question would have had a value of \$500.00 at the time of loss. Accordingly, claimant shall be entitled to a principal award of \$500.00 for the hand tools in issue.

As for the boat and outboard motor, claimant asserts a value of \$2,000.00 and has provided a relatively specific description. Based on that description the Commission finds that the valuation

asserted is appropriate and reasonable. Accordingly, claimant shall be entitled to a principal award of \$2,000.00 for loss of the boat and motor in question.

The remaining categories of property claimed for consist of clothing, jewelry, other household property and cash in the amount of 2,200,000 piasters, for which claimant asserts a total value of \$8,944.44. However, except for his statement as to the amount of the cash he assertedly owned, he has submitted nothing as to the specific nature of any of these property items or their individual values. Furthermore, he has submitted nothing to explain or substantiate the assertion that currency in such a large amount was present in his residence at the time of the Communist takeover.

Based upon the foregoing, and having noted in general the nature and value of personal property owned by other persons filing claims under Public Law 96-606, the Commission finds it reasonable to assume that the personal property here in question would have had a value of \$2,000.00 at the time of loss, and that the cash which is claimed for would have had a value of no more than \$1,000. Therefore, claimant is entitled to a further principal award of \$3,000.00 for the loss of these items.

Summary. Adding together the figures set out in the foregoing, claimant DONALD J. CHADD is accordingly entitled to a total principal award of \$55,500.00 for the loss of the property involved in this claim. This award shall date 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.

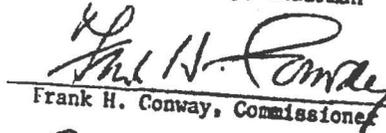
A W A R D

Claimant DONALD J. CHADD is therefore entitled to an award in the principal amount of Fifty-Five Thousand Five Hundred Dollars (\$55,500.00), plus interest at the rate of 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

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.)