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Frank Sassoon Case—Decision No. 8

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FRANK SASSOON CASE—DECISION No. 8 OF 23 JULY 1960

Compensation for war damage—Nationality of claimant—Loss of property—Requisition—Ownership of property claimed—Evidence—Measure of damages.

Indemnisation pour dommage de guerre — Nationalité du réclamant — Perte de biens — Réquisition — Propriété des biens réclamés — Preuve — Détermination du montant de l'indemnité.

The United States-Japanese Property Commission, established pursuant to the "Agreement for the Settlement of Disputes Arising Under Article 15 (a) of the Treaty of Peace with Japan" and composed of Mr. Lionel M. Summers, Counsellor of Embassy and Consul-General, Member of the Commission appointed by the Government of the United States of America; Mr. Kumao Nishimura, Member of the Permanent Court of Arbitration and former Ambassador of Japan to France, Member of the Commission appointed by the Government of Japan; and Judge Torsten Salén, President of the Supreme Restitution Court for Berlin, Third Member of the Commission chosen by mutual agreement of the Governments of the United States of America and of Japan,

Having considered the Petition and Reply filed with the Secretariat by the Agent of the United States, Mr. Arnold Fraleigh, on October 1, 1959, and February 17, 1960, respectively and the Answer and Counter Reply filed with the Secretariat by the Agent of the Government of Japan, Mr. Tatsuo Sekine, on February 10, 1960 and May 28, 1960, respectively in the case of the *United States of America ex rel. Frank Sassoon vs. Japan*, and

Having heard testimony on certain aspects of the dispute at an oral hearing held in Kobe, Japan, on July 18, 1960, and

Having determined that the Commission has jurisdiction over the dispute, has reached the following conclusions:

INTRODUCTION:

The Claimant, Frank Sassoon, was a national of Iraq on December 7, 1941, but became a national of the United States of America by naturalization on January 31, 1950. He is therefore an Allied national entitled to maintain a claim under the Treaty of Peace and the Draft Allied Powers Property Compensation Law, hereinafter referred to as the "Compensation Law".

With a note of October 22, 1953, the American Embassy transmitted to the Japanese Ministry of Foreign Affairs, on behalf of Frank Sassoon, two claims for compensation for war damage, one, in the amount of 21,444,000 yen, covering the alleged loss of office furnishings, fixtures and samples and the loss of merchandise owned by him on December 7, 1941, which he had been forced to sell to the Japan Cotton Textile Exporters Association, hereinafter referred

to as the "Association", and the other in the amount of 99,862,613.10 yen covering the alleged loss of certain cotton textile merchandise purchased by Frank Sassoon from Maruima Sangyo.

The Ministry of Foreign Affairs in a note of March 12, 1957, gave notice to the Embassy of the preliminary rejection of the claim, which notice was confirmed in a note of April 13, 1957. Although the Ministry referred to one "claim" it is clear that both claims were meant. From there on the claim has always been referred to in the singular.

The Embassy thereupon in a note of October 11, 1957, notified the Government of Japan that it referred the claim to the Commission for determination.

In the Petition, the Agent of the Government of the United States of America, on behalf of Frank Sassoon has modified the claim in the following manner:

	<i>Yen</i>
Loss of office furnishings	298,000
Loss of merchandise on hand in 1941 having a value of 40,000 yen	7,954,000
Loss of merchandise purchased from Maruima Company	<u>44,398,488</u>
	52,650,488

THE CLAIM FOR THE LOSS OF FURNITURE :

In 1931 the claimant, Frank Sassoon, opened an office in the Toyo Building, 16A Harima Machi, Kobe, rented from the firm Nakamura & Company and maintained the office till the building was destroyed by bombing by the United States Air Force on June 5, 1945. In an affidavit, Sassoon refers to the Bank of Japan, Kobe, the Post Office and the Telephone Office, Kobe, as well as to the Association in order to confirm the existence of his office. Further, Frank Sassoon relies upon an affidavit executed by Marie Phend, born Toku Emoto, a native of Kobe, who testifies to the effect that she had visited Frank Sassoon in his office at the indicated address between the first bombing of Kobe in March 1945 and the second one on June 5, 1945, and gives as description of the office consisting of a large, partially partitioned room with furniture and shelves.

