

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

IN THE MATTER OF THE CLAIM OF

JACK STREETER

Claim No. V-0133

Decision No. V-0418

Oral Hearing held on November 19, 1985

Counsel for Claimant:

Paul A. Richards, Esquire

FINAL DECISION

This claim in the asserted amount of \$50,000,000.00 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 50% interest in real property in Saigon, a bank account, and personal property.

By Proposed Decision issued June 26, 1985, the Commission made an award to claimant in the principal amount of \$2,000 for the loss of certain personal property, but denied that part of the claim for a one-half interest in real property known as the Crystal Palace Shopping Center in Saigon and for a bank account on the ground that claimant had not established ownership of such property.

Claimant, through counsel, objected to the Proposed Decision and requested an oral hearing which was held on November 19, 1985 at which time claimant appeared on his behalf and testified before the Commission and presented oral argument in support of his claim. In addition, claimant submitted further documentary evidence, all of which has been considered by the Commission. The sole issue for determination pursuant to this objection is whether claimant has established legal ownership of a one-half interest of certain real property known as the Crystal Palace

Shopping Center in Saigon, and if he has not, whether claimant has established the loss of any other property interest for the loss of which he is entitled to compensation under the provisions of Public Law 96-606.

As discussed in the Proposed Decision, claimant asserts that he acquired title to one-half of the Crystal Palace Shopping Center pursuant to a "certificate of transfer," a reproduced copy of which claimant submitted. This document states:

"CERTIFICATE OF TRANSFER

Considering articles #17, 18 and 34 of the organizing charter and operational regulations of Tam Da Company.

Considering organizing charter of the Crystal Foundation, in which Mr. Nguyen Van Anh is Chairman of the Board; and also considering all the decisions of bilateral operations for both companies as well as its properties essentially needed for the long-term investment projects, with beneficial to both organization.

DECISIONS:

1. Immediately as of July 1st, 1974 one half (1/2) of the value of the principal property of Tam Da Company, which is the Crystal Palace Shopping Center, located on both 95-101 Cong-Ly St and 4 Nguyen-Trung-Truc St, Saigon II. To be transferred to the management and exploitation of U.S. Enterprises represented by Mr. Jack Streeter of Reno, Nevada, USA.

2. The present document has immediate effect and value, while waiting for the U.S. Enterprises to proceed the routine legal requirement for the title of said property.

Made in Saigon on July 1st, 1974
TAM DA COMPANY
SOLE MANAGER WITH ABSOLUTE POWER
S&S NGUYEN VAN ANH"

In its Proposed Decision, the Commission found the evidence insufficient to establish any transfer of title to real property by this document. The Commission concluded that the document was not unambiguous on its face as to whether legal title to real property was being transferred and further that it had not been established who owned the real property prior to July 1, 1974, nor was it established that Nguyen Van Anh was authorized to transfer title to said real property.

The Commission has reviewed the entire record, including the additional documents submitted following the objection and finds no basis to change its finding that claimant has not established that he acquired title to one-half of the Crystal Palace Shopping Center.

In a nine page letter signed by Nguyen Van Anh and submitted in support of the objection, Mr. Anh states in one paragraph that he personally owned the real property, in another section of the letter he states that he, his wife, and his four children owned the property, and in another paragraph states that the Tam Da Company owned the Crystal Palace and that the Tam Da Company consisted of himself, his wife, and his four children. Prior to the issuance of the Proposed Decision, a number of affidavits were submitted, all of which were prepared in 1984 by former Vietnamese who now reside in the United States. Four of these refer to the Crystal Palace as having been financed by and owned by the Crystal Foundation, which is defined as a public charity. In the claim form filed by claimant he asserts, based upon the purported transfer of a one-half interest to claimant, that the property was owned by claimant and the Crystal Foundation, a Vietnamese foundation. At the oral hearing, claimant testified he did not know of his own knowledge what individuals or organizations were recorded as owners of the property prior to the purported transfer of an interest to claimant.

No power of attorney, corporate or foundation resolution nor authorization of claimant's wife or four children has been submitted. On this state of the record it is, therefore, not established that Nguyen Van Anh had the authority to transfer title to a half interest of what is asserted to be a \$100,000,000 asset.

