

In the Matter of the Claim of

Estate of JAMES A. WILLMAN, deceased  
by IRMA S. WILLMAN, Administratrix  
160 Remington Place  
New Rochelle, New York

Claim No. SOV-40,783

Decision No. SOV-5

Under the International Claims Settlement  
Act of 1949, as amended.

Counsel for Claimant:

MORRIS H. SWAN, Esquire  
36 West 44th Street  
New York 18, New York

PROPOSED DECISION OF THE COMMISSION

This is a claim, under section 305 of the International Claims Settlement Act of 1949, as amended, for the following:

* (1) Judgment dated September 21, 1935	\$ 200,497.20
(2) Russian currency 1,500,000 rubles	} 538,961.24
(3) Russian bonds 184,420 rubles	
Total	\$ 739,458.44

plus "interest claimed on all these above amounts to date."

Section 305(a) of the aforesaid Act provides that the Commission shall give preference to the disposition of claims which come within the purview of section 305(a)(1) of the Act. Section 305(a)(1) requires that (a) the claim be that of a national of the United States against a Russian national as defined in section 301(7) of the Act, (b) the claim originally accrued in favor of a national of the United States, and (c) a judgment or attachment lien was obtained by a national of the

\* Claimant states that \$10,000 has been received in partial satisfaction of this judgment which was originally for \$210,497.20; however, evidence in the file shows this judgment was for \$210,675.05.

United States, prior to November 16, 1933, upon property in the United States which has been taken, collected, recovered or liquidated by the Government of the United States pursuant to the Litvinov Assignment.

It is obvious that the part of the claim described in items (2) and (3) of the first paragraph hereof do not come within the purview of section 305(a)(1) but consideration will now be given as to whether the judgment described in item (1) of the said paragraph does come within the ambit of this section.

In response to the request of the Commission for certain documentary evidence, the claimant has advanced the contention that in granting the judgment the New York court determined both the validity and amount of the claims of James A. Tillman and that inasmuch as section 305(b) of the Act provides that any judgment shall be binding upon the Commission in its determination of any issue which was determined by the court in which the judgment was entered, the Commission cannot review either the validity or the amounts of the Tillman claims.

The evidence requested by the Commission is believed to be pertinent with respect to the issue of the original accrual of the claim in favor of a national of the United States. The record as presently constituted does not reveal that such issue was before the court which rendered the judgment, or, if it were, the determination with respect thereto. In any event the contention is not material inasmuch as section 305(b) must be read in context with section 305(a)(1). When so read it is manifest that it is not the judgment lien which is the foundation of the claim before the Commission inasmuch as the judgment was not obtained before November 16, 1933. The claimant must, perforce, rely on the theory that an attachment lien was obtained before the pertinent date.

The record, as presented, does not establish the factual pattern of the claim. However, from other data before the Commission, the chronology would appear as follows: James A. Tillman began an action against the Russo-Asiatic Bank on August 24, 1927. He procured from the New York

Supreme Court, Queens County, a warrant of attachment and caused a levy to be made upon the debt due from Guaranty Trust Company to Russo-Asiatic Bank. The original complaint set forth three causes of action, the plaintiff, Tilman, claiming as assignee in the second and third causes of action. Plaintiff being a citizen of the United States and the defendant a Russian corporation, the action was, on defendants' motion, removed to the United States District Court for the Eastern District of New York. While the action was pending, the District Court, on June 26, 1926, made an order vacating the warrant of attachment and all levies made thereunder. This order was made upon the consent of the attorneys for the respective parties in open court that the warrant of attachment be vacated. After severance of the third cause of action a judgment in favor of defendant Russo-Asiatic Bank on the first and second causes was rendered by the District Court.

