

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

IN THE MATTER OF THE CLAIM OF

OTTO H. LEHMANN
MAY E. BOESE

Claim No. G-0289

Decision No. G-3294

Under the International Claims Settlement
Act of 1949, as amended

Hearing on the Record held on MAY 13 1981

FINAL DECISION

This claim in the amount of \$4,244,859.00 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), is based upon the loss of five pieces of real property in Berlin located at Schoenfliesserstrasse 5 and 11, Parkstrasse 40, Prinzenstrasse 47 and Schoenhauser Allee 158; a farm known as Hartensford in Brandenburg; certain furniture and other personal property; and certain mortgages.

In its Proposed Decision dated February 25, 1981, the Commission granted claimants awards in the following amounts, plus interest, for losses under Public Law 94-542: OTTO H. LEHMANN - \$200,038.37; MAY E. BOESE - \$14,724.00; a consolidated award in which OTTO H. LEHMANN and MAY E. BOESE shared to the extent of one-half each - \$192,000.00.

A portion of the claim based upon personal property taken by Soviet troops on July 23, 1945 was denied because such taking was not the result of a nationalization or other taking for which the German Democratic Republic could be held responsible.

A portion of the claim based upon the loss of income from real property, for which an award was granted in the Proposed Decision, was denied for the reason that after the date of taking by the German Democratic Republic, the claimants no longer were entitled to income from the property taken, since they were no longer considered the owners of the property. The value of the property found by the Commission was intended to represent the actual market value of the property at the time of loss. Interest was awarded from the date of loss to the date of an agreement providing funds for the payment on the awards to compensate for the failure of the German Democratic Republic to pay prompt and effective compensation at the time of taking.

Claimant OTTO H. LEHMANN filed objections to the Proposed Decision on the following grounds:

1. The use of a conversion factor of 4.2 ostmarks equal to one dollar does not protect awardees from the loss of value due to inflation.

2. That accepting a cash award for losses under Public Law 94-542 may prevent former owners or their descendants from regaining their property in the event of a reunification of Germany.

3. That the values found by the Commission in the Proposed Decision for the real property at Schoenfliesserstrasse 5 and 11, Parkstrasse 40, Schoenhauser Allee 158 were too low.

4. That the value of the properties should include payments made in 1942 for house redemption taxes.

With respect to claimants' objection to the use of 4.2 ostmarks equal to one United States dollar for determining the dollar value of property at the time of taking by the German Democratic Republic, the Commission finds that the fact the dollar, or for that matter any currency, has less purchasing power due to economic conditions in the country issuing the currency and the world is not a loss cognizable under international law nor was it the intent of Congress in establishing the instant claims program for losses in the German Democratic Republic, including East Berlin to indemnify United States nationals for any losses resulting from changes in the relative value of world currencies.

As to the fact that awards granted by the Commission are based upon the finding that an ownership interest in property has been taken by the German Democratic Republic or one of its agencies and that such finding may preclude the restoration of such property, the Commission can only note that the filing of a claim under Public Law 94-542 and the accepting of awards granted by the Commission is completely voluntary on the part of claimants. However, under international law, compensation for property losses can traditionally only be obtained by negotiations between sovereign states. There is no right of direct settlement between nationals of one country and the government of the offending nation. Accordingly, the present program established by Congress under Public Law 94-542 represents the only practical means for possible recovery for losses resulting from a nationalization or other taking of property in the German Democratic Republic, including East Berlin. Whether or not at some future date a change in policy in the German Democratic Republic might result in property rights being restored the United States nationals is a matter of pure speculation upon which the Commission neither has authority nor competence to comment.

Claimant OTTO H. LEHMANN has also objected to the values found for properties at Schoenfleisserstrasse 5 and 11, Parkstrasse 40 and Schoenhauser Allee 158 in East Berlin. Claimant bases his objection on a comparison of the values found by the Commission for the properties in question with the values he obtains by: 1) increasing the 1935 tax assessed value by 25% to reach what he terms the fair market price; 2) adding the value of the house tax redemption payment, which the Commission has held would have been completely amortized or used up by June 6, 1952, the date of taking by the German Democratic Republic, and which, accordingly, would have had no value at that time; 3) subtracting the value