The Commission has again carefully examined the contents of the "certificate of transfer." From the translation submitted by claimant, the intent of the document is ambiguous. Subsequent statements of the parties referred to in the document are not

consistent with an interpretation that the document was meant to transfer legal title to real property. In a statement dated March 17, 1978, Nguyen Van Anh refers to the Crystal Palace as being owned by Tam Da Company and no mention is made of any interest having been transferred to claimant. The nine page letter from Nguyen Van Anh, above referred to, contains the following statement:

"Considering the special circumstances surrounding Vietnam and the activities of the Crystal Foundation at the time of the collapse of South Vietnam, it would be more fitting for me, Nguyen Van Anh (President of the Crystal Foundation) to sue the Vietnam Communist authorities for compensation for the total losses sustained, as I am authorized to act in the name of the organizations under the Crystal Foundations administrative umbrella."

The Commission considers this statement inconsistent with any understanding by Nguyen Van Anh that legal title to the Crystal Palace was divested in 1974 and transferred to claimant.

The Commission also notes that in a letter dated May 15, 1975 to the former Chairman of the Foreign Claims Settlement Commission, claimant asserts claim for \$230,000 which he had transferred to the Bank of America, Saigon branch, but asserts no claim for the loss of any real property. In the Statement of Claim signed by claimant, he listed the Crystal Foundation, a Vietnamese charitable organization, as the owner of the property interest when such interest was lost.

There is no evidence before the Commission that any attempt was made to register the claimant as the owner of legal title to the real property. The registration of such title in a non-Vietnamese citizen was possible in Vietnam, although it required an extensive process and ultimately approval by the President of Vietnam. There is no evidence of probative value that this was attempted, much less accomplished. In an affidavit signed September 12, 1985 by Tinh Q. Le, who states he was an executive officer of the Tam Da Company, he states:

"I am a J.D. graduated from Saigon University, but not active as a lawyer. I had the assignment paper prepared by the Companies Attorney, a Mr. Do Van. Mr. Do Van assured me that the legal document would be

accepted by any Vietnamese Court of Law. I reviewed the document prepared by Mr. Do Van's law firm and agreed and accepted it as legal, binding and valid."

Therefore, although Mr. Le may have considered that the document created some type of contractual right between claimant and Nguyen Van Anh, there is no information that Mr. Le took any steps to change the registered title of the real property.

The Commission considers the record before it completely insufficient to establish that claimant became the legal owner of a one-half interest in the Crystal Palace Shopping Center.

In the affidavit, above referred to, from Tinh Q. Le, he states:

"Although the 'Certificate of Transfer' was signed by Mr. Anh V. Nguyen on July 1st, 1974, it was not delivered to Mr. Jack Streeter until November or December of 1974 so that we were certain that he had deposited the sum of \$230,000.00, that he had promised to do."

Claimant has also submitted evidence that in July of 1974, he transferred \$140,000 from a bank account in the United States to a bank account in Vietnam and that on August 13, 1974, an additional \$90,000 was transferred. This presumably was the \$230,000 referred to in Mr. Le's affidavit and in the claimant's letter of May 15, 1975 to the former Chairman of the Commission. The mere fact that a claimant may have forwarded money to Vietnam, absent evidence that it existed in a bank account at the time of the fall of South Vietnam, does not, in and of itself, establish a claim that property was taken by or on behalf of the Socialist Republic of Vietnam.

In Claim of PECTEN VIETNAM COMPANY, Claim No. V-0522, Decision No. V-0425, the Commission held that where claimant had received a concession to exploit potential oil reserves, which concession was cancelled by the government, claimant was entitled to its capital investment in developing the concession. In Claim of WILLIAM A. YERABEK, Claim No. V-0167, Decision No. V-0257, the Commission held that where the claimant, who was a United States citizen, had demonstrated a cash investment to purchase a house,

which for convenience was placed in the name of a Vietnamese citizen, to the extent of that investment, claimant was entitled to an award due to the confiscation of the house.

In the present claim, based upon the information contained in the affidavit of Mr. Le, the "transfer document," and whatever rights it may have given to claimant to future proceeds from the Crystal Palace, was given in consideration of an investment of \$230,000. As set forth above, claimant has established that, in fact, he made such an investment.

The Commission concludes, that although the matter is not without doubt, that the facts in this claim brings the claimant within the aegis of the Commission's precedents entitling him to an additional award in the principal sum of \$230,000.

