

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

IN THE MATTER OF THE CLAIM OF

NELLIE YIN-CHIAO CHEUNG

Claim No. V-0131

Decision No. V-0321

Oral Hearing held on September 24, 1985

Counsel for Claimant:

Brian P. Lewis, Esquire

FINAL DECISION

This claim in the amount of \$175,285.85 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 improved real property and personalty in Saigon.

The claimant acquired United States citizenship by naturalization on May 11, 1976.

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... ."

Section 704 of Title VII of the Act limits the Commission's jurisdiction as follows:

"A claim may be favorably considered under section 703 of this Act only if the property right on which it is based was owned, wholly or partially, directly or indirectly, by a national of the United States on the date of loss and only to the extent that the claim has

been held by one or more nationals of the United States continuously from the date that the loss occurred until the date of filing with the Commission."

By Proposed Decision issued April 22, 1985, the Commission denied this claim on the ground that claimant had not established that any property had been taken at a time when it was owned by a United States national.

Claimant, through counsel, objected to the Proposed Decision and requested an oral hearing which was held on September 24, 1985. At the oral hearing testimony was presented by claimant and by claimant's father, Mr. Vuong Kim Dinh.

The claim is based on the assertion that claimant's father owned certain real property consisting of a house and land, and certain personal property consisting of gold and jewelry. It is asserted that in March of 1975, claimant's father made a gift of this property to claimant and that the property was taken after claimant became a United States citizen.

Claimant has submitted affidavits from Francis T. Lamle, who is presently in the United States, but who states he was an attorney in Vietnam. Mr. Lamle states in his affidavit that in March 1975, claimant and her father came to his office and that he completed all legal documents necessary to transfer the real property to claimant.

Mr. Lamle continues "Unfortunately a few weeks passed before recordation and during that time the communists took control of South Vietnam. The papers which were completed were left in my office and I do not know where they are at this time." It, therefore, appears that no registration of title in the name of claimant was completed as required for a transfer of ownership under the law of Vietnam. Claimant's father and mother continued to live in the premises until 1977 when they were able to leave Vietnam.

The record also contains a real estate title for the real property listing the owner of the property as Thi Thuc Tin, claimant's mother. Claimant's father testified that he had placed the property in the name of his wife in 1949 as a gift to his wife. Claimant's mother did not accompany claimant and her father to the attorney's office or sign any documents. For reasons not completely clear to the Commission, although claimant testified she made a trip to Vietnam in 1975 because she "wanted to be sure" that her father transferred property to her, she did not obtain a copy of the document purportedly signed.

Based on this record, the Commission concludes that claimant has not established that she acquired legal title to this real property at any time before the property was taken. The asserted transfer of title to the property was not registered in official land records to accomplish a transfer of title under the law of Vietnam as is admitted in the affidavit from Mr. Lamle. In addition, the property was in the name of claimant's mother who did not sign any documents authorizing a transfer. Claimant suggests that under the law in force in Vietnam, the property would be community property and that the husband, claimant's father, would have the right to manage the property. As claimant's father testified that the property was placed in the name of his wife as a gift from him to his wife, it is not clear that the property would be considered community property. However, even if it were considered to be community property, under Article 56 of SL 15/64 and Article 153 of BDL 72 of Vietnamese law, while the husband had a general right to manage property, any act involving the potential loss of valuable property would require the consent of both spouses and any disposition of the wife's separate property would require her consent. Therefore, it is not established in this claim that claimant's father had a right to dispose of the real property. For the above reasons, the Commission denies the claim for the real property.

As to the claim for the personal property consisting of gold and jewelry, the Commission can find no evidence in the record of any action taken by claimant's father which could form the basis of a gift of this property transferring ownership of the personal property. No written document was prepared at any time evidencing such a transfer. The property was contained in a safe deposit box and claimant's father testified that he at no time gave a key to this box to claimant nor took any action to transfer the ownership of the box to claimant. There was no physical transfer of the personal property to claimant. Claimant testified that she anticipated her father would sell the personal property at some future date and send the money to her, clearly indicating it was intended that her father would continue to have title to the personal property giving him a right to sell the personal property.

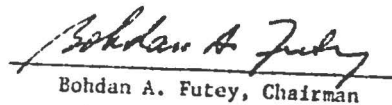
According to documents submitted by claimant on December 2, 1975, the safe deposit box was opened before a locally appointed committee and claimant's father was granted the right to remove certain items of jewelry and the property remaining was listed as the property of claimant's father. In a document dated August 3, 1976, claimant's father declared that he had rented a safe deposit box from June 13, 1974 and supplied an inventory of the property again asserting his ownership thereof.

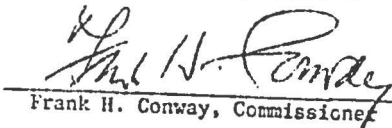
Based upon the above record, the Commission can find no basis to conclude that claimant became the owner of the personal property for the loss of which claim is made.

For the above reasons, the Commission affirms its original denial as its final determination of this claim.

