

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

IN THE MATTER OF THE CLAIM OF

CALVIN TAN

Claim No. V-0151

Decision No. V-0326

Hearing on the Record held on **JAN 22 1986**

Counsel for Claimant:

Brian P. Lewis, Esquire

FINAL DECISION

This claim in the amount of \$3,900,000.00 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 business property and improved real property in Saigon.

Claimant was born in the United States on May 25, 1964.

Claimant asserts that he acquired interests in companies known as Vinatefinco and Vinatexco and a 1/3 interest in real property at 114-116 Dai Lo Khong Tu, Cholon. In support of this assertion, claimant has submitted a reproduction of a document in English that purports to be a "declaration" in which an individual named Tan-Chen declares that "I am giving" to claimant interests in Vinatefinco, Vinatexco and property at 114-116 Dai Lo Khong Tu, Cholon. No original of this document has been supplied to the Commission. Furthermore, the document is in English unaccompanied by any Chinese language statement. Subsequently, claimant submitted a "sworn letter" dated April 26, 1985 written in Chinese accompanied by a translation of an official translator. The requirement for such translation of the subsequent document would make it appear that Tan-Chen was not versed in the English

language which raises the substantial question in the Commission's mind as to whether he was able to read and understand the contents of the asserted "declaration."

By Proposed Decision issued April 22, 1985, the Commission denied this claim on the ground that claimant had not established the ownership of any property taken by the Socialist Republic of Vietnam.

Claimant, though counsel, objected to the Proposed Decision and requested an oral hearing which was set in San Francisco on September 24, 1985, however, no appearance by claimant, or witnesses on his behalf was made and the matter was submitted as a hearing on the record.

Subsequently, claimant submitted an affidavit of Tan-Chen stating that he "presented" the stocks of the two companies to his grandson, CALVIN TAN, who was ten years of age at the time. Copies of such stock certificates have not been submitted to the Commission.

This claim is one of six associated claims in which various claimants assert they acquired interests in Vinatefinco, Vinatexco, and certain real property by way of copies of similar "declarations." In one of these, Claim of BERTA W. CHEUNG, Claim No. V-0249, Decision No. V-0331, sworn testimony was provided to the Commission by the claimant therein that, despite the submission of copies of similar "declarations," in fact, there was no written instrument that she had at the time of her testimony or that she had ever had evidencing a gift. In that claim, sworn testimony by one of the alleged signatories of such a "declaration" cast substantial doubt as to the authenticity and date of the document. Testimony in that claim further was to the effect that the asserted predecessors in title in each of the associated claims were friends and business associates.

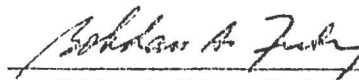
The Commission finds that the authenticity of the copies of each of the purported "declarations" filed in each of these claims is so subject to doubt that the Commission does not consider them reliable evidence in support of the claims.

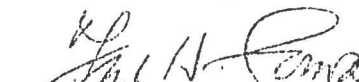
Furthermore, the Commission finds that even if the copies of the purported "declarations" were taken into consideration, claimant has failed to establish that effective action was taken either under the law of Vietnam or under the Commission's precedents to transfer property to claimant prior to the fall of South Vietnam.

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.

JAN 22 1986


Bohdan 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

This claim in the amount of \$3,900,000.00 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 business property and improved real property in Saigon.

The claimant was born in Washington, D.C. on May 25, 1964 and has been a lifelong citizen of the United States.

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 claimant asserts that his grandfather, Mr. Tan-Chen, a South Vietnamese national, owned (1) a 5% interest in "Vinatexco" (Vietnam Textile Company, Ltd.) worth \$1,500,000, (2) a 25% interest in "Vinatefinco" (Vietnam Textile Finishing Company, Ltd.) worth \$2,000,000, and (3) a 1/3 interest in improved real property at no. 114-116 Dai Lo Khong Tu in Saigon-Cholon, worth \$400,000, which properties were conveyed to the claimant by gift on December 10, 1974. As evidence of these transfers, the claimant submitted to the Commission in 1982 a photocopy of a typewritten document which reads as follows:

DECLARATION

I am TAN-CHEN (CHEN TUN SHENG) resident of 114-116 Dai Lo Khong Tu Cholon South Viet-Nam.

