

DECISION



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THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

FILE: B-201150

DATE: May 13, 1981

MATTER OF: Claims to Proceeds of Foreign Claims Settlement
Commission Award to American Club, Inc.

DIGEST: The issue of paying various claimants who claim to have held debentures of American Club, a corporation which was awarded funds by the Foreign Claims Settlement Commission and which has since dissolved, was presented for our consideration. Court settlement and distribution order showing distribution of American Club debentures and affidavit of claimant's son is sufficient corroboration of one claimant's assertions to allow payment of claim on condition that confirmation is obtained from two other legatees. In view of difficulties in producing evidence and consistent with our decisions permitting consideration of evidence from which necessary information might reasonably be reconstructed, a second claimant's position in the American Club, knowledge of its structure, and execution of Club responsibilities, are sufficient to corroborate his assertions about his debenture holdings. Despite difficulties of producing evidence, claims of other claimants, based solely on uncorroborated statements or affidavits, must be denied.

This responds to a Treasury Department [request] under 31 C.F.R. § 250.4(f) [concerning the [sufficiency of evidence] supporting a number of claims to proceeds of a Foreign Claims Settlement Commission award] to the American Club, Inc. For the reasons given below, we find that claimants Rosie Regina Friedman and Norwood F. Allman are entitled to their proportionate share of the proceeds. On the other hand, we conclude that the claimants whose support of claim consists solely of uncorroborated statements are not entitled to proceeds of the award.

1. Facts

[The claims presented in this matter are based on a claim by the American Club, Inc. against the People's Republic of China.] The American Club claim was brought under Title V of the International Claims Settlement Act of 1949, as amended, 22 U.S.C. §§ 1643-1643k. That title authorized the Foreign Claims Settlement Commission to determine the validity and amount of claims of United States

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nationals for losses resulting from, among other things, the nationalization or expropriation of their property by or under the authority of the People's Republic. The China Claims Program commenced in November 1967, when appropriations were made available. The deadline for filing claims was July 6, 1969, and the program substantially was completed by July 6, 1972, during which over 500 claims had been considered.

The American Club, Inc. formed in 1917 and organized under Delaware law, owned certain real and personal property in Shanghai, China that was taken by government authorities on or about September 28, 1953. Based on the evidence presented by the Club to the Commission, which consisted of the claimant's evaluation, affidavits of Club members and the Club's architect, a photograph of the building and a detailed description of the property, the Commission found that the Club was entitled to \$392,230 for its losses.

In 1979, the People's Republic of China agreed to provide monies for payment of Commission awards in the China Claims Program. The monies were to be paid over a 5-year period beginning in 1979. Subsequently, the Commission certified several hundred of the awards to Treasury for payment including that of the American Club. The award was to be distributed to American Club members in proportion to their holdings of American Club 4% 1st or 2d mortgage building debentures, issued in 1939. (Although the currency in which the debentures were expressed, Chinese taels, is worthless, Treasury still used the value of the debentures held to measure the proportionate amount awarded to each debenture holder.) This method of distribution was based on representations by Mr. Allman, American Club President and member of the Board of Directors, to Treasury that the only outstanding creditors of the Club were holders of those debentures.

Treasury has informed us that from the monies provided by the People's Republic, the total payment to the Club for 1979 was \$55,956.08. Of that money, each individual claimant was allocated a maximum of \$1,000 plus 14% of the total. For 1980, the Club received \$18,801.07. Treasury indicates that further sums, as yet undetermined, will be allocated for 1981, 1982 and 1983 and that it will seek our approval for those payments when they are determined. Moreover, Treasury states that at the end of the 5-year payment period or the end of a period fixed by this Office, it probably will recommend that the claimants who have come forward be paid whatever funds remain on the award in proportion to their interest.

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At the time the claim was presented to the Commission, Mr. Allman informed the Commission that he would act as the Club's trustee and would administer award payments to proper parties. Subsequently, however, (Mr. Allman) declined to perform that function and (asked Treasury to make the payments.) Pursuant to 31 C.F.R. § 250.4(f) which establishes procedures for payment of Foreign Claims Settlement Commission awards, (Treasury then referred to this Office the individual claims to award proceeds.)

(Treasury's original submission to our Claims Group involved six claimants, four of whose claims were supported by American Club debentures issued to them or held by them as successors in interest. One of the other claims was supported by affidavits and a settlement and distribution order in a testamentary proceeding and the other only by the claimant's statement.)