of the outstanding mortgages to obtain what he refers to as a net value; and finally, 4) increasing the net value by 200%. No new evidence was submitted in support of the higher values claimed. The Commission has determined, having considered the fact that, in general, real property in Germany, similar to the properties in question, had tax assessed values in 1935 less than their fair market value and that there was a general increase in value of such property between 1935 and World War II and after World War II until the date of loss, based upon the percentage of increase in building costs in the Federal Republic of Germany, for which such statistics are available, that increasing the 1935 tax assessed values for property by a factor of 2 yields the reasonable and fair market value of properties of the type at Schoenfliesserstrasse 5 and 11, Parkstrasse 40 and Schoenhauser Allee 158, at the time of taking by the German Democratic Republic, less, of course, any outstanding mortgage interests against such properties. The Commission has carefully reviewed the record and claimant's calculation of values but finds that there is no basis for changing the values previously determined in the Proposed Decision.

Claimant MAY E. BOESE also filed objections to the Proposed Decision based upon the grounds that the Commission erred in finding in the Proposed Decision on this claim that OTTO H. LEHMANN had purchased from his father, Heinrich Lehmann, in 1948, the estate known as Hartensdorf for which OTTO H. LEHMANN received an award as the sole owner.

In support of her objections, MAY E. BOESE, through her son, Klaus Boese, submitted a copy of a partial letter dated September 8, 1980 to the Circuit Court in Tiergarten in West Berlin from OTTO H. LEHMANN in reference to the Estate of Heinrich Lehmann, Deceased, in which OTTO H. LEHMANN states that "Despite many years of efforts I was never able to execute the sales contract [for the purchase of the estate known as Hartensdorf] of December 20, 1948. . ."

Accordingly, the Commission now finds that OTTO H. LEHMANN did not acquire the sole ownership interest in the estate in question in 1948 by purchase, since formal transfer of title, which is required in order to convey real property interests, was never accomplished, but that rather the property passed with the estate of Heinrich Lehmann, upon his death on April 24, 1952, to his wife Selma Lehmann, and in turn, to OTTO H. LEHMANN and MAY E. BOESE in equal shares upon her death.

In view of the fact that Selma Lehmann held a mortgage on the estate known as Hartensdorf in the amount of 150,000 reichsmarks for which an award was granted in the Proposed Decision on this claim and since that mortgage would have merged with the real property at the time she succeeded to the property upon the death of Heinrich Lehmann, the award for the mortgage made in the Proposed Decision is hereby vacated, and the value of the estate will be accordingly increased.

Based upon the foregoing, the Commission now concludes that the estate known as Hartensdorf, including farmland, forests, improvements and farm equipment and other personal property taken on April 30, 1952 had a value of \$231,000 rather than \$200,000 as found in the Proposed Decision and that OTTO H. LEHMANN and MAY E. BOESE are entitled to share equally in a consolidated award in the total amount of \$387,000 as compensation under section 602 of the Act for the losses of their late mother, Selma Lehmann.

The Commission also finds that the value of the personal property acquired by OTTO H. LEHMANN upon the death of his father had a value of \$5,000 on April 30, 1952, the date of loss.

Full consideration having been given to claimants' objections it is ordered that: the awards be restated as set forth below; the Proposed Decision be affirmed in all other respects; and the foregoing be entered as the Commission's final determination on this matter.

A W A R D S

Claimant, MAY E. BOESE, is therefore entitled to an award in the amount of Fourteen Thousand Seven Hundred Twenty-Four Dollars (\$14,724.00), plus interest at the rate of 6% simple interest per annum from April 30, 1952 until the date of the conclusion of an agreement for payment of such claims by the German Democratic Republic;

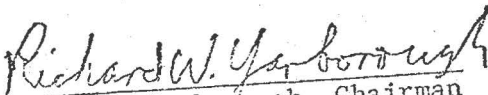
Claimant, OTTO H. LEHMANN, is therefore entitled to an award in the amount of Five Thousand Thirty-Eight Dollars and Thirty-Seven Cents (\$5,038.37), plus interest at the rate of 6% simple interest per annum from April 30, 1952 until the date of the conclusion of an agreement for payment of such claims by the German Democratic Republic; and,

