

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

IN THE MATTER OF THE CLAIM OF

HIEN HOANG CLAYTON  
CHARLES HENRY CLAYTON

Claim No. V-0118

Decision No. V-0399

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

FINAL DECISION

By Proposed Decision dated June 26, 1985, the Commission denied this claim filed by HIEN HOANG CLAYTON for the reason that the evidence of record was not sufficient to establish that she owned property which was taken by the Government of Vietnam as required for compensation under section 703 of the International Claims Settlement Act of 1949, as amended. Her husband, CHARLES HENRY CLAYTON, who acquired United States nationality by birth in New Jersey on June 16, 1924, has submitted evidence that he provided funds for the purchase of certain real property in the name of his wife. In accordance with its holding in the Claim of William A. Yerabek, Claim No. V-0167, Decision No. V-0267, the Commission now finds that CHARLES HENRY CLAYTON is a proper party claimant and he is hereby joined in this claim.

An objection to the Proposed Decision issued on this claim was filed by HIEN HOANG CLAYTON and new evidence was submitted.

Based upon the new evidence, including a contract of sale dated February 19, 1971 and evidence of contributions made by CHARLES HENRY CLAYTON to the purchase of the land, which consisted of 4,200 square meters on a beach near Vung Tau, as well as contributions to the construction of improvements to the land, the Commission finds that he had a beneficial ownership interest in the property in question at the time it was taken by the Government of Vietnam.

The record contains evidence, including an original signed and sealed copy and English translation of a bill of sale dated June 25, 1966, from which the Commission finds that HIEN HOANG CLAYTON was the owner of the property identified as residential land in Phuoc Tuy of Vung Tau recorded under land registration number 427, lot 11, page 12 and residential number 427, lot 11, page 12 and residential land in Phouc Tuy of Vung Tau recorded under registration number 428, lot 12, page 12, together with improvements thereon including a hotel, maternity clinic and villa.

With respect to the date of taking, the Commission has considered all the evidence of record, including affidavits dated February 26, 1983 and October 23, 1985 by Hoang Cau, HIEN HOANG CLAYTON's son, and contemporaneous correspondence from relatives in Vietnam. Based on the evidence of record, including evidence that HIEN HOANG CLAYTON had given her son, Hoang Cau, formal authority to act on her behalf with respect to her property in Vietnam, the Commission concludes that on or about October 1, 1977, Hoang Cau was forced, under duress, to transfer all the properties recorded in his mother's name to the Government of Vietnam.

Accordingly, the Commission finds that on or about October 1, 1977 all property recorded in the name of HIEN HOANG CLAYTON was nationalized or otherwise taken by the Government of Vietnam and that the claimants are entitled, therefore, to compensation under section 703 of the Act, above for the loss of their respective property interests.

With respect to the value of the real property claimed, the Commission has considered all the evidence of record, including the photographs of the improvements, plans of the properties with improvements, and the purchase prices recited in the contracts of sale submitted. The Commission notes that a number of the statements or estimates of the value of the property are not completely consistent and that there is no official documentation

or business records concerning the profit or loss of the hotel and maternity clinic in Vung Tau. However, based upon all the relevant evidence of record, giving weight to the documented purchase prices recited in the evidence, the Commission concludes that the real property in Phuoc Tuy of Vung Tau owned by HIEN HOANG CLAYTON together with all improvements had a value of \$200,000 on the date of loss; that the personal property associated with the hotel, maternity clinic and villa, for which no itemized list was provided, had a value of \$20,000 on the date of loss; and that, accordingly, claimant HIEN HOANG CLAYTON is entitled to a total award of \$220,000 for her losses.

With respect to the value of the real property located at "Petit Massif", the beach property, the Commission has considered all the evidence of record, including the price of the land recited in the contract of sale, the photographs submitted and the plans of the three main structures built on the property and concludes, having carefully weighed all the evidence, that the value of this property was \$45,000 on the date of loss.

The Commission further finds that CHARLES HENRY CLAYTON owned certain items of personal property which were nationalized or otherwise taken by the Government of Vietnam on or about October 1, 1977, and that he is entitled to compensation under section 703 of the Act, above, for this loss. Claimant CHARLES HENRY CLAYTON states that the items of personal property, which he has described, had a total value of \$22,015 based upon their cost in United States dollars. No dates of purchase or detailed descriptions of the items were provided. Therefore, based upon the average values for the types of property described and taking into consideration some depreciation, the Commission finds that all the personal property of CHARLES HENRY CLAYTON, wherever located in Vietnam, had a value of \$8,000 on the date of loss and that he is entitled to compensation in such amount. It should be noted that some items claimed, such as kitchen cabinets and a hot water heater are generally included in the value of the real

property for which awards were granted, above. Accordingly, CHARLES HENRY CLAYTON is entitled to a total award of \$53,000 for his losses in Vietnam.

