

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

IN THE MATTER OF THE CLAIM OF

THUY TIEN VANLE  
HUYNH THUY TONG

Claim No. V-0294

Decision No. V-0477

Counsel for Claimants:

Elia Weinbach, Esquire

Oral hearing held on December 11, 1985, at 9:30 a.m. in  
Washington D.C.

FINAL DECISION

This claim in the amount of 403,000,000 piasters 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 several pieces of real property in Saigon, Dalat and Sadec.

By Proposed Decision issued August 22, 1985, the Commission granted THUY TIEN VANLE a principal award of \$30,500.00 for the loss of a one-sixth interest in the property involved in this claim, as a result of its having been nationalized or otherwise taken by the successor Communist regime in South Vietnam as of May 1, 1975.

Under date of August 29, 1985, claimant THUY TIEN VANLE, through her attorney, filed objection to the Proposed Decision and requested an oral hearing on the objection before the Commission. In accordance with this request, an oral hearing was set and held at 9:30 a.m. on December 11, 1985, before the Chairman of the Commission in the Commission's offices in Washington, D.C. At the hearing, THUY TIEN VANLE's attorney, Elia Weinbach, Esquire, appeared on her behalf and presented legal arguments in support of the objection. These arguments

consisted essentially of an elaboration on a six-page objection brief, with one attached affidavit, which had been received from counsel on December 6, 1985.

I.

The first argument advanced on objection is that the Commission erred in the Proposed Decision in omitting to cite the South Vietnamese law upon which it determined that THUY TIEN VANLE was entitled to claim only for a one-sixth interest in the properties involved in the claim, based on her status as an intestate successor of her father, Huynh Thuy Le, following his death in Vietnam in 1972, rather than for the entire property. This assertedly has resulted in her being unable to "determine the accuracy or inaccuracy" of the Commission's determination. In the alternative, she then argues that even if the determination was correct, the Commission should find that there has been "functional" or "effective" compliance with the requirement of the former South Vietnamese intestate succession law relating to waiver of inheritance rights, in that her mother and four siblings stated under oath in their affidavits submitted in support of the claim in 1984 that, in accordance with the wishes of their predecessor, Huynh Thuy Le, expressed prior to his death, they had relinquished their inherited shares in her favor. Along with this, she then asserts that the Commission should "excuse . . . formal compliance with Vietnamese intestate law" because of the strife and unrest occurring in South Vietnam between 1972 and 1975, because she was residing in the United States during that period and thus not able to ensure that such compliance was properly carried out, and because the "intent" of the law has been satisfied with the execution of her mother's and siblings' affidavits.

The Commission has considered the foregoing arguments and assertions but finds them to be without merit. First, it is well established that the applicability of a provision of foreign law must be proved as a question of fact, and under the longstanding

regulations of the Commission, the burden of furnishing such proof is on the claimant. Therefore, it is up to her to submit evidence to support her position if she believes that the Commission's application of South Vietnamese intestate succession law to the facts of her claim is incorrect. For the record, however, if claimant wishes to verify the correctness of that determination, she should refer to the Code of Gia Long and the Code of Le which were in force in South Vietnam until December 20, 1972, and also to section 760/1 of the Civil Code of 1972, which was promulgated on that date and published in the Official Gazette of the Republic of Vietnam on February 28, 1973.

Secondly, there is no evidentiary basis in the record to justify ignoring the provisions of South Vietnamese intestate succession law so as to find that THUY TIEN VANLE was the sole owner of the subject properties for purposes of her claim. On the contrary, the record includes, at Exhibit 31, a document entitled "Letters of Inheritance" dated July 17, 1973, and signed by the District Chief of Duc Thinh, which certified THUY TIEN VANLE and her mother and four siblings as the "legitimate heirs" of her father, Huynh Thuy Le. Nor does the Commission have legal authority to do so, as its mandate from Congress, as set forth in Public Law 96-606, requires it to "determine . . . the validity and amounts of claims . . . in accordance with applicable substantive law, including international law," and only those claims which are shown by satisfactory evidence to be based on the loss of property interests owned by nationals of the United States at the time of such loss may be determined as valid.

Were it to make an exception to this statutory requirement in the present claim, the Commission would be acting outside its Congressional mandate, and this would also have the effect, in the future, of placing the United States in the position of espousing an international claim which did not have the requisite attributes of United States nationality. Moreover, such an

action would result in inconsistent and inequitable treatment of the present claim as compared with other claims in which ownership by a United States national has been properly established.

II.

