

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

IN THE MATTER OF THE CLAIM OF

TAM VAN NGUYEN

Claim No. V-0150

Decision No. V-0260

Hearing on the Record held on: **NOV 19 1985**

Counsel for Claimant:

J. Michael End, Esquire

FINAL DECISION

This claim in the amount of \$215,000.00 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 a house and land, 300 paintings, and a flower kiosk, all located in Saigon.

TAM VAN NGUYEN acquired United States citizenship by naturalization on October 8, 1980.

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... ."

By Proposed Decision dated March 29, 1985, the Commission denied this claim in its entirety on the ground that the record failed to establish that any of the property involved herein was the subject of a taking by Vietnam on or before December 28, 1980, the date of enactment of Public Law 96-606, as required for

compensation under the Act. The Commission cited the claimant's own assertion that the house and land, as well as 300 paintings allegedly stored in the house, were taken over by Vietnamese authorities in January 1981. As for the flower kiosk, the Commission found it to have been taken by Vietnam on March 3, 1981 based on a decision of that date issued by the People's Committee of First District of Ho Chi Minh City.

On April 10, 1985 claimant filed an objection to the Proposed Decision. Additional documentation was submitted pertaining to the taking of the subject property, consisting of: (1) a photocopy of a document issued by the People's Revolutionary Committee of Ban Co, Housing Commission, on July 15, 1975 concerning the management of the house at no. 51/46B Cao Thang Street, (2) a longhand notation on the back of the above photocopy, under the date "12/11/80," which the claimant alleges is an acknowledgement by a representative of the People's Revolutionary Committee of the receipt of two keys to the subject house, and (3) a letter from claimant's daughter in Vietnam, Le Thi Gam, dated 28.1.1982, but accompanied by an envelope postmarked 4.2.83, referring to the takeover of "our home" on November 12, 1980 and the subject flower kiosk "two weeks later."

The first of these documents, as translated by the claimant, reads as follows:

People's Revolutionary Committee
Ban Co Sector

REPUBLIC OF SOUTH VIETNAM
Independence.Democracy.Peace.Neutrality

CONFIRMATION

Per reconciliation spirit of the People's Revolutionary Committee, Housing Commission of Ban Co,
Mrs. Le Thi Gam agreed to turn the house 51/46B Cao Thang Street to the local authority management.

Considering that the above house is owned by Mr. Nguyen Van Tam who went abroad, and in a hurry, Mr. Tam wrote a credential letter to her (sic) step daughter Le Thi Gam, married, living with her husband at the address 212/75/7 Nguyen Thien Thuat Street, and he also is not listed on the 1973 family census list of Mr. Tam.

Based on the policy of current laws, the establishing time of the above credentials was not effective. Mrs. Le Thi Gam might turn the house 51/46B Cao Thang to the local authority management.

Ho Chi Minh City, July 15, 1975
People's Revolutionary Committee of Ban Co,
Housing Commission

Signed and sealed.

Nguyen Van Nguyen

From the language of this "Confirmation," it is apparent that Nguyen Van Tam attempted to appoint Le Thi Gam, his step-daughter (claimant refers to her simply as his daughter), as the administrator of his house at no. 51/46B Cao Thang Street. However, the instrument prepared by the claimant had no legal effect in South Vietnam.

Accordingly, Le Thi Gam, who resided at no. 212/75/7 Nguyen Thien Thuat Street, was either encouraged or directed (the language is ambiguous) to turn the management of claimant's house over to local authorities. Based on this "Confirmation," therefore, it seems that the subject house at no. 51/46B Cao Thang Street may have been taken by the Vietnamese government as early as 1975, when TAM VAN NGUYEN was not a United States citizen.

On the back of the foregoing document is a longhand notation which, according to the claimant's English translation, reads as follows:

November 12, 1980

This is to acknowledge the receipt of two keys of the house no. 51/46B turned in by Mrs. Le Thi Gam.

On behalf of the People's Revolutionary Committee,

Signed

Claimant cites this notation as evidence that his house was not actually taken over by the Vietnamese government until November 12, 1980, which was after he became a United States citizen, on October 8, 1980, as required for compensation under the Act. In studying this evidence, however, the Commission is skeptical as to its probative value. The notation is written in ballpoint pen and does not even appear on the original "Confirmation," but rather on the back side of a photocopy. Moreover, it bears no stamp or other mark of authentication. In and of itself, the notation does not have the hallmarks of an official government document.

