

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

IN THE MATTER OF THE CLAIM OF

HARRY T. MC ELDFOWNEY

Claim No. V-0369

Decision No. V-0393

Hearing on the record held on **NOV 19 1985**

FINAL DECISION

This claim in the amount of \$16,851.00 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 personal property in Saigon.

The claimant was born in Portsmouth, Virginia, on August 14, 1932 and has been a lifelong United States citizen.

By Proposed Decision issued May 20, 1985, the Commission made an award to claimant in the principal amount of \$15,000.00 for the loss of certain personal property. Although in his Statement of Claim, claimant did not set forth any indication of the total asserted amount of losses in United States dollars, as requested in item seven of the form, he did subsequently forward a handwritten list of various items of personal property, including his estimated value thereof which totalled \$16,851.00.

By letter dated May 28, 1985, claimant objected on the record to the Proposed Decision asserting that the Commission was in error in determining that the value of his personal property was less than the amount he asserted.

Claimant points out that he had resided in Vietnam for many years and had a wife and two children. He has submitted evidence to establish that his wife and children also were United States citizens. Claimant points out, therefore, that his estimated

value for clothing included clothing for four persons, not for himself alone. He further sets forth that his estimate of \$1,500 for "furniture" included two bedroom sets, a dining room set and a living room set and he further provided more details concerning the nature and description of the various items he had previously listed as "Vietnamese artifacts."

The Commission has reviewed the entire record in this claim. The Commission recognizes the difficulty presented both to claimants and the Commission in assessing a fair value on claims of this type. Under the circumstances of the evacuation from Vietnam, it is not realistic to anticipate that claimants would have documentation such as sales receipts "proving" the ownership and purchase price of a wide range of personal property and household effects. On the other hand, the Commission is charged by law with a responsibility to make findings of fact determining a fair valuation of each claimant's losses. The Commission has dealt with a number of such claims supported only by self-serving lists of property and estimated values. On a number of occasions such assertions have been grossly exaggerated.

In attempting to reach a fair determination of each claim, the Commission has available some evidence concerning 1975 prices of a wide range of goods, such as the 1975 edition of the Sears Roebuck catalogue which provides some guidelines concerning the reasonableness of values asserted for various types of property. The Commission is aware that certain items of property decrease in value over the years with age and use. The Commission is also aware that there are a number of categories of property, such as personal clothing, which, although having value to an individual claimant, have very little market value as used clothing. In addition, in a number of claims a broad category such as clothing has included property clearly owned by and suitable only for use by a spouse of the claimant who was not a United States citizen. Such property could not be considered as having been owned by a United States national on the date of loss.

Applying these general criteria, the Commission has examined in detail the record in the instant claim, including the additional information that any property owned by claimant's wife and children would also have constituted property owned by United States nationals. The Commission has taken into consideration the additional information describing the property. As stated in the Proposed Decision, the Commission found that most of the figures submitted were reasonable and indicated no intention to inflate values. With the additional evidence, the Commission concludes that claimant has sustained the burden of establishing his loss in the amount asserted.

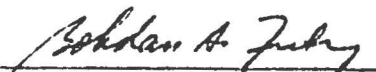
Accordingly, the Commission withdraws its previous award and makes a new award in the principal sum of \$16,851.00. In all other regards, the Commission affirms its findings in the Proposed Decision.

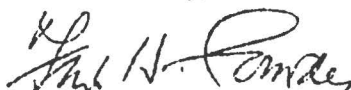
A W A R D

Claimant, HARRY T. MC ELDOWNEY, is therefore entitled to an award in the principal amount of Sixteen Thousand Eight Hundred Fifty-One Dollars (\$16,851.00), 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.

NOV 19 1985


Bohdan A. Futey, Chairman


Frank H. Conway, Commissioner


Joseph W. Brown, Commissioner

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WASHINGTON, D.C. 20579

IN THE MATTER OF THE CLAIM OF

HARRY T. MC ELDOWNEY

Claim No. V-0369

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PROPOSED DECISION

This claim in the amount \$16,851.00 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 personal property in Saigon.

The claimant was born in Portsmouth, Virginia, on August 14, 1932 and has been a lifelong United States citizen.

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 claimant indicates that he lived and worked in South Vietnam for eighteen years until forced to evacuate on April 26, 1975, shortly before the Communists completed their conquest of the country. The claimant has submitted an inventory of personal property which he states was left behind, mostly in his residence at no. 39 Le Loi Street, apartment 5, in Saigon. According to the claimant, this property included various furniture, appliances, and other household goods, clothing, art objects, an

automobile, and various recreational items including a boat and assorted audio and video equipment. The claimant has advised the Commission that he has no further documentation concerning his property because of the hurried circumstances of his departure from South Vietnam. On the basis of the inventory he has submitted, however, the Commission finds that he was the owner of the property items listed therein.

The record contains no evidence as to what became of the subject property after the claimant's departure from Saigon on April 26, 1975. However, the Commission has found that property left behind by Americans in South Vietnam would have been considered "property of the people" by the Communist authorities and taken under government control. In the absence of precise evidence as to when such action occurred, the Commission has held that such property was taken on or about May 1, 1975--the date the Communists completed their occupation of South Vietnam. (See Claim of BETTY JANET MITCHELL, Claim No. V-0358, Decision No. V-0259 (1984).) Accordingly, the Commission finds that the property involved in the instant claim was taken as of May 1, 1975.

As HARRY T. MC ELDOWNEY was a United States citizen at the time of loss, the Commission concludes that he is entitled to an award under the provisions of Public Law 96-606.

In determining the value of the subject property, the Commission has given careful consideration to the claimant's inventory and the dollar figures he has given therein for the various items listed, which add up to \$16,851.00. The Commission finds most of the figures to be reasonable for the respective properties as described by the claimant, although the Commission considers the \$1,500.00 for furniture, \$1,600.00 for clothing, and \$1,200.00 for Vietnamese artifacts to be rather

high in view of the lack of further specificity about the individual items within these categories. Based on the entire record, the Commission determines that the subject personal property was worth \$15,000.00 at the time of loss in 1975. The claimant is therefore entitled to an award in the principal amount of \$15,000.00.


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).)

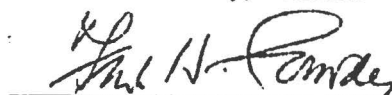
A W A R D

Claimant, HARRY T. MC ELDOWNEY, is therefore entitled to an award in the principal amount of Fifteen Thousand Dollars (\$15,000.00), 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.

MAY 20 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.)