

FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
WASHINGTON 25, D. C.

IN THE MATTER OF THE CLAIM OF

CHARLES CHESTER PEARCE
1311 Madison Street, N. W.
Washington 11, D. C.

Claim No. RUM-30,404

Decision No. RUM-493

Under the International Claims Settlement
Act of 1949, as amended

GPO 16-72126-1

PROPOSED DECISION

This is a claim against the Government of Rumania under Section 303 of the International Claims Settlement Act of 1949, as amended, in the sum of \$105,124.25, by CHARLES CHESTER PEARCE, a United States national by virtue of his birth in Dodgeville, Iowa County, Wisconsin, on November 13, 1888.

The claimant is a member of the Bar of the State of New York, and bases his claim upon an attorney's lien alleged to exist in his favor upon a judgment in the Supreme Court of New York, New York County, in the sum of \$95,801, and upon which there is now due the sum of \$95,709.82 and statutory interest from August 2, 1937, in an action wherein the American Union Bank, represented by the claimant, was plaintiff, and the Banca Marmorosch Blank and Co., S. A., a Rumanian banking corporation was defendant. Claimant asserts that under the terms of his contract of employment as attorney for the plaintiff, he is entitled to one-half of any sums collected under the judgment.

Claimant alleges that under Law No. 119 (Rumanian Official Gazette No. 133 bis June 11, 1948) and Decree No. 197 (Rumanian Gazette No. 186, August 13, 1948) issued by the Rumanian Government, "all assets of Rumanian private banking institutions, including those of the judgment-

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debtor in the above-described action, passed into the hands of the State (of Rumania), and were seized and liquidated by that Government."

Claimant asserts that under the above state of facts, the nationalization and liquidation of the judgment-debtor constituted a taking of his property within the purview of Section 303(2) of the International Claims Settlement Act of 1949, as amended, and further contends that since under the nationalization decrees above cited, the Rumanian Government assumed the obligations of the nationalized enterprises, the judgment became its obligation within the meaning of Section 303(3) of the Act.

The Commission has considered the argument advanced by the claimant in open hearing and in his brief and supplementary brief, and concludes that he has failed to establish that the nationalization and liquidation of the Banca Marmorosch Blank and Co., S. A., constituted a taking of any property owned by the claimant, within the purview of Section 303(2) of the Act.

An attorney's lien does not constitute a property interest in the judgment-debtor's property, nor does the lien itself extend to such property. It is a lien upon the judgment alone, enforceable against whatever proceeds are collected thereunder. 1/ If there are no proceeds under the judgment, there is nothing upon which the lien may operate. 2/ Under an attorney's lien, the attorney has a right to have the judgment enforced and to receive from the proceeds thereof compensation for his services. But the right is one of priority only in the sums realized from the execution of the judgment; it does not include a right to maintain an action on his own behalf against the debtor as an assignee of the judgment. 3/

The claimant alleges that, following the entry of judgment, execution was issued, as a result of which the net sum (after costs) of \$91.18 was realized by levy upon certain assets of the defendant, and that this

1/ Matter of Hasbrouck, 138 N.Y.S. 620, 153 App. Div. 394; Matter of Ely, 139 N.Y.S. 729, 79 Misc. 118.

2/ In re Farmers' Loan and Trust Co., 188 N.Y.S. 373, 196 App. Div. 639.

3/ Restatement of Agency, Sect. 464, p.1093; 5 Am. Jur. "Attorneys at Law", Sect. 248, p. 410.

represents the total proceeds of the judgment to this date. Were further assets of the defendant to be discovered, and the judgment still had vitality under applicable New York law, an alias writ of execution could undoubtedly be levied thereon, and there would then exist a fund to which the claimant's lien would affix itself. But under the conceded facts, the judgment-debtor no longer possesses available assets, because they have passed into the ownership of the State of Rumania or its agencies. Certainly they did not thereby become the property of the claimant. What he seeks here, in effect, is to institute a proceeding designed to follow the former assets of the judgment-debtor into the hands of the Rumanian Government and to establish therefrom a fund upon which his lien may operate. Neither the New York Attorney's lien statute nor the Act authorizes the claimant to proceed under such a theory.

The claimant contends that his lien constitutes an equitable assignment to the extent of one-half of the amount of the judgment, constituting him, in effect, the owner of a one-half interest. In the case of Nichols -vs- Orr, 166 Pac. 561 (Colo.), 2 A.L.R. 449, 452, the Court remarked:

"...(T)he statement that a contract between client and attorney for payment out of a judgment 'recovered or to be recovered' operates as a binding equitable assignment is too general...."

A lien is a 'charge upon' property, while an assignment creates an 'interest in property'. In the one case the property can be conveyed subject to the lien; in the other case, the portion assigned can be conveyed only by the assignee, who is a co-owner with the assignor."

Dealing with the New York statute, the Court, in Fischer-Hansen -vs- Brooklyn Heights R. Co., 173 N. 492, 66 N.E. 395, stated, "A cause of action is not the property of the attorney, but of the client. The attorney owns no part of it, for a lien does not give a right to property, but a charge upon it."

What has been said to this point also disposes of the claim so far as it is presented under Section 303(3) of the Act, because even had the Government of Rumania, in the decrees above described, assumed the

obligation of the judgment, it was one which was due to the judgment-creditor, and not to the attorney for the judgment-creditor.

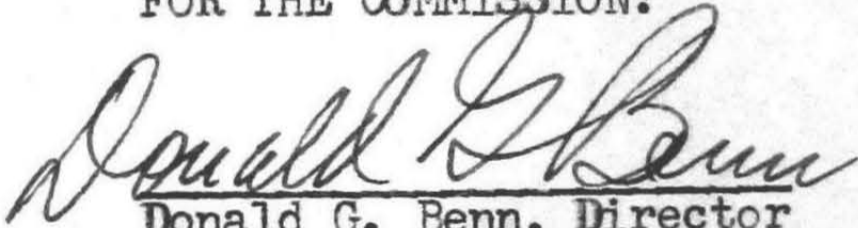
In any event, the Commission finds that under the terms of Section 303(3), in order for a claim to be compensable thereunder, the contractual right must have been acquired by a national of the United States, prior to September 1, 1939 (in the case of Rumania), that it must have been an existing obligation of the Government of Rumania on that date, and that it must have been an obligation which became payable by that Government prior to September 15, 1947. Here, the obligation is alleged to have been initially assumed in 1948. It could not, therefore, have been an existing obligation of the Government of Rumania prior to September 1, 1939, nor could it have been payable by that Government prior to September 15, 1947.

For the reasons above stated, this claim is denied.

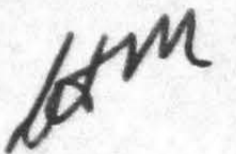
Dated at Washington, D. C.

AUG 15 1958

FOR THE COMMISSION:


Donald G. Benn, Director
Balkan Claims Division





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FINAL DECISION

The Commission issued its Proposed Decision herein on August 15, 1958, denying this claim for the reasons therein set forth.

Full consideration having been given to the briefs and memoranda submitted by the claimant, and to the evidence and arguments presented at the hearing held on January 15, 1959, and sufficient cause appearing, it is

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

Dated at Washington, D. C.

JUN 29 1959

Whitney Hilliland

Paul Pace

Robert L. Kunzig

COMMISSIONERS

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