The photocopy of the "Confirmation" with the longhand notation on the back side was evidently sent to the claimant by Le Thi Gam in the aforementioned letter dated "28.1.1982." Whether her letter was actually written on that date is unclear from the record since the envelope in which it was allegedly sent is postmarked February 4, 1983. As for the substance of the letter, the claimant has provided an English translation which reads, in pertinent part, as follows:

"Concerning our home and our flower kiosk, I send you here a copy of the Confirmation. As you know, after several postponements, they physically took over our home in the morning of November 12, 1980....My husband and I had to turn over the keys of our home to them and we moved out just with our clothes and personal papers. Everything inside the home were considered your properties which must be taken over and managed by the authorities....Two weeks later, the authorities took over our flower kiosk no. 10, Nguyen Hue Boulevard, together with other kiosks."

Claimant cites this letter from Le Thi Gam as further evidence that his house was taken on November 12, 1980. The Commission notes, however, that the house discussed in the letter is not identified by street address, land record entry, or other data. Le Thi Gam continuously writes of "our home," which could

refer to no. 212/75/7 Nguyen Thien Thuat Street, where she and her husband resided in 1975, just as easily as it could to the claimant's house at no. 51/46B Cao Thang Street.

As for the flower kiosk at no. 10 Nguyen Hue Boulevard, which was taken "two weeks later" according to the letter, the claimant has made no attempt to reconcile his daughter's otherwise unsubstantiated statement with the document he himself previously submitted--the decision of the People's Committee of First District of Ho Chi Minh City dated March 3, 1981 (the text of which was reproduced in full in the Proposed Decision)--containing explicit language directing the Foreign Trade Service to take possession of the subject kiosk. That decision made no mention of any action taken with respect to the kiosk in late November 1980. Even if the Commission were to ignore the March 3, 1981 decision of the People's Committee and rely exclusively on Le Thi Gam's letter, the record contains no evidence that claimant's wife, Le Thi Thuy, the owner of the flower kiosk, was a United States citizen at the alleged time of taking in November 1980.

After a thorough review of the entire record in this claim, the Commission remains unconvinced that any property owned by TAM VAN NGUYEN, or his wife, was the subject of a taking by Vietnam between October 8, 1980, the date claimant became a United States citizen, and December 28, 1980, the date of enactment of Public Law 96-606. The only official documents are the "Confirmation" issued by the People's Revolutionary Committee of Ban Co, Housing Commission, on July 15, 1975 and the decision of the People's Committee of First District of Ho Chi Minh City issued on March 3, 1981--which point to takings of the house and flower kiosk, respectively, at times which would not form the basis of compensable claims under Public Law 96-606. Claimant's assertion that the takings occurred in November 1980 is based on less compelling evidence--the letter of uncertain year from his daughter which claimant inexplicably failed to send to the

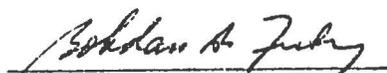
Commission until two or three years after it was written, as well as an unauthenticated notation on the back side of a photocopy of the 1975 "Confirmation."

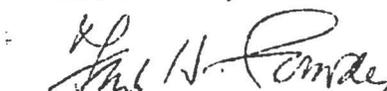
The Commission concludes, therefore, that the evidence of record does not establish the basis to grant an award on any portion of this claim. Accordingly, the Commission hereby affirms the denial of this claim in its entirety.

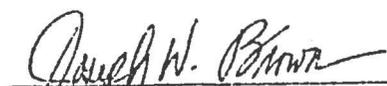
As noted previously in the Proposed Decision, the Commission's determination in this claim would not preclude TAM VAN NGUYEN or his wife from filing a new claim in a second Vietnam program, should the Commission be authorized in the future to conduct a program for losses which occurred after December 28, 1980.

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

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Claim No. V-0150

Decision No. V-0260

PROPOSED DECISION

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The evidence of record indicates that the claimant purchased a dwelling house at no. 51/46B Cao Thang Street in Saigon for 26,000 Vietnamese piasters in 1960, and that the claimant and his wife, Le-Thi-Thuy, also purchased some land in 1960 for 12,000 Vietnamese piasters which was recorded in the land register of Saigon Thai Binh in Book 10, Sheet 2338, Land Title No. 2338. According to the claimant, he owned 300 paintings which were stored in his house on Cao Thang Street. The record also

establishes that the claimant's wife, Le-Thi-Thuy, purchased a flower kiosk in 1947 for 10,500 Vietnamese piasters at no. 10 Charner Boulevard (subsequently renamed Nguyen Hue Avenue).

