

FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
WASHINGTON, D.C. 20579

IN THE MATTER OF THE CLAIM OF

ALBERT OTTEN
HANNAH SINAUER

Under the International Claims Settlement
Act of 1949, as amended

G-0261
Claim No. G-3355

Decision No. G-3286

ORDER

By Proposed Decision dated February 25, 1981, the Commission granted to claimants ALBERT OTTEN and HANNAH SINAUER respective awards of \$803,000.00 and \$556,750.00, based upon the loss of beneficial shareholder interests in the corporation "Eisenhuettnerwerke Thale A.G.," an iron foundry works in Thale, German Democratic Republic, as of September 23, 1947.

Subsequent to the issuance of the Proposed Decision, four relatives of claimant HANNAH SINAUER, namely, Margaret Bloch, Renee Martello Laux, Thomas Peter Meyer, and Herman Rothschild, petitioned the Commission to be joined as additional claimants in her claim, based upon their status as descendants of Albert Rothschild, the brother and business partner of claimant HANNAH SINAUER's father, Max Rothschild. It is stated in their petitions that Albert Rothschild died in 1938 and was survived by his wife, Lisbeth (Sophie Elisabeth) Rothschild nee Merzbach, and his four children, two of whom are the petitioners Margaret Bloch and Herman Rothschild. His other two children were Karin Rothschild Martello, the deceased mother of the petitioners Renee Martello Laux and Thomas Peter Meyer, and a son, Henry Rothschild, who has been at all times a national of Great Britain.

Information submitted in support of these petitions further indicates that Margaret Bloch and Herman Rothschild became United States citizens by naturalization on November 13, 1944, and November 27, 1946, respectively, that Karin Rothschild Martello,

mother of Renee Martello Laux and Thomas Peter Meyer, became a United States citizen by naturalization on April 1, 1946, that Renee Martello Laux acquired United States citizenship by birth on May 24, 1946, and that Thomas Peter Meyer was naturalized as a United States citizen on January 16, 1951.

In addition, petitioners Margaret Bloch, Renee Martello Laux, and Thomas Peter Meyer have executed affidavits stating that Albert Rothschild's entire estate, which would have included his beneficial interest in the Thale works, passed by will to his widow, Lisbeth Rothschild nee Merzbach, upon his death. No portion of that beneficial interest, or of the right to claim for its loss, following the taking of it by the German Democratic Republic on September 23, 1947, can thus be said to have been held by the petitioners Margaret Bloch and Herman Rothschild, or by the mother of petitioners Renee Martello Laux and Thomas Peter Meyer, until after Lisbeth Rothschild's death, which is stated to have occurred in or about 1950. Furthermore, although documentation has been submitted which indicates that Lisbeth Rothschild came to the United States as an immigrant in 1947, petitioners have submitted no evidence to establish that she ever held United States citizenship.

Section 603 of the Act limits the Commission's jurisdiction as follows:

"A claim shall not be favorably considered under section 602 of this title unless the property right on which it is based was owned, wholly or partially, directly or indirectly, by a national of the United States on the date of loss, and if favorably considered, the claim shall be considered only if it has been held by one or more nationals of the United States continuously from the date that the loss occurred until the date of filing with the Commission."

In addition, section 601 of the Act provides the following definition:

"(1) the term 'national of the United States' means--
"(a) a natural person who is a citizen of the United States. . ."

In view of the sworn statements which have been submitted as to the descent of Albert Rothschild's estate following his death in 1938, together with the absence of evidence establishing that

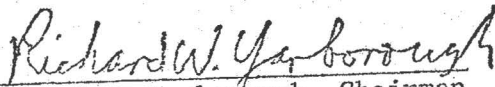
his widow, Lisbeth Rothschild, was ever a United States citizen, the Commission must conclude that it would have no authority under the Act to find a claim filed by the petitioners to be compensable. The Commission therefore finds that to grant their petitions to be joined in the present claim would serve no purpose.