The Agent for the Government of Japan denies that Frank Sassoon maintained his office in the Toyo Building until the bombing on June 5, 1945. In so doing he relies on a statement of Shigeo Imawaki, Managing Director of the Maruima Commercial Co. Ltd., which is written in answer to his questioning by an administrative official of the Ministry of Finance in which he states that in March 1945, Sassoon did not have an office in the Toyo Building. In his statement, Mr. Imawaki also declares that at the time of the transactions with Frank Sassoon concerning the merchandise sold by the Maruima Company (in the beginning of 1942) he had visited Frank Sassoon's office, which was a small room furnished with two office desks and chairs, two small chairs for guests, two shelf cabinets for trade samples, a single leaf screen, all extremely shabby looking, as well as a second-hand typewriter. The value, even as brand new, would, according to Mr. Imawaki, have been less than 1,000 yen "in the current price of the time". The statement, however, betrays considerable animosity against Mr. Sassoon and therefore has relatively little probative value.

In view of the detailed references given by Frank Sassoon in his sworn affidavit, which would have been easy to refute if incorrect, and to the fact that the telephone was still carried in the name of Frank Sassoon on June 5, 1945, the Commission considers it to be established that Frank Sassoon maintained

his office at that time and that the furniture, fixtures and samples were destroyed by the bombing.

It is true that an affidavit has been supplied with the Counter Reply to indicate that the furniture had been moved from the office prior to the bombing. At the oral hearing in Kobe, however, the value of that affidavit was demonstrated to be questionable.

The Commission has noted that the value of the furniture as of 1952 was, according to the claimant, 298,000 yen. It is difficult to be precise in the absence of specific evidence but it appears to the Commission that some of the values attributed by the claimant to the furniture, fixtures and samples may be somewhat high. In the circumstances the Commission feels it proper to deduct 1/3 from the value of the furniture and to find its value to be 198,667 yen.

CLAIM FOR COTTON GOODS REQUISITIONED FROM MARUIMA:

During the period from March 1942 to March 1943 the Japanese Cotton Textile Exporters Association requisitioned certain cotton merchandise allegedly owned by the claimant from Maruima Sangyo K.K., a trading firm in Kobe. The claimant states that as a consequence of the requisition of the property, compensation is due him under the Treaty of Peace and the Compensation Law. The first question which must be determined is whether the claimant can establish an ownership or other interest in the merchandise which would give him a right to present the claim.

An examination of the record shows that on February 6, 1942, Maruima wrote a letter to the claimant which contained the following passage:

It is to be understood that as there is at the present time no means available to communicate with the actual party to the contract, Mr. Ezra M. Sassoon, Bagdadaddo City, Iraq, no attempt will be made in this respect.

In reply the claimant on February 10, 1942, stated:

Although I am aware of the fact that it is difficult to communicate with Ezra M. Sassoon in Bagdadaddo, it was made known to you that I had been acting as his agent. In addition, as his agent I have the formal power of attorney, that is, the document approved and signed by the Minister of Foreign Affairs and the Minister of Justice of Iraq and certified and signed by Honorable Yoshiro Miyazaki, the Minister Plenipotentiary of Imperial Japan, resident in Iraq at that time.

The Commission has never seen the power of attorney to which reference is made. It has, however, no reason to doubt its existence. In any event the exchange of correspondence constitutes a contemporaneous record presumably reflecting the true situation. Certainly if the claimant had been acting for himself, and not as agent there would not have been any necessity for the preparation of a power of attorney executed and certified to with all of the formalities prescribed by law and international usage.

It is true that evidence has been submitted later to demonstrate that his father and his family considered that the claimant was actually operating on his own behalf and was himself the owner of the goods.

However, the internal relations between Ezra Sassoon and Frank Sassoon whatever they may have been are irrelevant to the case, because, according to the correspondence quoted above, it is clear that the contract of sale of

the merchandise in question was entered upon between Maruima and Ezra Sassoon with Frank Sassoon acting as agent for Ezra Sassoon. Consequently, in relations to Maruima and third parties, such as the Government of Japan, Frank Sassoon has no claim to ownership of the merchandise and, therefore, his claim for compensation under this item must be rejected.

PURCHASE OF COTTON GOODS FOR 40,000 YEN:

In his own sworn affidavit of October 8, 1953, Frank Sassoon declares that in the summer of 1941 he was the owner of a quantity of cotton piece goods of various qualities having an acquisition cost of approximately 40,000 yen, the goods being stored in a bonded warehouse. He further declares that under the pressure exercised upon him by the Japan Cotton Textile Exporters Association, an agency of the Government of Japan, having no other alternative and fearing further repressive measures he turned the warehouse receipts over to the Association, which in return deposited in his name in a blocked account with the Bank of Taiwan, Kobe, the sum of 46,000 yen.