In his statement of claim, TAM VAN NGUYEN asserted that the house, land, and paintings involved herein were all taken over by Vietnamese authorities in January 1981. The record contains no documentary evidence of these property losses. Even if such evidence were in the claim file, however, the Commission has held in the current Vietnam program, as it has repeatedly held in prior claims programs, that the taking of the subject property must have occurred before the enactment of the statute authorizing the claims program in order to represent a compensable claim. (See Claim of ANH NGOC LA, Claim No. V-0048, Decision No. V-0003 (1982).) Public Law 96-606, under which the Vietnam claims program is being administered, was enacted on December 28, 1980. Accordingly, the Commission finds that it has no jurisdiction to grant awards for any property which was lost after that date. Since the claimant has asserted that the house, land, and paintings were taken by Vietnamese authorities in January 1981, and there is no evidence in the claim file that the losses occurred at any other point in time, the Commission concludes that these portions of the instant claim are not compensable under the Act.

As for the flower kiosk purchased by the claimant's wife, it was asserted in the statement of claim that this property was taken over by Vietnamese authorities in December 1980. The record does contain evidence that this property was taken over by the Vietnamese Government, but not at the time asserted by the claimant. The pertinent document is a decision of the People's Committee of First District of Ho Chi Minh City (Saigon), the English translation of which reads as follows:

HO CHI MINH CITY

SOCIALIST REPUBLIC OF VIETNAM

Independence-Freedom-Happiness

PEOPLE'S COMMITTEE OF
1st DISTRICT

March 3, 1981

No: 134 /QB-UB

PEOPLE'S COMMITTEE OF 1st DISTRICT

- By constitutive laws of the People and Administrative Committees of all levels of October 27, 1962.

- Per circular No 2040/UB of Dec. 29, 1978 of the City People's Committee about the disposition of all kiosks on Nguyen Hue area.

- Per decision of the interministerial meeting of Foreign Trade, Tourist Agencies, Sea Line Supplies, Cultural and Information Service, Trade and Commerce Ministry... of August 1, 1979.

DECISION

Article 1. - The Foreign Trade Service is commissioned into the possession with the responsibility to reorganize, expand the export of merchandise, dispense the collected foreign currency from the kiosks of the sidewalks of Nguyen Hue Avenue such as No. 10, 11, 15, 16, 17, 18, 20, 23, 24.

Article 2. - After seizing the kiosks, Foreign Trade Service have the obligation to maintain and restore the activities and the responsibility to dispense the properties as fix active capital of the Branch, to transfer them when needed within the Branch.

Article 3. -The Director General of the People's Committee of 1st District, Office of Land and Housing Directorate, Comptroller Office, Correctional Commission, 1st District Security Agency, People's Committee of the 9th District, People's Committee of the 10th District, Foreign Trade Service and owners of the above indicated kiosks, all are obligated to carry out this decision as directed.

For the PEOPLE'S COMMITTEE OF 1st DISTRICT
CONCURRENTLY CHAIRMAN
AND VICE CHAIRMAN

Copies to:

.....

Signed: TRAN TU BINH

Conform copy No 123/SNT

March 7, 1981

FOREIGN TRADE
Vice Director

Signed: NGUYEN HONG PHUONG

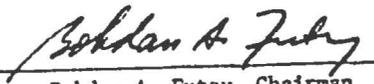
Based on this document, the Commission concludes that the kiosk owned by the claimant's wife at no. 10 Nguyen Hue Avenue was taken over by the Vietnamese Government on March 3, 1981, the date the decision was issued. Since this loss occurred after the enactment of Public Law 96-606 on December 28, 1980, the Commission finds that it does not represent a compensable claim in this program.

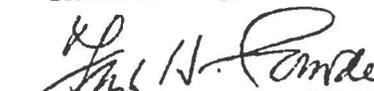
For the foregoing reasons, the Commission determines that the instant claim must be and it hereby is denied in its entirety.

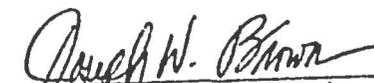
The Commission notes that should the Commission receive authorization to conduct a second Vietnam claims program for losses which occurred after December 28, 1980, TAN VAN NGUYEN and Le-Thi-Thuy would be entitled to file new claims based on their proven and asserted losses in 1981.

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

MAR 29 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.)