

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

IN THE MATTER OF THE CLAIM OF

JOHN HAVICAN  
THU LANG HAVICAN

Claim No. V-0471

Decision No. V-0490

Hearing on the Record Held on: NOV 19 1985

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FINAL DECISION

By Proposed Decision dated August 22, 1985, the Commission granted claimant JOHN HAVICAN an award in the principal amount of \$4,000, plus interest, for the loss of certain items of personal property in Vietnam. A portion of the claim based upon real property located in Nha Trang was denied for the reason that the evidence of record indicated that claimant THU LANG HAVICAN was the recorded owner of such property and that she was not a United States national when such property would have been taken by the Government of Vietnam, as required for compensation under section 703 of the International Claims Settlement Act of 1949, as amended.

Claimants filed objections to the Proposed Decision and have submitted a sworn statement by JOHN HAVICAN dated in September of 1985 in which he states that "...all information enclosed is true and accurate." The enclosures consisted of a letter and a copy of a handwritten "Money Receipt" dated September 8, 1974, with an English translation, signed by THU LANG HAVICAN's parents. The receipt states that they had been repaid 4,000,000 Vietnamese piasters which they had loaned to their daughter and her husband to build a house at 53 Thoai Ngoc Hau Street in Nha Trang.

By letter dated September 17, 1985, claimants were requested to send to the Commission the original of the "Money Receipt." They responded, however, that it had been lost at the time the copy submitted to the Commission had been made.

By letter dated October 14, 1985, claimant JOHN HAVICAN advised the Commission of his annual salary from 1969 to May of 1975 and of his wife's annual salary from 1970 to 1974. He also stated that, as a wedding present in July of 1974, he and his wife received the equivalent of 4,500,000 Vietnamese piasters, or \$7,258.06 at the applicable exchange rate, and that this money was the basic source of the repayment of the loan of 4,000,000 Vietnamese piasters to the parents of THU LANG HAVICAN for the construction of a house on the real property in Nha Trang. This statement is supported by another sworn statement dated October 12, 1985 by the parents.

The Commission has considered all the evidence of record and has considered its holding in the Claim of William A. Yerabek, Claim No. V-0167, Decision No. V-0257, wherein it held that a United States national's monetary interest in the purchase of real property in Vietnam may be the basis of a compensable claim even though such interest may be unrecorded in the official land records in Vietnam. Based upon the entire record, the Commission finds that JOHN HAVICAN contributed to the repayment of 4,000,000 piasters for the construction of improvements to real property in Vietnam to the extent of one-half or \$3,225.81 at the applicable exchange rate in 1974, and that, considering some general appreciation in the value of real property in Vietnam after July of 1974, JOHN HAVICAN is entitled to an additional award in the amount of \$3,500 for the loss of his interest in the improved real property located at 53 Thoai Ngoc Hau Street in Nha Trang, which was nationalized or otherwise taken by the Government of Vietnam on or about May 1, 1975.

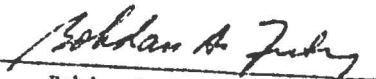
Accordingly, the Commission concludes that its award must be restated as follows:


A W A R D

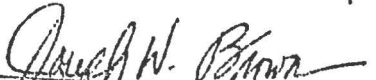
Claimant JOHN HAVICAN is therefore entitled to an award in the principal amount of Seven Thousand Five Hundred Dollars (\$7,500.00), plus interest at the rate of 6% simple interest per annum from May 1, 1975 until the date of settlement.

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

NOV 19 1985

  
Bohdan A. Futey, Chairman

  
Frank H. Conway, Commissioner

  
Joseph W. Brown, Commissioner

FOREIGN CLAIMS SETTLEMENT COMMISSION  
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IN THE MATTER OF THE CLAIM OF

JOHN HAVICAN

THU LANG HAVICAN

Claim No. V-0471

Decision No. V-0490

PROPOSED DECISION

This claim in the amount of \$58,358.00 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 real property in Nha Trang and personal property.