The second portion of the objection is directed to the issue of valuation of the subject properties. Here, THUY TIEN VANLE asserts that "there is no stated reasons [sic] given for the devaluation of [the] properties" by the Commission and that consequently it is "impossible . . . to determine the basis of the Proposed Decision as it relates to valuation." (emphasis supplied by claimant.) Further, she asserts that the "Proposed Decision initially states that claimant's one-sixth interest had a value of 67,166,667 piasters (or \$89,000)" but then "finally states on no discernible basis that . . . claimant's share was worth \$30,500, not \$89,000;" and that "[t]here is no logic or consistency to the reduction in values by the Commission or any formula that is revealed that makes sense."

Secondly, claimant has submitted as asserted support for this portion of the objection an affidavit by one Tru Huynh of Pompano Beach, Florida, that, "[d]uring the end of 1974 and the beginning of 1975," he and a partner, one Tran Boi, "offered to purchase from the claimant, through her mother, the properties described in Exhibits 6 and 7 for a total purchase price of 120,000,000 piasters," and that the property described in Exhibit 6 "consisted of an unoccupied three-story concrete commercial building, the only one of its kind in Sadec."

Lastly, her attorney presented at the oral hearing an opinion and two suggestions relating to the evidence already of record which assertedly would justify a higher valuation of the Sadec rental properties. First, the opinion offered was that it is "difficult to believe" that those properties, comprised as they were of 84 rental units, could reasonably be assigned a value of only a little over \$1,000 per unit as of the time of loss. Next, he suggested that the tenants may have paid "key

money" in addition to their monthly rent, thereby raising the amount of capitalizable income received from the properties above that reflected on the rent roll. Third, he suggested that the figure of 1,021,845 piasters shown on the document pertaining to the properties, which reflects the tax liability for them for the year 1974, may justify a higher valuation.

Turning first to the written arguments submitted in this portion of the objection, the Commission has considered arguments and assertions made but finds them likewise to be without merit. Rather than presenting a basis for increasing the award made in the Proposed Decision, they constitute merely an attempt to have the Commission excuse claimant from carrying the burden of proof in substantiating her assertions of value, while requiring the Commission to justify the findings of value it has made. In addition, it is to be noted that claimant has misquoted the Proposed Decision, as the decision merely states (at page 3, lines 9 and 10) "that her one-sixth interest [in the properties] assertedly had a value of 67,166,667 piasters" (emphasis added).

As for the new evidence submitted in this portion of the objection, it is again noted that claimant's only submission consists of the affidavit by Tru Huynh. And although the Commission has carefully reviewed the contents of the affidavit, it concludes that the statements therein are insufficient to outweigh the other evidence of value of the Sadec rental properties which is in the record. In particular, this conclusion is compelled by the statement that the properties were unoccupied at the time the purchase offer was made. This would appear to raise serious questions as to the condition of the properties at that time, and the Commission has had no opportunity to obtain from the affiant, through personal testimony, an explanation which would resolve those questions.

Finally, with regard to the submissions made at the oral hearing, the Commission has considered the opinion regarding the unit value of the Sadec rental properties expressed by claimant's

attorney. However, the Commission must also note that in answer to a question from the Chairman, the attorney stated that he had never seen the properties, and it is further noted that no photographs of the properties are in the record. Under these facts, counsel's opinion can be viewed as nothing more than speculation or conjecture, and thus of no probative value.

Similarly, counsel's suggestion that the tenants may have paid "key money," in addition to their monthly rent, must be viewed as conjectural. In fact, it is noted that the rent roll document includes space for listing amounts of key money paid by the tenants, but no amounts are shown.

Thirdly, the Commission has considered the suggestion that the amount of taxes paid may justify a higher valuation of the Sadec rental properties. In this regard, it has ascertained that, under the South Vietnamese law cited on the rent roll document--which provided for "payment of tax determined upon excessive residential rent"--the amount of tax due was to be set at between 1% and 5% of the property's market value, depending on the revenue needs of the government. Thus, assuming that the tax was assessed at the end of 1974, its value in dollars came to \$1,525.14, which would yield possible market values of anywhere between \$30,502.80 and \$152,514. If anything, this could be viewed as an indication that the Commission's valuation of the properties in the Proposed Decision may have been high, as even at the 2% level, the amount of the tax would translate to a market value of only about \$76,000. In any event, it is clear that this approach does not offer a basis for increasing the valuation of the property made in the Proposed Decision.