In the Petition the Agent for the Government of the United States of America considering that the purchase of the goods by the Association was accomplished in its capacity as an agency of the Government of Japan, requests the payment of compensation for the loss of the merchandise in an amount of 7,954,000 yen. That figure had been arrived at by multiplying the purchase price of the goods by 200, the alleged approximate rate of the rise in price levels during the period from 1941 to 1952, and by subtracting the sum of 46,000 yen received for the goods.

As proof of the forced nature of the purchase the Agent for the Government of the United States of America relies upon the affidavit of Frank Sassoon and upon a letter of September 30, 1946, from the Association to the Judicial Affairs Division, Supreme Headquarters of the Allied Army of Occupation. That letter deals with the question of the merchandise purchased from the Maruima Company referred to above which had annulled the contract with Sassoon in February 1942 and thereupon sold the same merchandise to the Association. In its letter of September 30, 1946, the Association textually declares: "At that time Mr. Sassoon had another lot of merchandise besides the goods involved in this case (viz. goods purchased from the Maruima Company) and that lot was requisitioned by the Association".

The Government of Japan observes that in the affidavit there is no information relating to the items and quantities of the merchandise nor as to the name of the party from whom it was purchased or of the warehouse where it was stored. It also observes that the statement of Frank Sassoon was unreliable. It is further stated that the books and documents concerning the purchases of the Association were all destroyed by bombing except for a copy of a list of merchandise which the Association bought from its members in which list there is no indication that the Association bought any merchandise from Frank Sassoon. It is suggested that the mention in the letter of September 30, 1946, from the Association of another lot of merchandise must have been made on the ground of the assertion made by Frank Sassoon himself in his claims brought after the war.

The Agent of the Government of Japan goes on to say that even if it is granted for the sake of argument that the merchandise was purchased by the Association that purchase is not a measure envisaged by Article 4, Paragraph 1, item 2 of the Compensation Law. He argues that the Association was an association voluntarily established according to the provisions of Article 9 of the Trade Association Law with the object of providing common facilities to the

members for the development of foreign trade. The Association in accordance with its statutes and with a decision of its Board of Directors decided to obligate its members to sell their cotton textile goods to the Association but, although compulsory on each member under the statutes of the Association, it was not a compulsory measure imposed by the Government.

Adumbrating on the nature of the purchases the Government of Japan relies on a report of an investigation presented to the Chief of Foreign Property Section, Property Custodian Bureau, Ministry of Finance, dated June 5, 1956. In that report it is stated that the Association carried out a compulsory purchase of designated cotton piece goods owned by its members as of April 1942, adding that the Association carried out these compulsory purchases in conjunction with the Resources Mobilization Program implemented by the Government of Japan under the National Mobilization Act with the primary aim of securing and increasing the stock of essential goods in the country as well as making the most efficient and appropriate use thereof. Nevertheless, designated foreign nationals were not eligible. Hence Frank Sassoon who was a designated foreign national since January 26, 1942, when Iraq was declared to be a designated country under the "Law Implementing Regulations for the Control of Transactions Related to the Persons of Foreign Nationality" of July 1941, was excluded from among the persons eligible for such purchase. The reason for that exclusion was that the business of such persons was practically prohibited through the "Regulations" just quoted. Permission for the execution of already existing contracts was also impossible to obtain from the competent Minister. On the request of the Association the Government of Japan on February 12, 1942, issued directives to the effect that the designated foreign nationals should be dismissed from the Association. The Board of Directors of the Association thereupon on February 21, 1942, decided to dismiss the designated foreign nationals and to purchase cotton textiles held by such persons "as designated cotton yarns and cotton textiles pursuant to the Control Regulations Concerning Purchase and Export of Designated Cotton Yarns and Designated Cotton Textiles". Consequently, the exclusion of goods owned by the designated foreign nationals from the compulsory purchase of goods owned by other members "was for no other reason than for carrying out purchase of such goods [owned by designated foreigners] separately in accordance with the said directive issued in the name of the Director of Foreign Trade Bureau and the decisions of the Board of Directors".

Finally, the Agent for the Government of Japan contends that in any case Frank Sassoon did not suffer any damage from the alleged purchase since the Agent for the Government of the United States of America declares that Frank Sassoon was paid 46,000 yen covering the price of the merchandise and the costs connected therewith.