The Commission has concluded that in granting awards on claims under section 703 of Title VII of the Act, above, 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).)

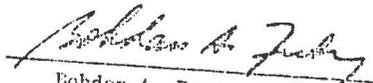
A W A R D S

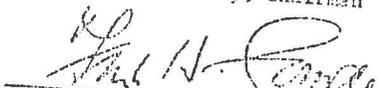
Claimant HIEN HOANG CLAYTON is therefore entitled to an award in the principal amount of Two Hundred Twenty Thousand Dollars (\$220,000.00), plus interest at the rate of 6% simple interest per annum from May 1, 1975 until the date of settlement.

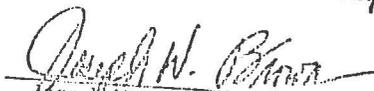
Claimant CHARLES HENRY CLAYTON is therefore entitled to an award in the principal amount of Fifty Three Thousand Dollars (\$53,000.00), plus interest at the rate of 6% simple interest per annum from May 1, 1975 until the date of settlement.

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

JAN 22 1986

  
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

HIEN HOANG CLAYTON

Claim No. V-0118

Decision No. V-0399

PROPOSED DECISION

This claim in the amount of \$1,000,000.00 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 real property in Vung Tau personal property and business interest.

The record indicates that claimant acquired United States citizenship by naturalization on March 12, 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."

At the time of filing this claim, claimant stated that her losses consisted of:

- 1 - a maternity hospital which was completely taken at the end of 1975 or beginning of 1976;
- 2 - a hotel called "Anh Lan" taken completely in 1976;
- 3 - a big villa called "Thanh Van" and two small houses;
- 4 - the "Villa Camille" taken in October of 1977, when her son and family were thrown out;
- 5 - a fruit garden; as well as

6 - personal property associated with the real properties listed above.

No official documentation has been submitted to establish claimant's asserted ownership of the real and personal properties claimed or to establish that such properties were, in fact, taken on or after March 12, 1976, the date she acquired United States nationality.

By Commission letter dated February 10, 1983, claimant was advised that it would be in her interest to obtain documentary evidence to establish that she owned real or personal property which was, in fact, taken by the Government of Vietnam at a time when she was a United States national.

In response, claimant has submitted a number of statements by people who had lived in Vietnam as well as that of her son, who states in relevant part as follows:

"After the communists took over South Vietnam, the communist government officially called me to their office in October 1977 and let me know that: 'your mother is married to an American and left Vietnam, so all her properties are confiscated.' I had to move out of our Villa Camille in a short time."

No official documentation or records relating to the claimant's ownership of any of the real and personal property, nor any itemized list of the personal property with purchase prices, dates of purchase or condition of the property on the date of loss has been submitted. The Commission notes that claimant stated at the time of filing that she arrived in the United States in 1966 and that therefore she was not precluded from being able to bring out the originals or copies of official documents, deeds or other papers relating to her ownership interests.

Subsection 531.6(d) of the Commission's regulations provides:

"The claimant shall be the moving party and shall have the burden of proof on all issues involved in the determination of his claim."

The Commission has carefully reviewed all the evidence of record in this claim but finds that the claimant has not met the burden of proof in that she has failed to submit sufficient corroborating evidence to establish that she owned real and personal property which was nationalized, confiscated or otherwise taken by the Government of Vietnam, as required for compensation under section 703 of the Act, above.

The Commission notes that obtaining official documentation in support of a claim for losses in Vietnam may be difficult but, nevertheless, the Commission finds that in order to establish the ownership of real property sufficient evidence of the date and manner by which such property was acquired and of the fact that the claimant was recorded as the legal owner of the property in the official land records in Vietnam must be submitted. It should also be noted that the Commission has held in other claims for losses under Public Law 96-606 that unless the documentary evidence of record establishes that property owned by a United States national was taken later, the Commission will deem such property to have been taken by the Government of Vietnam on or about May 1, 1975. The Commission has also held that where a United States national can establish that he contributed to the purchase of real property in Vietnam his interest, to the extent of his contribution to the purchase price, may be recognized for the purposes of compensation under section 703 of the Act, above, even if the title to the real property was recorded in the name of a Vietnamese national on the date of loss. The Commission finds that the record in the instant claim does not contain evidence to establish that claimant's husband, Charles H. Clayton, contributed to the purchase of the properties in question prior to their marriage in 1966, and the Commission also finds that neither the statement of the claimant's son, Can Hoang, nor the other evidence submitted is sufficient to warrant a finding that either the Villa Camille or the other properties

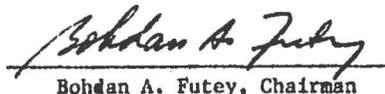
claimed were, in fact, taken by the Government of Vietnam after March 12, 1976, the date claimant acquired United States nationality.

Accordingly, the Commission has no alternative but to deny this claim in its entirety.

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.

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.)