Claimant states that prior to 1974, he had made additional investments in Vietnam. He has submitted an income tax return for 1974 in which he listed \$174,899 as his previous business losses. The fact that claimant may have previously invested money in projects in Vietnam and suffered business losses does not provide any basis to find that property owned by claimant was confiscated on or after April 29, 1975 by the Socialist Republic of Vietnam.

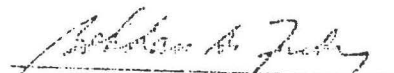
No objection has been raised concerning the previous award of \$2,000 for personal property. The Commission, therefore, for the reasons set forth above, withdraws its previous award and makes the follows award as its final determination of this claim.

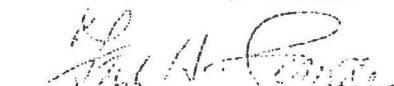
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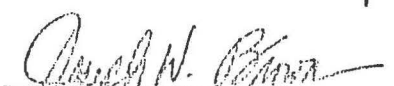
Claimant, JACK STREETER, is therefore entitled to an award in the principal amount of Two Hundred Thirty-Two Thousand Dollars (\$232,000.00), plus interest at the rate of 6% simple interest per annum from May 1, 1975 until the date of settlement.

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

JAN 22 1986


Holden A. Futey, Chairman


Frank H. Conway, Commissioner


Joseph W. Brown, Commissioner

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IN THE MATTER OF THE CLAIM OF

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Counsel for Claimant:

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PROPOSED DECISION

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The record indicates that claimant acquired United States citizenship by birth.

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."

Part of claimant's claim is based upon the asserted ownership of a half interest in a shopping center known as the Crystal Palace Shopping Center in Saigon. In support of this part of the claim, claimant has submitted a number of affidavits from individuals who generally describe the shopping center and make reference to a Vietnamese foundation named the Crystal

Foundation. The affidavits indicate that the Crystal Foundation came into existence in 1956, apparently principally through the efforts of Nguyen Van Anh, and that it became a public corporation in 1968 and has variously been described as being involved in social and cultural development and social promotion and economic development. Reference is also made in the affidavits to the effect that in 1969, a corporation, Tam Da Company, was formed, a principal owner of which apparently was also Nguyen Van Anh.

The affidavits imply that the Crystal Palace Shopping Center may have been owned, in whole or in part by the Crystal Foundation and/or Tam Da Company, although no primary documentation has been submitted to demonstrate what, if any, ownership interest was so held.

Claimant has submitted a xerox copy of a document in Vietnamese assertedly prepared on July 1, 1974. According to the translation submitted by claimant, this document states:

"CERTIFICATE OF TRANSFER

Considering articles #17, 18 and 34 of the organizing charter and operational regulations of Tam Da Company.

Considering organizing charter of the Crystal Foundation, in which Mr. Nguyen Van Anh is Chairman of the Board; and also considering all the decisions of bilateral operations for both companies as well as its properties essentially needed for the long-term investment projects, with beneficial to both organization.

DECISIONS:

1. Immediately as of July 1st, 1974 one half (1/2) of the value of the principal property of Tam Da Company, which is the Crystal Palace Shopping Center, located on both 95-101 Cong-Ly St and 4 Nguyen-Trung-Truc St, Saigon II. To be transferred to the management and exploitation of U.S. Enterprises represented by Mr. Jack Streeter of Reno, Nevada, USA.

2. The present document has immediate effect and value, while waiting for the U.S. Enterprises to proceed the routine legal requirement for the title of said property.

Made in Saigon on July 1st, 1974
TAM DA COMPANY
SOLE MANAGER WITH ABSOLUTE POWER
S&S NGUYEN VAN ANH"

It is claimant's contention that he acquired a 1/2 ownership interest in the Crystal Palace Shopping Center as of July 1, 1974. The Commission finds this evidence to be insufficient to establish an ownership interest in real property in Vietnam by claimant prior to May 1, 1975.

In this regard, the Commission finds that claimant has not established the ownership of the Crystal Palace Shopping Center prior to July 1, 1974. The Commission finds the evidence insufficient to establish any transfer of ownership of real property by the document dated July 1, 1974. Assuming without at this time finding that the original of this document was prepared and signed on July 1, 1974, the Commission finds that it is not clear from the face of the document whether an ownership interest of real property is being transferred or merely a right to manage and exploit; and further, the Commission finds that it is not established that Nguyen Van Anh was authorized to transfer 50% of the principal asset of Tam Da Company or the Crystal Foundation. Particularly, in this regard the Commission notes that the Crystal Foundation is stated in affidavits to be a charitable corporation which had been established as a public corporation and the Commission finds no evidence that Nguyen Van Anh had authority to transfer 50% of a principal assets of a public charity to an individual.