### III.

In the last portion of her objection, THUY TIEN VANLE has advanced as an alternative argument the contention that in the event she is held to have owned only an inherited one-sixth interest in the subject properties, the Commission should permit her brother, HUYNH THUY TONG, to be included in her claim as an

additional one-sixth owner by inheritance. She states that he became a United States citizen in 1964, which means that his inherited interest thus would qualify as property owned by a national of the United States at the time of loss, as required for favorable consideration under the Act. In support of this contention, her attorney submitted at the hearing a request signed by HUYNH THUY TONG to be included in the claim as well as documentation showing that he was naturalized as a United States citizen on July 24, 1964.

The Commission concludes that this portion of claimant's objection is meritorious. Accordingly, the present claim is hereby amended to include HUYNH THUY TONG as an additional claimant therein, and the Commission finds that he is entitled to a separate award of \$30,500 plus applicable interest for the taking of his inherited one-sixth interest in the real property which is the subject of the claim. This award likewise shall date from May 1, 1975.

#### Conclusion.

Therefore, the Commission restates the award granted to THUY TIEN VANLE in the Proposed Decision and grants a further award to HUYNH THUY TONG as set forth below. In all other respects, the findings of the Proposed Decision are affirmed. This constitutes the Commission's final determination in this claim.

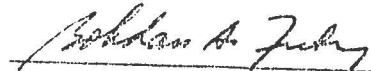
#### A W A R D S

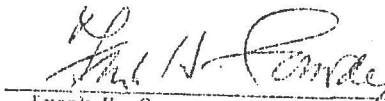
Claimant THUY TIEN VANLE is entitled to an award in the principal amount of Thirty Thousand Five Hundred Dollars (\$30,500.00), plus interest at the rate of 6% simple interest per annum from May 1, 1975, to the date of settlement.

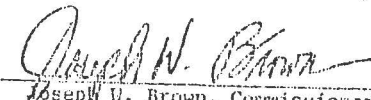
Claimant HUYNH THUY TONG is entitled to an award in the principal amount of Thirty Thousand Five Hundred Dollars (\$30,500.00), plus interest at the rate of 6% simple interest per annum from May 1, 1975, to the date of settlement.

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



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

IN THE MATTER OF THE CLAIM OF

THUY TIEN VANLE

Claim No. V-0294

Decision No. V-0477

Counsel for Claimant:

Elia Weinbach, Esquire

PROPOSED DECISION

This claim in the amount of 403,000,000 piasters 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 Saigon, Dalat and Sadec.

Claimant acquired United States nationality by naturalization on June 15, 1962.

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."

This claim involves the loss of numerous pieces of real property, two located respectively in Saigon and in the village of Dalat and the remainder located in the town of Sadec. Claimant states that the properties were owned by her father, Huynh Thuy Le, who died intestate in South Vietnam on August 10, 1972, and has submitted documentation and other evidence which appears to substantiate this statement. On the basis of affidavits executed by her mother, four siblings, and an aunt, she then asserts that although her father died intestate, she

succeeded to sole ownership of the properties because her father expressed the wish before his death that the properties should pass solely to her, as she was his oldest child and he was confident that she would maintain the properties intact and manage them properly. However, the record is devoid of documentation showing that legal title to any of the pieces of property was actually transferred to the claimant as sole owner in the period of nearly three years between her father's death and the Communist takeover of South Vietnam at the end of April 1975.

Furthermore, the Commission has ascertained that under the relevant provisions of the law of South Vietnam, which was the domicile of claimant's father at the time of his death, the succession to ownership of property following the death of the owner could be determined only on the basis of the owner's will or, in the absence of a will, on the basis of expressly defined rules of intestate succession. According to the latter the surviving spouse and children acquired equal shares in the decedent's property, and an heir could not waive his or her share except through an official declaration filed in court within one year after the date of inheritance.

Therefore, the Commission must conclude that the record fails to support claimant's contention that she was the sole owner of the properties involved in this claim after her father's death. Instead, the Commission finds that at the times relevant to the claim she owned a one-sixth interest in the properties based on her status as an heir of her father's estate, along with her four siblings and her mother, under the provisions of South Vietnamese intestate succession law.

Turning next to the issue of the loss of the subject property, claimant states that she does not know the exact date of loss but believes that it occurred "between 1975-1976 . . . as the result of hostile invasion." Based on its study of the history of events in the country during that time the Commission

concur with this view and, in the absence of evidence as to a specific date, the Commission finds that the properties were nationalized, expropriated or otherwise taken, within the meaning of the present Act, as of May 1, 1975. Accordingly, claimant is entitled to an award for the loss of her one-sixth interest in the properties as of that date.