Tilman appealed to the Circuit Court of Appeals for the Second Circuit. With respect to the first cause of action which arose out of the failure of defendant Russo-Asiatic Bank to pay a 72,000 rubles check drawn by Tilman on his 114,000 rubles account, the Circuit Court affirmed the judgment in favor of defendant. However, with respect to the second cause of action wherein Tilman was the assignee of one Pajans to whom Russo-Asiatic had delivered a 100,000 rubles draft directed to its office in Novorossiysk, Russia, and which was not paid, the judgment was reversed on the ground that the District Court was without jurisdiction, with direction to the District Court to remand the second cause of action to the Supreme Court of the State of New York. *Tilman v. Russo-Asiatic Bank*, 51 F. 2d 1023 (2d Cir. 1931), cert. denied, 285 U. S. 539, 52 S. Ct. 312, 76 L. Ed. 932 (1932).

On April 28, 1933, on motion of defendant Russo-Asiatic Bank an ex parte order was granted by Special Term which vacated and set aside nunc pro tunc as of June 26, 1926 the warrant of attachment of August 27, 1927 and all levies made thereunder. Plaintiff Tilman's motion

to set aside the ex parte order was denied and the denial was affirmed. 240 App. Div. 875 (1933). The order of the Appellate Division of the Supreme Court in the second judicial department, entered November 3, 1933, was affirmed on March 13, 1934. The Court of Appeals concluded that the effect of the ex parte order at Special Term was merely to create a notation on the record of valid action taken by the Federal Court on June 28, 1926. 261 N. Y. 167 (1934).

On July 13, 1935 the Supreme Court of Kings County entered an order striking out the appearance of defendant Russo-Asiatic Bank's attorney, nunc pro tunc, as of November 26, 1927, and vacating the state court order which had vacated the warrant of attachment.

On September 23, 1935 Tillman obtained a default judgment in the Supreme Court, Queens County, for \$210,675.05.

It would appear to be properly inferable that at least a portion of the claim that was the basis for securing the warrant of attachment and which ultimately resulted in this judgment of \$210,675.05 for Tillman, did not originally accrue in favor of Tillman. If so, was Tillman's assignor(s) a national(s) of the United States as required by the statute? The present state of the record does not permit a definitive answer.

Inasmuch as the claimant has failed to sustain the burden of proof with respect to the essential requirement of the statute that the claim must have originally accrued in favor of a national of the United States, the claim must be and is hereby denied. However, it must be emphasized that such denial does not, either expressly or impliedly, settle the issue in regard to that provision of section 305(a)(1) which requires that a judgment or attachment lien be obtained, prior to November 16, 1933, by a national of the United States on certain property. On the present record the Commission expresses no view with respect to this eligibility issue.

This finding is without prejudice to a consideration of all three

to November 16, 1933 of nationals of the United States against the Soviet Government" and it is ordered that such a determination be made as soon hereafter as may be practicable.

Dated at Washington, D. C.

AUG 1 1956

Whitney Gilliland  
Whitney Gilliland, Chairman

Pearl Carter Pace  
Pearl Carter Pace, Commissioner

Henry J. Clay  
Henry J. Clay, Commissioner

This is certified to be a true and correct copy of the original.

By Julius M. Kleizo  
Administrative Officer of the Commission



In the Matter of the Claim of

Estate of JAMES A. WILSON, deceased  
by LENA S. WILSON, Administratrix  
169 Westington Place  
New Rochelle, New York

Claim No. SOV-40,783

Decision No. SOV-5

Under the International Claims Settlement  
Act of 1949, as amended

Counsel for Claimant:

BENJAMIN M. WOLFE, Esquire  
36 West 44th Street  
New York 18, New York

FINAL DECISION

The Commission issued its Proposed Decision on this claim on August 1, 1956 under Section 305 (a) (1) <sup>1/</sup> of the International Claims Settlement Act of 1949, as amended, and a certified copy thereof was duly served upon the claimant. Pursuant thereto, this claim was denied without prejudice to the further consideration thereof under Section 305 (a) (2) of the Act. Such denial was issued on the ground that the claimant had failed to establish, in accordance with the pertinent provisions of the Act, that the claim had originally accrued in favor of a national of the United States. It was noted in the Proposed Decision that the claimant had likewise failed to sustain the burden of proof with respect to another requirement under the Act, although requested to do so, relating to the issue of whether a lien, based upon a duly issued warrant of attachment or judgment, was obtained by a national of the United States, prior to November 16, 1933, upon any property in the United States which has been taken,

<sup>1/</sup> Public Law 285, 84th Congress, approved August 9, 1955; 69 Stat. 575.

collected, recovered, or liquidated by the Government of the United States pursuant to the Litvinov Assignment. However, no determination was made with respect to this issue.