(The Claims Group determined that "the debenture holders and successors in interest of deceased debenture holders who have come forward, are entitled to proportional payment of amounts due for 1979 and 1980, on the Foreign Claims Settlement Award) to the dissolved corporate awardee, American Club, Inc." Z-2825780, October 28, 1980. (When Treasury received the Claims Group response, however, it was concerned that the decision did not establish a standard of proof for ascertaining whether claimed debenture holders or their successors in interest who could not produce debenture certificates should be paid. Accordingly, the matter was referred to our Office of General Counsel to determine whether the claims of the two individuals who could not produce debentures) Ms. Rosie Regina Friedman and Mr. Yao-Ting Liu (were supported by sufficient evidence.) Subsequently, three additional claimants have come forward) Mr. Allman, Ms. Isabelle Alcone and Mr. George Shluger, who also cannot produce debentures.)

In on case, Ms. Friedman's claim was presented by her son, Roy Friedman. Mr. Friedman informed Treasury that his mother owned one American Club 1st mortgage and one 2d mortgage debenture whose face value totalled CN\$30,040 (CN=Chinese taels). He also stated that the debentures were originally issued to Max Friedman, Ms. Friedman's deceased husband, (but have been lost.) Ms. Friedman's (claim also is supported by her affidavit attesting she is the legal and beneficial owner of the lost debentures, that she is entitled to their exclusive possession and that all efforts have been made to locate them.) Furthermore, a certified copy of a Los Angeles County Superior Court settlement and distribution order in the Estate of Max Friedman

shows that Ms. Friedman was entitled to 17/20ths of the Estate property which included the debentures though the order does not specifically indicate that the debentures were bequeathed to her. The remaining 3/10ths were bequeathed to each of three children of Ms. Friedman and her deceased husband, including 1/10th to Roy Friedman. In this regard, Treasury has indicated that it will endeavor to verify from each of the legatees entitled to 1/10th of the Estate other than Roy Friedman that Ms. Friedman received the debentures.)

[Mr. Allman's claim is supported by his affidavit asserting ownership of Club debentures valued at CN\$4,500, which he states he was prevented from taking from Shanghai when he left in 1950 and which subsequently disappeared; a copy of the 1965 Annual Report of the American Club listing Mr. Allman as President and one of the four Board of Director members; correspondence from Mr. Allman to Treasury providing information to Treasury about the Club; and numerous copies of Club debentures issued to other claimants with Mr. Allman listed as trustee. Aside from his affidavit, the evidence presented suggests that Mr. Allman occupied a prominent position in the Club and the Club's management.)

[The evidence presented by Mr. Liu, Ms. Alcone and Mr. Shluger consists only of uncorroborated statements—a letter from Mr. Liu alleging ownership of Club debentures worth \$5,000, a notarized letter from Ms. Alcone alleging ownership of debentures worth \$55,000 and an affidavit of Mr. Shluger alleging ownership of Club bonds worth \$60,000. [Since they present essentially the same evidentiary problem, in the following discussion we will consider them together.)

2. Law

[As a general rule, this Office requires that all claims against the Government be supported by the best evidence obtainable. 55 Comp. Gen. 402, 404 (1975). [At the same time, when unusual circumstances make that presentation impossible or impractical we have exercised our discretion in establishing the quantum of evidence necessary to certify a claim. In this regard, we have stated that we would accept other pertinent data from which the necessary information might reasonably be reconstructed.] Id. 404-05. On the other hand, [we have held that we cannot authorize payment of claims against the Government based solely on statements submitted by a claimant that are not supported or corroborated in some manner by Government records or documentary evidence.] B-189685, March 29, 1978; B-175008, August 24, 1972; B-160795, April 4, 1968.

These principles have developed in instances in which claims were brought directly to this Office. Although we think the same principles generally should guide our disposition of this case, since the matter was originally brought before the Foreign Claims Settlement Commission, which already has made an award to the American Club, we will also discuss the principles formulated by the Commission when presented with evidentiary problems in the China Claims Program.

In addressing these problems, the Commission recognized there would be instances in which primary evidence supporting a claim might not be available, either because it was lost or destroyed during the years between the taking of a claimant's property and the enactment in 1966 of Title V of the International Claims Settlement Act of 1949, as amended, 22 U.S.C. §§ 1643-1643k, or because of political conditions in the People's Republic subsequently, during the China Claims Program. Accordingly, it concluded it would accept and consider secondary evidence when claimants established a sufficient basis to explain the unavailability of primary evidence. See e.g., In re St. Rose Convent, Cl. No. CN-0252 (April 30, 1970); In re Day, Cl. No. CN-0030 (October 15, 1968).