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
WASHINGTON, D.C. 20579

IN THE MATTER OF THE CLAIM OF

NELLIE YIN-CHIAO CHEUNG

Claim No. V-0131

Decision No. V-0321

Counsel for claimant: Brian P. Lewis, Esquire

PROPOSED DECISION

This claim in the amount of \$175,285.85 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 improved real property and personalty in Saigon.

The claimant acquired United States citizenship by naturalization on May 11, 1976.

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... ."

Section 704 of Title VII of the Act limits the Commission's jurisdiction as follows:

"A claim may be favorably considered under section 703 of this Act only if the property right on which it is based was owned, wholly or partially, directly or indirectly, by a national of the United States on the date of loss and only to the extent that the claim has been held by one or more nationals of the United States continuously from the date that the loss occurred until the date of filing with the Commission."

The record includes a copy of a land record extract indicating that the claimant's mother, Thi Thuc Tin, "acting under the authority and assisted by, Mr. Vuong Kim Dinh," her husband, purchased some improved real property at no. 175-177 Freres Louis Street in Saigon-Gallieni on January 11, 1950. The record indicates that this property was subsequently recorded in the name of the claimant's father, Vuong Kim Dinh. In addition, the evidence establishes that the claimant's father owned numerous gold objects, including jewelry and other valuables, which were kept in a safe deposit box at the French Commercial Bank in Saigon.

Following the fall of South Vietnam in April 1975, Vuong Kim Dinh continued to reside in Saigon at no. 175-177 Vo Tanh (formerly Freres Louis Street and subsequently renamed Nguyen Trai Street) until his emigration from Vietnam in September 1977. As a condition of his leaving the country, Vuong Kim Dinh was forced to turn over all of his property to governmental authorities. With regard to the subject real property, a Decision was issued by "The Service of Real Estate and Public Works Management" on September 14, 1977:

"To assume the management of the residence no. 175-177 Nguyen Trai Street...and all personal property therein belonging to, and for the use of, Mr. Vuong Kim Dinh who now delivers them in order to go abroad."

As for the valuables in the safe deposit box, the record includes a letter from a state banking office to Vuong Kim Dinh, dated September 19, 1977, advising him that his safe deposit box would be opened the next day, although there is no evidence as to exactly what happened to the contents thereafter.

The foregoing documentation identifies the claimant's father, Vuong Kim Dinh, as the owner of the real and personal property involved in this claim as of September 1977, at which time the subject property was taken over by the Vietnamese Government as the price of Vuong Kim Dinh's emigration from

Vietnam. As the claimant's father was not a United States national at that time, the taking by the Vietnamese Government of property belonging to him does not represent a compensable claim under section 703 of the Act.

The claimant asserts that her father actually transferred his property to her in March 1975, so that the subject property would have been owned by a United States national at the time of its taking by Vietnam. In support of this assertion, the claimant has submitted affidavits from herself, her father, and the former South Vietnamese lawyer in whose office the instrument of conveyance was allegedly prepared. According to this attorney, however, the transfer of ownership (of the real property) was not recorded in the interval between the meeting in his office in March 1975 and the fall of Saigon on April 30, 1975. Moreover, the lawyer indicated that no copy of the deed of conveyance could be produced since the document was left in his Saigon office when the Communists took control of the city.

Under the 1972 Civil Code which governed South Vietnam until the Communist takeover in 1975, a conveyance by gift of real property required an "official act." As set forth in Article 967 of the Civil Code, an "official act" entailed either the preparation of the instrument of conveyance by a local administrative officer of the government or, if the instrument was privately prepared, the notarization of the instrument by a local administrative officer. Thereafter, the transfer of title had to be recorded in the land register.

In the instant claim there is no evidence that the deed of conveyance allegedly prepared in the office of a Saigon attorney in March 1975 was then notarized by a local administrative officer. The fact that Vuong Kim Dinh was still identified by Vietnamese officials as the owner of the subject property at the time of his emigration from Vietnam in September 1977 clearly in-

dicates that no change of legal title was recorded. Thus, the evidence of record does not establish that the attempted transfer of property from Vuong Kim Dinh to the claimant in March 1975 had any legal effect in Vietnam.

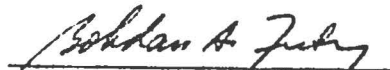
In consideration of the foregoing factors, in addition to the non-availability of the instrument of conveyance itself, the Commission finds that the record fails to establish that NELLIE YIN-CHIAO CHEUNG held any ownership interest in the subject real property, or in the personal property located in the safe deposit box, at the time of taking in September 1977. The Commission concludes, therefore, that the foregoing properties were not owned by a United States citizen at the time of loss, as required for compensation under section 703 of the Act.

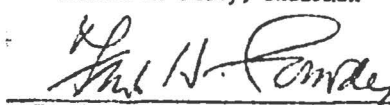
Accordingly, the Commission determines that the claim of NELLIE YIN-CHIAO CHEUNG must be and it hereby is denied.

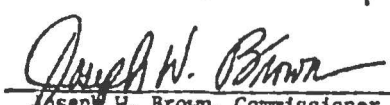
The Commission finds it unnecessary to make determinations with respect to other aspects of this claim.

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

APR 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.)