General notice of the Proposed Decision was posted on the bulletin board of the Commission for at least thirty days as required by Section 531.5 (e) of the Regulations of the Commission.

Objections to the Proposed Decision were filed, and a hearing was requested which was duly held on September 13, 1956. These objections, and the arguments presented at the hearing were fully considered. However, since the record was insufficient to permit a determination with respect to one issue and did not warrant a favorable determination with respect to another, the claimant was afforded a final opportunity to submit evidence in these respects. Pursuant to the Order of the Commission, issued on October 9, 1956, a certified copy of which was duly served upon the claimant, and which granted ten days for the submission of such evidence, the failure to comply therewith would form the basis for the issuance of a Final Decision affirming the Proposed Decision.

Within the ten day period, the claimant forwarded a photostatic uncertified copy of a warrant of attachment, a letter from the Under Sheriff of the City of New York, and an affidavit from the Administratrix herein, accompanied by a letter from the claimant's attorney advancing further arguments.

The documents submitted pursuant to the Order of the Commission are insufficient to establish that the statutory prerequisites have been satisfied. The submission fails to constitute evidence with respect to the two essential elements of this claim.

Having fully considered the entire record and the contentions advanced by and on behalf of the claimant, it is

ORDERED that the Proposed Decision, dated August 1, 1956, be and the same is hereby entered as the Final Decision on this claim.

Dated at Washington, D. C.

NOV 14 1956

*Whitney Gilliland*  
Whitney Gilliland, Chairman

*Pearl Carter Pace*  
Pearl Carter Pace, Commissioner

*Henry J. Clay*  
Henry J. Clay, Commissioner

This is certified to be a true and correct copy of the original.

By *Julius M. Klezo*  
Administrative Officer of the Commission



IN THE MATTER OF THE CLAIM OF

Estate of JAMES A. TILLMAN, deceased  
by LENA S. TILLMAN, Administratrix  
160 Remington Place  
New Rochelle, New York

SOV-40,783

Claim No.

SOV-5a

Decision No.

Under the International Claims Settlement  
Act of 1949, as amended

~~Counsel for Claimant:~~

OPC 16-72120-1

DORRIS M. KIMAR  
36 West 44th Street  
New York 18, New York

SUPPLEMENTAL PROPOSED DECISION

The above-captioned claim in the principal amount of \$739,458.44  
(together with interest thereon) is based on the following three (3)  
items:

- Item 1 - A judgment in the Supreme Court,  
Queens County New York, in favor  
of James A. Tillman (now deceased)  
against the Russo-Asiatic Bank. \$ 200,497.20
  - Item 2 - Value of 1,500,000 Russian ruble  
currency assertedly seized from  
Mr. Tillman by armed forces of the  
Soviet Government, and ))
  - Item 3 - Value of Russian bonds in the aggre-  
gate amount of 184,420 rubles which  
were assertedly owned by Mr. Tillman  
and which were repudiated by the  
Soviet Government. ))
- )----- \$ 538,961.24

Item 1 was heretofore considered under Section 305(a)(1) of the Act  
and was denied by the Commission's Proposed Decision dated August 1, 1956  
for the reasons stated in said Proposed Decision, without prejudice, how-  
ever, to consideration of all the aforementioned three (3) items of the  
claim under Section 305(a)(2) of the Act. Claimant filed objections to  
said Proposed Decision. After hearing thereon, it was affirmed on  
November 14, 1956.

The question here to be determined is whether the claim, or any part thereof, is compensable under Section 305(a)(2) of the Act.