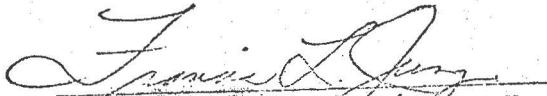
Accordingly, it is

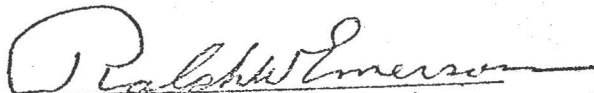
ORDERED that the petitions of Margaret Bloch, Herman Rothschild, Renee Martello Laux and Thomas Peter Meyer to be joined as additional claimants in Claim No. G-3855 be and they are hereby denied.

Dated at Washington, D.C.
and entered as the Order
of the Commission.

MAY 13 1981


Richard W. Yarborough, Chairman


Francis L. Jung, Commissioner


Ralph W. Emerson, Commissioner

This is a true and correct copy of the decision
the Commission which was entered as the final
decision on MAY 13 1981


Executive Director

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IN THE MATTER OF THE CLAIM OF

ALBERT OTTEN
HANNAH SINAUER

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Claim No. G-0261
G-3855

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Counsel for Claimant:
ALBERT OTTEN

Robert M. Jacobs, Esquire
Winne, Banta, Rizzi &
Harrington

PROPOSED DECISION

These claims against the Government of the German Democratic Republic, under Title VI of the International Claims Settlement Act of 1949, as amended by Public Law 94-542 (90 Stat. 2509), are based upon the loss of shareholder interests in the corporation "Eisenhuettenwerke Thale A.G.," an iron foundry works in Thale, German Democratic Republic. In addition, claimant HANNAH SINAUER has asserted a claim for the loss of certain parcels of commercial real property at unnamed locations in the German Democratic Republic, and for two industrial storage and distribution facilities in Gerwisch and Taucha, German Democratic Republic.

The record indicates that claimants ALBERT OTTEN and HANNAH SINAUER became United States citizens on August 29, 1946, and February 15, 1944, respectively.

Under section 602, Title VI of the Act the Commission is given jurisdiction as follows:

"The Commission shall receive and determine in accordance with applicable substantive law, including international law, the validity and amounts of claims by nationals of the United States against the German Democratic Republic for losses arising as a result of the nationalization, expropriation, or other taking of (or special measures directed against) property, including any rights or interests therein, owned wholly or partially, directly or indirectly, at the time by nationals of the United States whether such losses occurred in the German Democratic Republic or in East Berlin. . ."

The record in these claims, which includes a report on the investigation of the claims by the Commission's field office in West Germany, establishes that as of 1936, claimant ALBERT OTTEN, through his ownership of the "Eisenfirma Albert Ottenheimer" in Cologne, Germany, held shares in the Eisenhuettenwerke Thale A.G. amounting to 46.68% of the stock in that corporation, and that the father of claimant HANNAH SINAUER, Max Rothschild, as one of the two equal partners in the firm "Aquila-Adlergruppe" in Frankfurt/Main, Germany, held shares amounting to 25.78% (one-half of 51.56%) of the stock in the corporation. These percentages are listed in the 1936 edition of the "Handbook of German Corporations." The 1940 edition of the Handbook, however, a copy of the pertinent portions of which was also obtained by the Commission's field office, lists the "Firma Otto Wolff" of Cologne as the owner of approximately 99% of the total capital stock of the corporation. Furthermore, it is stated in the 1940 Handbook that this 99% share interest had been acquired by the Otto Wolff concern in 1936 through conveyance from the Albert Ottenheimer firm and the Aquila-Adlergruppe firm, as well as from certain banks. Moreover, the Commission notes that in the report on the activities and holdings of the Otto Wolff concern in Germany which was prepared by the French military government for the French Occupation Zone of Germany after World War II, a copy of which was submitted in connection with the earlier Claim of ULRICH STRAUSS (Claim No. W-12067, Decision No. W-20493 (1967), adjudicated in the earlier General War Claims program under Public Law 87-846), it is stated that the Otto Wolff firm had acquired its ownership interests in Thale A.G. through an "aryanization" of the corporation sponsored by the Nazi regime. Such measures were implemented as a means of furthering the policies of Nazi religious and racial persecution.