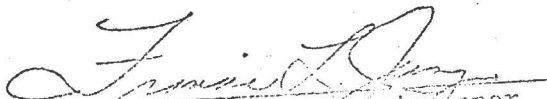
A consolidated award is made in the amount of Three Hundred Eight-Seven Thousand Dollars (\$387,000.00), with interest on \$156,000.00 from July 6, 1952 and interest on \$231,000.00 from April 30, 1952 until the date of the conclusion of an agreement for payment of such claims by the German Democratic Republic, as follows:

MAY E. BOESE	(1/2)	\$193,500.00
OTTO H. LEHMANN	(1/2)	\$193,500.00


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

MAY 13 1981


Richard W. Yarborough, Chairman


Francis L. Jung, Commissioner

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


Ralph W. Emerson, Commissioner


Executive Director

G-0289

FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
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IN THE MATTER OF THE CLAIM OF

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PROPOSED DECISION

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Claim forms were submitted by the claimants on behalf of OTTO H. LEHMANN for certain losses of property assertedly owned by him, by MAY E. BOESE for certain property assertedly owned by her, and by MAY E. BOESE and OTTO H. LEHMANN as heirs of the estate of Selma Lehmann. The claimants agree that they are entitled to share equally in any awards made to the estate of Selma Lehmann. Therefore the Commission will discuss its findings and conclusions separately as to the losses to the estate of Selma Lehmann, the losses of MAY E. BOESE, and the losses of OTTO H. LEHMANN. The Commission will issue separate awards to OTTO H. LEHMANN and MAY E. BOESE for their individual losses and will issue a consolidated award to MAY E. BOESE and OTTO H. LEHMANN based upon the claim they inherited from their mother, Selma Lehmann.

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. . ."

Before proceeding to a discussion of the individual claims, the Commission takes note of the extensive documentation provided by claimants in support of this claim. The Commission has conducted an independent investigation through its field office in Munich. The information received therefrom, with insignificant variations, confirms the information and assertions submitted by claimants. Limited information furnished by appropriate officials in the German Democratic Republic further confirms many of the assertions of claimants. The assertions made by claimants concerning such matters as the relationship between tax-assessed valuations of apartment houses and their actual value, the imposition in Germany of the advanced rental payment (Hauszinssteuer), and the effect of a mortgage which has been paid off but is retained in the property records, (Eigentümer Grundschulden) are all in accord with the Commission's understanding of these matters.

The Commission, however, can not accept claimants' basis for computing awards in dollars for the losses. Claimants point out correctly that the exchange rate between various forms of marks and dollars has varied over the years. Claimants therefore suggest that each mark valuation should be considered as a "gold mark" convertible into gold and in turn converted into the dollar value of that gold. The so-called "gold mark", a concept eliminated in both East and West Germany after World War II, was never a form of currency. Rather, it was a form of contractual terminology used in certain contracts and mortgages in an attempt to eliminate risks of inflation and devaluation of currency.

The currency in Germany whether, in the old mark, rentenmark, reichsmark, or Deutsche mark, had a value, as early as 1887, approximating 4.2 marks to the dollar which value held remarkably constant until World War I. After the stabilization of the German currency following the rampant inflation following World War I, the mark again returned to a value of approximately 4.2 marks to the dollar until 1933. With the advent of Nazism and the great depression, the par value of the mark was reduced in 1934 to approximately 2.5 marks to the dollar where it remained until 1945. However, at least by 1939 or 1940 the actual exchange rate at which American dollar bank transfers to Germany were converted to reichsmarks had returned to a figure approximating 4.2 marks to the dollar. During the immediate postwar period, due to the devastation of the Germany economy, the mark lost value as a medium of exchange until the currency conversions of 1948, whereafter the West German mark was again established at 4.2 marks to the dollar. It remained at this approximate exchange rate until the last decade when the West German Deutsche mark increased in value in relationship to the American dollar. The Commission has determined, for the purpose of its adjudications, that the German Democratic Republic Deutsche mark, referred to as an ostmark, had a value equal to the West German Deutsche mark. It has made this determination based on the continuous assertion by the German Democratic Republic that the East and West German mark are of equal value, although it could readily be argued that for practical purposes the ostmark had nowhere near the value of the West German Deutsche mark.

Based upon this analysis the Commission has determined that in valuing reichsmark and Deutsche mark valuations it will convert these valuations to dollars at the rate of 4.2 marks being equalled of one dollar.