Claimant asserts that the subject properties had a total value of 403,000,000 piasters at the time of loss, which means that her one-sixth interest therein assertedly had a value of 67,166,667 piasters. At the exchange ratio between piasters and dollars prevailing at the end of April 1975, this would have been equivalent to about \$89,000. As supporting evidence, claimant has submitted a number of photographs and documents, including in particular a 1974 tax document showing the monthly rent paid for each of the various townhouses, apartments and other income-producing properties located in Sadec. These totalled some 84 units in all, and were at the following addresses:

Tong Phuoc Hoa Street,  
Nos. 92, 94, 96, 98, 100, 100a, 102, 104,  
106, 106a, 108, 110, 140, 142.

Quang Trung Street,  
Nos. 1, 3, 5, 7, 9, 11, 13, 15, 17, 19, 21,  
23, 2, 4, 6, 8, 10, 12, 14, 16, 18, 18A, 20,  
22, 24, 26.

Vo Tanh Street,  
Nos. 2, 2bis, 4, 6, 8, 10, 12, 14, 16, 18,  
20, 22.

Phan Thanh Gian Street,  
Nos. 23, 25, 27, 29, 31, 33, 35, 37, 39, 41,  
43, 45, 113, 115, 117, 119, 159, 161, 163,  
195, 197, 253, 253a, 257, 259, 263, 265, 333,  
335, 337, 339, 341.

According to the tax document, the total monthly rents paid for these units amounted to 599,950 piasters. At the average of the exchange ratios between piasters and dollars in effect during the year 1974, this was equivalent to about \$965.00 per month, for an annual total of \$11,580.

The rest of the properties claimed for are comprised of those in Saigon and Dalat; the mansion and grounds where claimant's family had lived in Sadec; and two unimproved lots in Sadec. The property in Saigon, which is depicted by two photographs in the record, consisted of a three-story duplex house on a lot measuring 500 square meters (about 5,400 square feet) at 254 bis and 254 ter Phan Dinh Phung Street in the Doc Lap section of Saigon. Claimant asserts that "about one-third" of the property was rented to the United States Embassy as residence space for some of its employees at an annual rental of 2,000,000 piasters (\$2,649 at the last official exchange rate) and that the property had a market value in 1975 of 60,000,000 piasters, which would have been equivalent to about \$79,500. However, she has submitted no documentation to support these assertions. The property in Dalat, which is pictured in one photograph in the file, was a 3-story villa on a lot said to cover 2,000 square meters (about one-half acre) at 18 Hung Vuong Boulevard. Claimant asserts that its market value in 1975 was 7,000,000 piasters, which would have been equivalent to about \$9,300.

As for the properties in Sadec, the family mansion is said to have been located at 261 Phan Thanh Gian Street, and the record contains five photographs which indicate that it was of elaborate and costly construction. Claimant asserts that the property's 1975 market value was 30,000,000 piasters (about \$39,700), and states that the mansion contained some ten rooms including three bedrooms and two bathrooms and that there was also a two-story guest house on the property as well as a kitchen structure, a grain storage warehouse, fish ponds, a porch and a garden. The two unimproved lots are shown to have had an area of 3,153 square meters (about 34,000 square feet) and to have been located on Ta Thu Thau Street, and in 1975 they assertedly were worth 3,000,000 piasters, or about \$4,000.

Based upon the foregoing, and having considered the entire record, the Commission finds that the properties which are the subject of this claim had values as follows:

Rental properties in Sadec	\$90,000
Saigon duplex	\$40,000
Villa in Dalat	\$9,300
Family mansion in Sadec	\$39,700
Unimproved lots in Sadec	<u>\$4,000</u>
TOTAL	\$183,000

Thus, the Commission's finding is that the properties involved in this claim had a total value of \$183,000 at the time of nationalization. For her one-sixth interest therein, claimant is accordingly entitled to a principal award of \$30,500.00, dating from May 1, 1975.

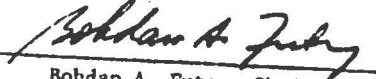
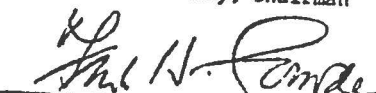
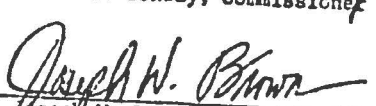
The Commission has concluded that awards granted under Public Law 96-606 for the nationalization or other taking of property, or interests therein, shall include interest at the rate of 6% simple interest per annum from the date of loss to the date of settlement.

A W A R D

Claimant THUY TIEN VANLE is therefore entitled to an award in the principal amount of Thirty Thousand Five Hundred Dollars (\$30,500.00), plus interest at the rate of 6% simple interest per annum from May 1, 1975, to 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.)