

REPORTS OF INTERNATIONAL ARBITRAL AWARDS

RECUEIL DES SENTENCES ARBITRALES

Administrative Decision No. IX

1 May 1929

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those applying during the belligerency period of the United States to American owned property, rights or interests in Germany.

The Commission finds that the Petition for a reconsideration of its final decision in this case is without merit, and it is accordingly dismissed.

Done at Washington April 21, 1930.

Chandler P. ANDERSON

American Commissioner

W. KIESSELBACH

German Commissioner

ADMINISTRATIVE DECISION No. IX

(May 1, 1929, pp. 951-952.)

JURISDICTION: TIME-LIMIT FOR PRESENTATION OF "LATE CLAIMS". *Held* that, under supplementary Agreement of December 31, 1928, Commission is without jurisdiction to consider claims, notice of which in writing was not received by Department of State prior to July 1, 1928.

BY THE COMMISSION: —

The American Agent by appropriate motion requests of this Commission an administrative ruling with respect to its jurisdiction in a group of claims against Germany put forward on behalf of Emilie Bernhardt and other claimants. The facts upon which the ruling is requested are recited in the motion as follows:

"On June 29, 1928, Max Sturm, an Attorney at Law of 147 Summit Avenue, Union City, New Jersey, mailed a letter by registered mail at the United States Post Office, Union City, New Jersey, addressed to the 'Department of State, Washington, D. C.', which contained notice of a claim against the Government of Germany on behalf of Emilie Bernhardt, *et al.* This letter reached the Department of State on July 2, 1928."

This Commission was established and exists in pursuance of the Agreement between the United States and Germany dated August 10, 1922, as supplemented by the exchange of notes between the two Governments in the nature of a Supplementary Agreement dated December 31, 1928.

Under the original Agreement the Commission was without jurisdiction to consider any claims of American nationals not notified to the Commission on or before April 9, 1923 (Administrative Decision VIII, Decisions and Opinions, page 347 *et seq.*).^a

Subsection (j) of section 2 of the "Settlement of War Claims Act of 1928" provided in part as follows:

"The President is requested to enter into an agreement with the German Government by which the Mixed Claims Commission will be given jurisdiction of and authorized to decide claims of the same character as those of which the commission now has jurisdiction, notice of which is filed with the Department of State before July 1, 1928."

That Act came into effect March 10, 1928. It put American nationals on notice that in order to secure the benefit of such Agreement, if any, as might

^a *Note by the Secretariat*, Vol. VII, p. 252.

be entered into in pursuance of the above-quoted request embodied in the Act, they were required to file notice of their claims with the Department of State prior to July 1, 1928, unless such notice had already been so filed.

The request of the Congress to the President was complied with and the two Governments entered into the Supplementary Agreement of December 31, 1928, above mentioned, which in effect extended the jurisdiction of the Commission to include claims of the same character as those of which the Commission has jurisdiction under the original Agreement, provided notice thereof was filed with the Department of State prior to July 1, 1928.

It follows from the foregoing statement that this Commission is without jurisdiction to consider any claim put forward on behalf of an American national if notice in writing of the claim was not filed with the Department of State prior to July 1, 1928.

This decision, in so far as applicable, will control the disposition of all claims presented to the American Agent for submission to the Commission.

Applying it to the claims dealt with in the motion of the American Agent, notice of which in writing was not filed with the Department of State prior to July 1, 1928, it follows that the Commission is without jurisdiction to consider them.

Done at Washington May 1, 1929.

Edwin B. PARKER
Umpire

Chandler P. ANDERSON
American Commissioner

W. KIESSELBACH
German Commissioner

ELIZABETH A. ACHELIS, MARGARET ACHELIS SANSOME, AND
FREDERIC G. ACHELIS (UNITED STATES) *v.* GERMANY

(May 1, 1929, pp. 953-957.)

PROCEDURE: REHEARING AFTER FINAL JUDGMENT. — ESTATE CLAIMS: EXCEPTIONAL WAR MEASURES, DEPRECIATION OF SECURITIES. Death in October, 1916, of claimants' grandmother, whose will provided for postponement of distribution of estate "until peace with England is concluded". Liquidation, nevertheless, under German exceptional war measure, after United States entered war, including payment in April, 1918, and May, 1919, to *Treuhaender* of securities, inherited by claimants' mother, an American national. Final judgment by Commission refusing compensation for alleged losses through depreciation of securities. Petition for rehearing on ground, that decision contrary to Administrative Decision No. IV (see Vol. VII, p. 117). *Held* that claim did not come under Administrative Decision No. IV, applicable only when obligation arose to transmit money or securities to American nationals: neither under will nor war measure, an obligation to transmit securities to claimants' mother could arise for executor and liquidator, respectively.

DAMAGE: RULE OF PROXIMATE CAUSE. — EVIDENCE: BURDEN OF PROOF, PRESUMPTIONS. *Held* that Administrative Decision No. IV established presumption, that administrators of estates are ordinarily under duty to transmit shares to beneficiaries as soon as estate ready for distribution, and that they