Claimant has the burden of proof on all issues. As a prerequisite to eligibility for an award, claimant, among other things, is required to establish by satisfactory evidence that when the claim arose against the Soviet Government it was owned by a United States national. The Commission finds that claimant has failed to do so with respect to Item 1.

For supporting evidence relating to Item 2, claimant refers to documents filed by Mr. Tillman with the Department of State. The record before the Commission discloses that Mr. Tillman filed a verified petition with the Department of State on September 13, 1935 in which he stated, in substance, that he was living in Petrograd, Russia in 1917 and 1918 where he conducted certain business and that in connection with one of the transactions in April 1918, he deposited with the Swedish Embassy in Petrograd "1,150,000" rubles; that the Swedish Embassy, two months thereafter, returned to him in cash "1,500,00" rubles; that when he was carrying the said money from the Swedish Embassy to his hotel in Petrograd, uniformed members of the Soviet Army seized "1,150,00" rubles from his possession. The record is barren of any evidence of probative value to corroborate the seizure.

Claimant has listed in "Exhibit 1" attached to the Statement of Claim the bonds upon which Item 3 is based. Said list identifies these bonds by description, denomination and/or series and serial numbers. In support of this item, claimant has delivered to the Commission certain bonds in the aggregate face amount of 107,250 rubles, plus a quantity of coupons.

In paragraph 8 of Mr. Tillman's petition, filed with the Department of State, which was verified on September 12, 1935, he stated that

" . . . in the years 1917 and 1918 and thereafter, I was and still am the owner of various securities either issued or guaranteed by the Governments of Russia, . . . "

In paragraph 11 of said petition, Mr. Tillman referred to "Exhibit B", annexed thereto, for enumeration of the securities owned by him. However, the bonds so enumerated are entirely different from those which are listed

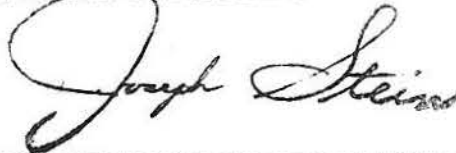
in "Exhibit I" in the Statement of Claim and are likewise entirely different from those which were delivered to the Commission. The explanation for this discrepancy offered by claimant's attorney is not persuasive. On the basis of the entire record, the Commission finds that claimant has failed to establish that the bonds, which are the subject of Item 3, were owned by Mr. Tillman or by a United States national on the date the claim arose thereon, that is to say, February 10, 1918, the date they were repudiated by the Soviet Government.

In view of the foregoing, it becomes unnecessary to consider other elements bearing on eligibility and compensability since, for the reasons stated above, this claim must be and is hereby denied in its entirety under Section 305(a)(2) of the Act.

Dated at Washington, D. C.

MAR 12 1950

FOR THE COMMISSION:



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Joseph Stein  
Director, Soviet Claims Division

IN THE MATTER OF THE CLAIM OF

Estate of JAMES A. TILLMAN, deceased  
by LENA S. TILLMAN, Administratrix  
160 Remington Place  
New Rochelle, New York

Claim No. SOV-40,783

Decision No. SOV-5a

Under the International Claims Settlement  
Act of 1949, as amended

opo 16-72126-1

Counsel for Claimant:

BORRIS M. KOMAR  
36 West 44th Street  
New York 18, New York

FINAL DECISION

The Commission issued its Supplemental Proposed Decision on this claim on March 12, 1958. A copy thereof was duly served upon Borris M. Komar, counsel for claimant. Claimant, by her said counsel, filed objections thereto.

Full consideration having been given to claimant's objections and general notice of the Supplemental Proposed Decision having been given by posting for thirty days as provided for by § 531.5(C) of the Commission's regulations, it is

ORDERED that the aforementioned Supplemental Proposed Decision be and the same is hereby entered as the Final Decision on this claim.

Dated at Washington, D. C.

MAY 14 1958

*Whitney Hilliland*  
*Henry L. Day*

COMMISSIONERS