In a substantial number of decisions to date, beginning with the decision in Claim of MARTHA TACHAU, Claim No. G-0177, Decision No. G-0171, the Commission has held that persecutory losses of property and property interests such as those involved herein

would not be considered to have cut off all rights of the original owners or their heirs, and that the persecuted owners retained a beneficial in the affected property. Based upon the record, the Commission finds that claimant ALBERT OTTEN and the predecessor of claimant HANNAH SINAUER, her father, Max Rothschild, continued as beneficial owners of shareholder interests in Eisenhuettenwerke Thale A.G. after 1936, notwithstanding the loss of their legal shareholder interests. In addition, based upon documentation in the record, the Commission finds that claimant HANNAH SINAUER succeeded to ownership one-half of her father's beneficial shareholder interest following his death in or about 1943.

The investigation by the Commission's field office further disclosed that, on or about February 6, 1946, the Thale Works was temporarily sequestered by the Soviet occupation authorities and, soon thereafter, it was integrated into the corporation "Metallurgische A.G." which had been established by the Soviet authorities in the territory of what is now the German Democratic Republic. Evidence submitted in the claim of Ulrich Strauss in the present claims program indicates that this action was effected on or about September 23, 1947. The Commission concludes from the record that this action constituted a "nationalization, expropriation or other taking" of the Thale Works, within the meaning of section 602 of the Act, and that it also operated to take from the claimants their remaining beneficial interests in the concern. The Commission therefore finds that claimant ALBERT OTTEN and HANNAH SINAUER are respectively entitled to awards based upon the loss of beneficial ownership interests in the Thale Works amounting to 46.68% and 12.89%, respectively, and dating from September 23, 1947.

With respect to the values to be attributed to these beneficial interests at the time of their loss, evidence submitted in the related claim of Ulrich Strauss, previously referred to, establishes that the Thale Works was assigned a value of approximately 27 million marks by its Nazi-era acquirer, the Otto Wolff firm, at the time of its sequestration by the Russian occupation forces

after the end of World War II. A copy of the accountants' report setting forth the figures upon which this valuation was based was obtained by the Commission's field office and is included in the record. According to the report, included in the total value of the concern was an amount of approximately 1,330,000 marks which represented the value of shares of stock in other corporations which was owned by the Thale concern. Of this amount, it appears that stock of a value of 623,000 marks related to corporations which were located in what is now the German Democratic Republic and in which the Thale concern was the sole or major shareholder; the remaining shares of stock, of a value of 707,000 marks, appear to have related to corporations which were located in what is now West Germany or West Berlin. Since a corporation located in West Germany or West Berlin could not have been nationalized or otherwise taken by the German Democratic Republic, the value of the shares in such corporations cannot be included in the determining the value of the Thale concern at the time of its nationalization by the German Democratic Republic.

The Commission therefore finds that, after deducting the value of the stock shares owned by the Thale concern which related to corporations located in West Germany and West Berlin, the value of the Thale concern and its assets as nationalized by the German Democratic Republic was 26,293,000 marks. Applying the percentage which represented the extent of claimant ALBERT OTTEN's beneficial shareholder interest in the Thale concern to the above-stated valuation thus yields a figure of approximately 12,273,600 marks as the value of his interest in the concern at the time of loss in 1947.

The Commission also notes, however, that in letters dated May 5, 1980, and November 12, 1980, claimant ALBERT OTTEN stated through his attorney that he has previously received payments in respective amounts of 4,600,000 marks and 4,300,000 marks as a result of legal proceedings instituted in West Germany in the period following World War II. It appears from the record that

G-0261
G-3855

the first of these payments was made to him by the successor to the Otto Wolff firm in settlement of a suit he had brought against the firm under West German law for restitution of the interest in the Thale concern which he had been forced to relinquish in 1936. The second payment, amounting to 4,300,000 marks, appears to have been made by the West German government in accordance with the "Bundesentschaedigungsgesetz" (Federal Restitution Law) as compensation for his having been forced to surrender shares of stock in the Vereinigte Stahlwerke (United Steel Works) to the Nazi government in 1937 as security for the "Reich escape tax" which was imposed on Jewish citizens wishing to emigrate from Germany at that time. The record indicates that these shares of stock in turn represented the consideration nominally or purportedly paid to him by the Otto Wolff firm for his shareholder interest in the Thale concern.

Section 605 of the Act provides:

"In determining the amount of any claim, the Commission shall deduct all amounts the claimant has received from any source on account of the same loss or losses. . ."