The contention of Frank Sassoon as to the facts is strongly supported by the above mentioned letter of September 30, 1946, in which the Association admitted having requisitioned certain merchandise from Frank Sassoon. Nothing in that letter indicates that this mention on the part of the Association was based on the post war claims made by Frank Sassoon himself, especially so as the Association very carefully set out the facts about the merchandise bought from the Maruima Company and rejected its responsibility in that respect. Frank Sassoon has further specifically pointed out that the Association paid to a blocked account in his name with the Bank of Taiwan, Kobe the sum of 46,000 yen as a price for the merchandise under this heading. That assertion has not been specifically challenged by the Government of Japan although it should have been possible to verify the matter with the bank or the successor to its interests.

The fact that the merchandise may not have been found on the list of goods requisitioned by the Association cannot be a decisive argument against the admission on the part of the Association of having requisitioned certain merchandise from Frank Sassoon personally, especially since most of the books and documents of the Association are said by the Government of Japan to have been destroyed during the war. The lack of details in the affidavit about the purchase and storing of the goods can be explained by the fact that all the documents in Frank Sassoon's office have been destroyed. On these grounds the Commission accepts as established the fact that the merchandise was requisitioned by the Association.

That the Association in making the purchases, including those from the designated foreign nationals, acted as an agent for the Government of Japan is made abundantly clear by the report produced as Exhibit 2 to the Answer. It is stated in that exhibit that the Board of Directors decided to purchase the textiles held by these persons pursuant to the Control Regulations concerning Purchases and Export of Designated Cotton Textiles and that the purpose of the exclusion of those persons from the compulsory purchases incumbent on the members was to establish that the purchases to which designated foreign nationals were subjected would be considered separately in accordance with the directives issued in the name of the Director of the Foreign Trade Bureau.

The measures under Article 4 Paragraph 1 item 2 giving cause to compensation for damage arising therefrom are not limited to the war-time special measures as defined in Article 2 Paragraph 4 of the Compensation Law but include also "other measures of the Government of Japan and its agencies".

War-time special measures are defined in Article 2 Paragraph 4 of the Compensation Law to mean measures "toward the enemy". These measures are, however, not the only ones under Article 4 Paragraph 1 item 2 which give rise to compensation. The fact that these "other measures", contrary to the "war-time special measures", are not qualified as having been "taken towards the enemy" leads to the conclusion that for these "other measures" there is no corresponding qualification, namely that they should have been "taken against the enemy".

The merchandise at issue was lost by Frank Sassoon by virtue of the compulsory sale. The amount of damage in such a case is specified in Article 5 Paragraph 2 of the Compensation Law, where it is stipulated that this amount shall be a sum of money required at the time of compensation for the purchase in Japan of property of similar condition and value. The intention is thus clearly expressed to assess the compensation at the actual value in yen at the time of payment and not at the value in yen at the time of the taking.

It is noted that in the Petition the Agent of the Government of the United States requests the payment of compensation in the amount of 7,954,000 yen for the loss of the merchandise with an acquisition cost of approximately 40,000 yen and for which the claimant has received 46,000 yen. The figure of 7,954,000 yen was determined by multiplying the purchase price of the goods by 200, the approximate rate of the rise in price level during the period from 1941 to 1952, and by subtracting the sum of 46,000 yen which was received for the goods. In actual fact, however, according to the Statistics Department of the Bank of Japan, the rise in the wholesale price index of textiles for the period 1941 to 1959 is 162.01. Therefore, the Commission finds that the actual magnification factor of 162.01 rather than the general magnification factor of 200 should be used. As the price level has remained stable since 1952 the Commission finds that the claimant is entitled to receive the sum of 6,434,400 yen for the above mentioned merchandise.

DETERMINATION OF THE COMMISSION:

In view of the foregoing the United States Japanese Property Commission determines that the Government of Japan should pay the claimant the sum of 198,667 yen for the loss of his furniture, fixtures and samples and the sum of 6,434,400 yen for the merchandise he was obligated to sell, a total of 6,633,067 yen.

This decision shall be definitive and binding and its execution incumbent upon the Government of Japan.

SIGNED in the City of Tokyo on this 23rd day of July, 1960.

Torsten SALÉN

Third Member

Lionel M. SUMMERS

United States Member

Kumao NISHIMURA

Japanese Member