On the other hand, the Commission also found that difficulties in producing evidence should not be used as a basis for findings leading to decisions favorable to claimants unwarranted by claims records. In this regard, the Commission stated that when the basic elements of a claim had not been established and the secondary evidence submitted consisted essentially of self-serving statements, it could not extend its liberal view regarding supporting evidence to a point where it was compelled to speculate on matters of ownership, value, and class and quantity of property involved. In re Dongses, Cl. No. CN-0077 (May 13, 1970). Accordingly, in numerous instances the Commission denied claims that were based solely on claimants' uncorroborated assertions. E.g., In re Dongses, *supra*; In re Chichkanoff, Cl. No. CN-0331 (April 15, 1970).

Hence, the proof requirements formulated by the Commission in the China Claims Program are very similar to those of this Office. Thus, we have both held that when primary or best evidence is unobtainable, secondary evidence or other pertinent data may be considered. We have also both concluded that claimants' uncorroborated statements are insufficient to support claims.

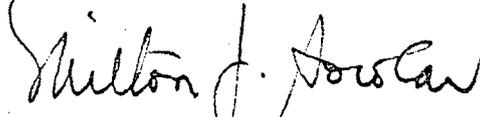
{ Based on the application of these principles, we conclude that Ms. Friedman, subject to the condition described below, and Mr. Allman { have presented sufficient evidence in support of their claims despite their not having either the originals or copies of American Club debentures. } Besides the statements of Ms. Friedman and her son, Mr. Friedman has submitted a certified copy of a settlement and distribution order in the Estate of Mr. Max Friedman, Ms. Friedman's deceased husband. The order shows that Mr. Friedman owned the debentures alleged to be owned by Ms. Friedman, and that they constituted a part of the Estate property. The order also shows that Ms. Friedman was the principal legatee of the Estate, receiving 17/20ths thereof. Although we are inclined to think that the settlement order and affidavit of Roy Friedman, himself a legatee of 1/10th of the Estate property, are sufficient to corroborate Ms. Friedman's claim to ownership of the debentures, we would prefer that Treasury also obtain confirmation from the other two Friedman children named in the settlement order as legatees. As soon as this is done, we think Ms. Friedman's claim could be paid. 2 debts

Mr. Allman's claim is somewhat more problematical since the supporting evidence, other than his affidavit, shows only that he was a prominent member of, and had considerable knowledge about, the American Club. As noted above, he was Club President, member of the Board of Directors, named trustee on all the American Club debentures submitted to Treasury and trustee before the Commission. We acknowledge that Mr. Allman's position in the Club at best inferentially supports his claim to ownership of CN\$4,500 worth of Club debentures. However, consistent with our decisions permitting consideration of evidence from which necessary information might reasonably be reconstructed, 55 Comp. Gen. 402, supra, we are of the view that in all likelihood someone in Mr. Allman's position would have had a financial interest in the Club. Accordingly, { in view of the evidentiary difficulties encountered in the China Claims Program we conclude that Mr. Allman's position in the Club, knowledge of its structure and execution of Club responsibilities are sufficient to corroborate his assertions about his debenture holdings. } We note as well that Mr. Allman's claim is small compared to that of other Club debenture holders.

Although we allow the claims of Ms. Friedman, subject to the conditions described, and Mr. Allman, as an additional condition of payment to both those claimants and any other awardees that cannot present debentures, { we would require that they sign an agreement providing that they and their heirs will reimburse and hold the United States harmless should a lost debenture be presented and paid. }

Unlike the claims of Ms. Friedman and Mr. Allman, ^{3 side charts} those of Mr. Liu, Ms. Alcone and Mr. Shluger consist only of their uncorroborated statements. While we recognize the difficulty in providing supporting evidence, consistent both with the decisions of this Office and those of the Commission in the China Claims Program, we conclude that uncorroborated statements or affidavits of claimants are not sufficient to support claims. Accordingly, we must deny their claims. Although the statement of Ms. Alcone suggests that she was extensively involved in the China Claims Program (apparently she was the recipient of another award from the Commission and is Chairman of the China Claims Committee), we are unable to allow her claim without some corroboration of her debenture interests. Of course, if in the future any of these claimants provide evidence that adequately corroborates their assertions, we would reconsider our decision.

Treasury has also asked informally about the quantum of evidence that we would regard as sufficient support of a claim to American Club award proceeds absent possession of a debenture showing ownership. Consistent with our holdings and those of the Commission, at a minimum we would require as proof of debenture ownership, third party confirmation from an individual or individuals in a position to have knowledge of such ownership, or similar documentary evidence. As it is difficult to speculate on the evidence that might be presented in each case we do not think it prudent to specify as to sufficiency of evidence in further detail. Should Treasury be presented with a claim to a share in the award that cannot be resolved by the principles set forth in this case, it should submit the matter to us for resolution.


Acting Comptroller General
of the United States