Claimant ALBERT OTTEN asserts in the above-cited letters that the payments previously received by him in connection with his former shareholder interest in the Thale concern are not related to his claim against the German Democratic Republic for the loss of his remaining beneficial interest in the concern through nationalization in 1947. Having reviewed the record, however, the Commission concludes that the payments are in fact related to the present claim, since, insofar as can be discerned from the record, both payments were made for the purpose of restoring to him a portion of the ownership interest in the Thale concern which, but for the forced sale to Otto Wolff, he would have continued to hold after 1936. In other words, through his receipt of these payments, the value of his beneficial interest in the Thale concern at the time of its nationalization in 1947

G-0261
G-3855

deducted from the figure of approximately 13,557,000 marks which would have represented the value of the firm's 51.56% beneficial shareholder interest in the Thale concern when it was nationalized in 1947.

Based upon the foregoing, and having considered the entire record, the Commission finds that as of the date of loss of September 23, 1947, the beneficial shareholder interest in the Thale concern owned by Aquila-Adlergruppe had a value of \$2,227,000.00. For the one-fourth portion of that interest for which she is entitled to claim, claimant HANNAH SINAUER is accordingly entitled to an award of \$556,750.00.

With respect to the real property assertedly owned by the Aquila-Adlergruppe firm for which claimant HANNAH SINAUER has asserted a separate claim, the Commission notes that her claim was not filed until November 16, 1978, well after the filing deadline established under the terms of the present Act. While the timely filing of claimant ALBERT OTTEN's claim for the Thale concern has enabled the Commission to consider her claim for that property, none of these other parcels of property is the subject of any other claim against the German Democratic Republic which was timely filed with the Commission.

The Commission must therefore conclude that it is without authority under the Act to consider the present claim for the loss of these parcels of property. This portion of the claim must accordingly be and it is hereby denied.

The Commission has concluded that in granting awards on claims under section 602 of Title VI of the Act, for the nationalization or other taking of property or interests therein, interest shall be allowed at the rate of 6% per annum from the date of loss to the date of settlement. (Claim of GEORGE L. ROSENBLATT, Claim No. G-0030, Decision No. G-0100 (1978)).

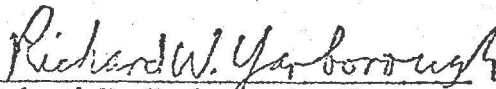
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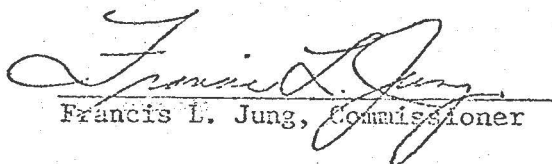
Claimant, ALBERT OTTEN, is therefore entitled to an award in the amount of Eight Hundred Three Thousand Dollars (\$803,000.00), plus interest at the rate of 6% simple interest per annum from September 23, 1947 until the date of the conclusion of an agreement for payment of such claims by the German Democratic Republic.

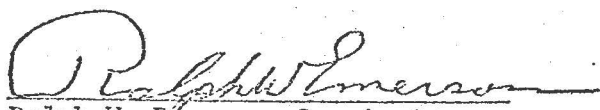
Claimant, HANNAH SINAUER, is therefore entitled to an award in the amount of Five Hundred Fifty-Six Thousand Seven Hundred Fifty Dollars (\$556,750.00), plus interest at the rate of 6% simple interest per annum from September 23, 1947 until the date of the conclusion of an agreement for payment of such claims by the German Democratic Republic.

Dated at Washington, D.C.
and entered as the Proposed
Decision of the Commission.

FEB 25 1981


Richard W. Yarborough, Chairman


Francis L. Jung, Commissioner


Ralph W. Emerson, Commissioner

NOTICE: Pursuant to the Regulations of the Commission, if no objections are filed within 15 days after service or receipt of notice of this Proposed Decision, the decision will be entered as the Final Decision of the Commission upon the expiration of 30 days after such service or receipt of notice, unless the Commission otherwise orders. (FCSC Reg., 45 C.F.R. 531.5 (e) and (g), as amended.)

G-0261
G-3855