Claimant JOHN HAVICAN acquired United States citizenship by birth on November 21, 1949 in Michigan. Claimant THU LANG HAVICAN acquired United States citizenship by naturalization on January 8, 1982.

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 evidence of record establishes and the Commission finds that JOHN HAVICAN owned certain items of personal property which were nationalized or otherwise taken by the Government of Vietnam on or about May 1, 1975 and that he is therefore entitled to compensation under section 703 of the Act, above, for his loss.

In determining the value of the property lost, the Commission has reviewed a list of personal belongings submitted by the claimant and finds that, based upon the average retail price for similar items in 1975 and after the deduction of reasonable depreciation, the value of \$4,000 asserted by the claimant for such property on the date of loss is fair and reasonable. Accordingly, the Commission concludes that JOHN HAVICAN is entitled to an award in that amount.

The Commission has concluded that in granting awards on claims under section 703 of Title VII of the Act, for the nationalization, expropriation, or other taking of property, interest shall be allowed at the rate of 6% simple interest per annum from the date of loss to the date of settlement. (See Claim of BETTY JANET MITCHELL, Claim No. V-0358, Decision No. V-0259 (1984).)

A portion of this claim is based upon improved real property described as a 125 square meters lot with a two story brick and stucco house located at 53 Thoai Ngoc Hau, Na Trang. The record contains a copy of a "Real Estate Purchase Contract" dated April 24, 1970 which indicates that THU LANG HAVICAN purchased the real property in question for 315,000 piasters or approximately \$4,000 at the applicable exchange rate. Accordingly, the Commission finds that THU LANG HAVICAN was the recorded legal owner of the improved real property at 53 Thoai Ngoc Hau, Na Trang on or about May 1, 1975, the date such property would have been nationalized or otherwise taken by the Government of Vietnam. Because she was not a United States national at the time the property would be deemed by the Commission to have been taken, no award may be granted for her interest in the property for the reasons set forth in section 703 of the Act, above.

At the time of filing, claimant JOHN HAVICAN stated that he had acquired an interest in the subject real property as a result of his marriage on June 14, 1974 to THU LANG HAVICAN. The Commission finds, however, that under Vietnamese Law (SL 15/64

and BDL 72) that, absent an antenuptial agreement to the contrary, real property purchased by one spouse prior to the marriage does not become community property, but remains the separate property of each spouse after marriage.

It should be noted that the Commission has held in the Claim of William A. Yerabek, Claim No. V-0167, Decision No. V-0257, that where there is evidence to establish that an United States citizen used funds to purchase real property in Vietnam the Commission may grant an award for his beneficial ownership in the property, based upon the extent of his contribution to the purchase price, even though the evidence of record establishes that the legal title holder of the real property was a Vietnamese national on the date of loss. The record in the instant claim, however, does not contain any evidence to establish the amount of any contribution by the claimant to the purchase price of the real property claimed. In fact, the record indicates that funds used to pay for the real property and improvements were not separate, but comingled, and came from a bank account in the name of THU LANG HAVICAN.

Subsection 531.6(d) of the Commission's regulations provides:

"The claimant shall be the moving party and shall have the burden of proof on all issues involved in the determination of his claim."

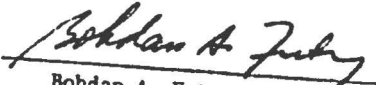
Based upon the foregoing, the Commission finds that the record contains no evidence to establish that any real property owned by a United States national was nationalized or otherwise taken by the Government of Vietnam as required for compensation under section 703 of the Act, above. Accordingly, that portion of this claim based upon an interest in real property must be and it is hereby denied.

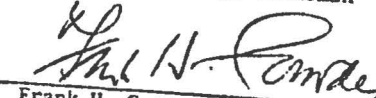
AWARD

Claimant JOHN HAVICAN is therefore entitled to an award in the principal amount of Four Thousand Dollars (\$4,000.00), plus interest at the rate of 6% simple interest per annum from May 1, 1975 until the date of settlement.

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

AUG 22 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.)