Claim On Behalf Of The Estate Of Selma Lehmann

Selma Lehmann became a United States citizen on March 13, 1913. Her husband, Heinrich Lehmann, owned five pieces of real property in Berlin as herein above set forth. Upon the death of Heinrich Lehmann in April 1952, she inherited his interest in these five apartment houses. The record establishes that after Heinrich Lehmann's death all five pieces of property were put under administration by the City of Berlin pursuant to the decree of December 18, 1951 which required that foreign owned property be placed under government administration. Based upon documentation submitted as to some of the property, the Commission finds that the five apartment houses were taken on June 6, 1952.

The Commission has been provided with evidence concerning the tax assessed value of the five apartment houses, the postwar insurance valuation of three of the buildings, the number of rental units in the buildings, the monthly rentals provided by the buildings which survived the war, as well as the rental value of the property at Schoenhauser Allee 158 after it had been almost totally destroyed. The Commission has reviewed the valuations of the relative value of property at different locations in Berlin before World War II. It has considered the claimants' description of war damage, as well as records of West German authorities as to the extent of war damage. Losses caused by such war damage are not compensable under Public Law 94-542. The Commission has distinguished between those mortgages which were placed upon property for payment of the house tax, which credit was cancelled by the authorities in East Germany following World War II, mortgages which had been in fact paid off but were retained in the name of the owner, and an amortized mortgage which had not been fully paid off by the time the property was taken. In determining the amount of war damage, the Commission has also taken into consideration the assertions of claimant that substantial funds from postwar rentals were used to repair and rehabilitate certain of the structures. Based upon a consideration

of all of the above factors, the Commission determines that the following properties had the following values on the date of loss:

- | | |
|-----------------------------|-------------|
| 1. Schoenfliesserstrasse 5 | \$40,000.00 |
| 2. Schoenfliesserstrasse 11 | \$47,000.00 |
| 3. Parkstrasse 40 | \$32,000.00 |
| 4. Prinzenstrasse 47 | \$32,000.00 |
| 5. Schoenhauser Allee 158 | \$ 5,000.00 |

In addition, the evidence establishes that Selma Lehmann held a mortgage in the amount of RM 150,000 upon the estate known as Hartensdorf. This mortgage was also taken pursuant to the decree of September 6, 1951 by the German Democratic Republic. This was acknowledged by letter dated July 30, 1953 from officials of the German Democratic Republic. In the absence of specific evidence as to when this mortgage was put under administration, the Commission will presume this occurred on April 30, 1952 the date when the estate was put under government administration, and determines that on the date of loss this mortgage had a value of \$36,000.00.

Claim is also made by claimants on behalf of Selma Lehmann for the loss of personal property including jewelry and a fur coat. These items were lost on July 23, 1945 when a group of soldiers of the Soviet Union burst into the claimants' premises and robbed them of this personal property. Although the Commission considers such action as highly regrettable, it does not find this to be the basis, under international law, for imposing a liability upon the German Democratic Republic. Therefore this part of claimants claim must be and hereby is denied. In summary the Commission determines that Selma Lehmann suffered a compensable loss in the amount of \$192,000.00 and that claimants OTTO H. LEHMANN and MAY E. BOESE are entitled to share in a consolidated award for that amount.

Claim of MAY E. BOESE

MAY E. BOESE has been a United States citizen from birth on July 18, 1910. She inherited from her father furniture located on the Hartensdorf estate which was taken, as hereinafter discussed, on April 30, 1952. Claimant has described the furniture and asserts a value therefore in the amount of 21,800 marks which the Commission considers reasonable and therefore determines that claimant suffered a loss in the amount of \$5,200.00.

The evidence establishes that MAY E. BOESE owned a mortgage in the amount of RM 40,000 upon the estate known as Hartensdorf which was also effectively taken on April 30, 1952, for which she is entitled to an additional award of \$9,524.00.

In addition claimant makes claim for a number of items of jewelry and furs which were also stolen when the Soviet troops burst into the premises in 1945. This part of claimant's claim must be and hereby is denied for the same reasons set forth in relation to the claim of the estate of Selma Lehmann.

In summary the Commission determines that MAY E. BOESE is entitled to an award in the amount of \$14,724.00.