I declare that I am giving my grand-son MR. TAN CALVIN;

1. My share of the capital stock (V.N.\$6,000,000) of Viet-Nam Textile Company, VINATEXCO Head office No. 12 1st Floor Cong Ly Street Saigon South Viet Nam. The estimated current value of these shares is \$1,500,000 U.S. currency.

2. My share of the capital stock (V.N.\$7,500,000) of Viet-Nam Textile Finishing Company Limited, VINATEFINCO Head office No. 12 2rd (sic) Floor Cong Ly Street Saigon South Vietnam. The estimated current value of these shares is \$2,000,000 U.S. Currency.

3. My One-Third ownership of property located on 114-116 Dai Lo Khong Tu Cholon South Viet-Nam. The estimated current value of this property is \$400,000 U.S. Currency.

Saigon 10th of December 1974

Signature: _____
TAN-CHEN

WITNESSES: Chau Tran Toq
WITNESSES: Hau-Hoa

According to the claimant, the above properties were taken over by the new Communist authorities shortly after the fall of South Vietnam.

The original "Declaration" allegedly prepared in Saigon on December 10, 1974 has not been submitted to the Commission, and the photocopy in the claim file bears no official stamp or any other governmental verification as to its authenticity. It appears from the evidence of record that the claimant was not present in Saigon for the preparation of his grandfather's declaration and there is no indication as to when this document, or a copy thereof, was transmitted to the claimant. The Commission sent a letter to the claimant's attorney requesting the submission of whatever additional evidence might be available that could help to establish the claimant's ownership interest(s) in the subject properties. Counsel for claimant subsequently submitted a sworn statement prepared in November 1984 by a resident of Taipei, Taiwan, which reads, in pertinent part, as follows:

I, LU THUYEN residing at No. 8 Lane 9 ChangShia Rd Sect. 1 Bhilin Taipei after first being duly sworn, do now swear:

On the 10, day of December 1974. I was witness to Mr. Tan Chen act of giving to his grandson shares of stock in VINATEXCO, and VINATEFINCO, and certain real property.

I declare under penalty of perjury that the foregoing is true and correct and that if called to testify that this would be my testimony.

Witness Signature:Lu Thuyen

The Commission notes that the name Lu Thuyen does not appear at the bottom of the 1974 declaration as one of the witnesses of that document.

The Commission has consistently held, in claims presenting the issue of an inter vivos transfer of real property, that four criteria must be met: (1) there must be a written instrument; (2) the intent to transfer the subject property must be clear and unequivocal; (3) the written instrument must be delivered to the transferee; and (4) there must be evidence that the transaction was recorded in the land register, that a reasonable attempt to

record was made, or an explanation as to why there was no recordation. In the instant claim, there is a written instrument (although the original document has not been submitted) containing language indicating an intent on the part of Tan-Chen to transfer some real property to his grandson, CALVIN TAN. There is no evidence as to when the instrument was delivered to the claimant, however, nor any evidence that the alleged transfer was recorded in the local land register or that any such attempt was made. As for the subject business interests which are also addressed in the written instrument, there is likewise no evidence that the purported transfer of ownership was ever recorded in the commercial register or in any other competent office in South Vietnam. It is entirely unclear, therefore, that the "Declaration" of Tan-Chen dated December 10, 1974 had any legal effect in Vietnam.

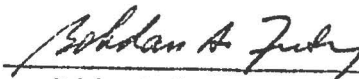
After thorough consideration of the entire record in this claim, the Commission finds that the evidence fails to establish that CALVIN TAN acquired any ownership interests in his grandfather's real and business property in Saigon prior to the fall of South Vietnam and the takeover of the properties by Communist authorities. Since the claimant's grandfather was evidently not a United States national at the time of loss, he would not qualify for an award under Public Law 96-606 for the loss of any

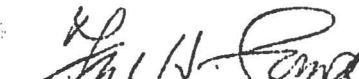
ownership interests in the subject properties. Accordingly, the Commission concludes that the instant claim must be and it hereby is denied.

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.)