On May 15, 1975, after the fall of Saigon, claimant wrote a letter to J. Raymond Bell, the then Chairman of the Foreign Claims Settlement Commission. The letter states:

"Dear Mr. Bell:

Pursuant to advice from Senator Paul Laxalt's office, I am submitting to you the following information and claim.

For the past several years, I have worked with Vietnamese associates in Saigon endeavoring to entice American business industry and investment into South Vietnam. Also we submitted proposals to the Government of South Vietnam to handle on a commission basis the war surplus and scrap metal program. Our endeavors were about to be consummated with such a contract when the North Vietnamese and Viet Cong offensive started.

Last year I deposited in the Bank of America, Saigon Branch, the sum of \$230,000.00 U.S. This money was used to rent office space, furnish the same, entertain business and government officials and none of this money has been returned to me and I understand through Bank of America that it has been confiscated by the present government of South Vietnam. In addition to this, I had sent approximately \$3,000.00 in equipment such as typewriters, calculators, etc, and it is also evident that this will never be returned.

Due to the fact that I made periodic trips at least once every six weeks for the past two years, I left personal effects such as clothing, luggage, etc., having a value of at least \$2,000.00 and this too has been confiscated.

Therefore, I make claim for the sum of at least \$235,000.00 and would you kindly advise what else I must do in addition to this letter to have this claim considered and paid.

Respectfully yours,

JACK STREETER

Although the letter makes reference to the loss of typewriters, calculators, luggage and clothing, there is no indication that claimant considered himself to be the owner of any real property interest in Vietnam.

Based on the entire record, the Commission finds no credible evidence of probative value to establish that claimant owned real property in Vietnam which was nationalized or otherwise taken by the Socialist Republic of Vietnam and, therefore, denies this part of claimant's claim.

Claimant, in his present claim, asserts the loss of a bank account in the Bank of America in Saigon which he asserts was in the amount of \$40,000.00. Except for claimant's letter of May 15, 1975 where reference was made to a deposit of \$230,000, and the assertion in the claim form of a bank account of \$40,000, no evidence has been submitted in the form a bank book or other evidence of the existence of a bank account in the Saigon Branch of Bank of America as of April 29, 1975 and, therefore, the Commission finds that claimant has not carried the burden of

proving the existence or amount of any bank account in existence as of April 29, 1975 or that it was nationalized or otherwise taken by the Socialist Republic of Vietnam.

Finally, in the present claim, claimant asserts the loss of an "entire tropical wardrobe stored in President hotel, Saigon" valued at \$5,000.00. Presumably, this is the same clothing referred to in the letter of May 15, 1975 and valued along with other personal effects at \$2,000.00. Although no specific evidence has been provided such as sales receipts or other proof of ownership of clothing, the Commission recognizes the difficulty in producing such specific evidence of the ownership of personal property. The file does reflect that claimant traveled frequently to Vietnam and it appears reasonable to the Commission that he may well have had clothing and other such personal effects which he left in Vietnam to be available for his frequent visits. The Commission, therefore, is willing to find that claimant did have personal property in Vietnam and accepts his stated value of such clothing and personal affects in his May 15, 1975 letter as \$2,000.00.

The Commission therefore makes an award to claimant in the amount of \$2,000.00.

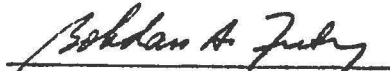
The Commission has concluded that in granting awards on claims under section 703 of Title VII of the Act, for the nationalization, expropriation, or other taking of property, interest shall be allowed at the rate of 6% simple interest per annum from the date of loss to the date of settlement. (See Claim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

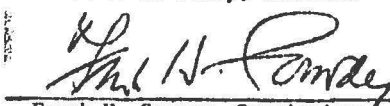
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Claimant, JACK STREETER, is therefore entitled to an award in the principal amount of Two Thousand Dollars (\$2,000.00), plus interest at the rate of 6% simple interest per annum from May 1, 1975 until the date of settlement.

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

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.)