Claim of OTTO H. LEHMANN

The evidence of record establishes that OTTO H. LEHMANN acquired legal title to an estate of 419 hectares on December 20, 1948 by way of purchase from his father. OTTO H. LEHMANN had been a United States citizen since birth on June 17, 1918. The purchase price of the estate was in the amount of 240,000 marks and the assumption of certain mortgages. Documentation provided establishes that the estate, Hartensdorf, was taken on April 30, 1952. The Commission notes that all estates over 100 hectares were normally taken as of late 1945 by the authorities in what is presently the German Democratic Republic. Claimant, however, has provided documentation establishing that this was not the case with this particular estate. In fact, a lease agreement as to approximately 187 hectares of land with payment of 10,000 marks per year had been entered with local authorities. Claimant has also provided a copy of the notice putting the property under administration as of April 30, 1952.

In valuing this estate, the Commission has taken into consideration the tax assessed and Hektarsatz values for the area. The Commission's general information concerning the tax assessed value of agricultural property confirms the assertion of claimant that the tax assessed value of agricultural property was substantially below its actual market value. The Commission has reviewed extensive studies carried out in the Federal Republic of Germany comparing tax assessed value of farm property with actual sale prices. Claimant has also forwarded appraisals of forestry land which was also included within the estate. Based upon the entire record, the Commission determines that the agricultural and forest property had a value, after deduction for the mortgages held by Selma Lehmann and MAY E. BOESE and an amortized mortgage with a balance of approximately 49,600, of \$160,000.00. The Commission has reviewed pictures and descriptions of the buildings upon the estate and considered the tax assessed value on the buildings and the fire insurance value, and determines that the buildings and personal property of claimant therein had a value of \$35,000.00. In addition claimant suffered the loss of farm equipment in the amount of \$5,000.00. Therefore the Commission finds that claimant OTTO H. LEHMANN is entitled to an award in the total amount of \$200,000.00 for the loss of Hartensdorf, its buildings and implements.

Claimant acquired from his father three reichsmark bank accounts with a total balance of RM 1,611.62. These accounts were also taken on September 30, 1952. The prewar reichsmark accounts would have been subject to the 1948 currency conversion in the German Democratic Republic and would have been converted into accounts totalling 161.16 ostmarks with a value of \$38.37. Therefore claimant is entitled to an additional award in this amount.

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)).

The Commission notes that claimants also assert claim for the loss of income from the various pieces of property from the date they were taken until the present time. As herein above set forth, the Commission has found that the various properties for which claim is made were taken by the German Democratic Republic and has made an award based upon its evaluation of the value of the property at that time. The property having been taken by the German Democratic Republic, that government is thereafter entitled to any income produced by the property after the date the property was expropriated. Therefore, this part of claimants claim must be and hereby is denied.

A W A R D S

Claimant, MAY E. BOESE, is therefore entitled to an award in the amount of Fourteen Thousand Seven Hundred Twenty-Four Dollars (\$14,724.00), plus interest at the rate of 6% simple interest per annum from April 30, 1952 until the date of the conclusion of an agreement for payment of such claims by the German Democratic Republic.

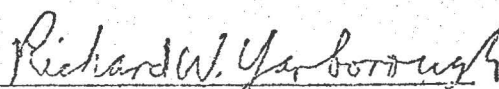
Claimant, OTTO H. LEHMANN, is therefore entitled to an award in the amount of Two Hundred Thousand Thirty-Eight Dollars and Thirty-Seven Cents (\$200,038.37), plus interest at the rate of 6% simple interest per annum from April 30, 1952 until the date of the conclusion of an agreement for payment of such claims by the German Democratic Republic.

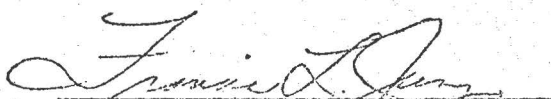
A consolidated award is made in the amount of One Hundred Ninety-Two Thousand Dollars (\$192,000.00) with interest on \$156,000.00 from July 6, 1952, and interest on \$36,000.00 from April 30, 1952 until the date of the conclusion of an agreement for payment of such claims by the German Democratic Republic, as follows:

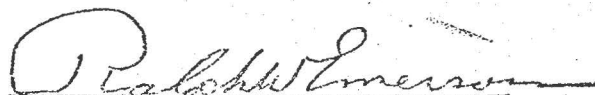
MAY E. BOESE	(1/2)	\$96,000.00
OTTO H. LEHMANN	(1/2)	\$96,000.00

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.)