

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

IN THE MATTER OF THE CLAIM OF

ERIC G. KAUFMAN

Under the International Claims Settlement
Act of 1949, as amended

Claim No. G-0457

Decision No. G-2982

Oral Hearing Held on April 23, at 2:00 p.m.

FINAL DECISION

This claim in the amount of \$1,272,393.00 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 improved and unimproved real property in East Berlin, unimproved real property in Belzig, a right of preemption on property in East Berlin, two mortgages, securities, and claims against debtors in the German Democratic Republic.

By Proposed Decision dated January 21, 1981, the Commission granted claimant an award of \$182,950.00 for the loss of eight pieces of real property in East Berlin and the German Democratic Republic. Claimant objected to the Proposed Decision on the grounds that the valuations were incorrect insofar as invalid mortgages had been subtracted from the values of the property; that the land had been undervalued; and that incorrect multipliers had been used in appreciating the property.

At the oral hearing held at the Commission's offices on April 23, 1981, the claimant appeared and provided evidence that only some of the mortgages subtracted by the Commission from the value of his properties were valid mortgages at the time the property was lost under duress during the Nazi regime. As the documentation supported claimant's contentions, the Commission agreed to modify the values with respect to the mortgages. Claimant further argued that, with respect to property at Muenzstrasse 21/23 in East Berlin, the remaining building and the land had a greater value than what the Commission had previously found. With respect to property at Heilige Geiststrasse in Berlin, claimant argued that the building on the property, which had been destroyed during the war, had been over 200 years old and had relatively little value compared to the plot of land. Accordingly, the Commission agreed that the value of the land was worth more than the value that had been awarded. Claimant also objected to the use of a multiplier of 1.5 to appreciate certain of the properties and asserted that the multiplier of 2 should uniformly be used.

Based upon the documentation submitted and the arguments presented at the oral hearing, the Commission determines that the subject properties in East Berlin and the German Democratic Republic had the following values on the date of loss:

1. Muenzstrasse 21/23, East Berlin: \$164,307
2. Heilige Geiststrasse 17/18, East Berlin: \$24,380
3. Frankfurter Allee 30, East Berlin: \$36,726
4. Hasselwerderstrasse 7, East Berlin: \$4,000 (no change)
5. Invalidenstrasse 14, East Berlin: \$22,749
6. Goerschstrasse 15, 16, 17, 29, 31 and Rettigweg 28-30, East Berlin: \$40,000 (no change)
7. Britzerstrasse 5, East Berlin \$1,450
8. Unimproved property, Weizgrunderweg, Belzig: \$450.

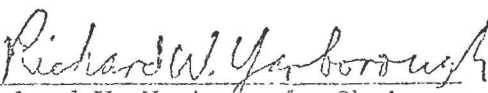
Accordingly, the Commission withdraws its previous award and issues a new award to ERIC G. KAUFMAN in the total amount of \$294,062, as its final determination on this claim.

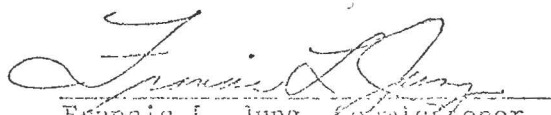
A W A R D

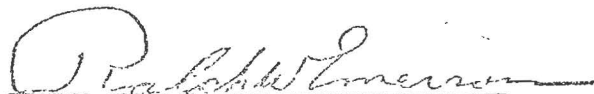
Claimant, ERIC G. KAUFMAN, is therefore entitled to an award in the amount of Two Hundred Ninty-Four Thousand Sixty-Two Dollars (\$294,062.00), with interest on \$40,000.00 from August 25, 1947, interest on \$450.00 from September 6, 1951, and interest on \$253,612.00 from December 18, 1951, until the 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 Final
Decision of the Commission.

MAY 6 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 6 1981


Executive Director

G-0457

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

IN THE MATTER OF THE CLAIM OF

ERIC G. KAUFMAN

Under the International Claims Settlement
Act of 1949, as amended

Claim No. G-0457

Decision No. G-2982

PROPOSED DECISION

This claim in the amount of \$1,272,939.00 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 improved and unimproved real property in East Berlin, unimproved real property in Belzig, a right of preemption on property in East Berlin, two mortgages, securities, and claims against debtors in the German Democratic Republic.

The record indicates that claimant became a United States citizen on August 17, 1944.

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. . ."

Section 603 of Title VI 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."

The evidence of record in this claim includes the materials submitted and the decisions issued under Title II of the War Claims Act of 1948, in file W-7460. The decision issued in the War Claims Program establishes that claimant had been the owner of improved real property at Muenzstrasse 21/23, Heilige Geiststrasse 17/18, and Frankfurter Allee 30 in Berlin, and had owned a 2/3 interest in property at Hasselwerderstrasse 7, also in Berlin. The Commission found in the War Claims Program that damage had occurred to the improvements on the above properties, and claimant was compensated for the destruction to his property.

Based upon materials contained in the War Claims file, as well as documentation newly submitted by the claimant, the Commission finds that he was the owner of improved real property at Invalidenstrasse 14 in East Berlin and unimproved lots at Goerschstrasse 15, 16, 17, 29, 31 and Rettigweg 28 and 30 in East Berlin. The Commission further finds that claimant inherited an interest in unimproved property at Britzerstrasse 5 in East Berlin and at Weizgrunder Weg in Belzig, German Democratic Republic.

With respect to the unimproved lot at Britzerstrasse 5, the evidence of record indicates that claimant's father had owned a 50% interest in this property. When claimant's father died in 1913, claimant inherited one-third of his estate, or a one-sixth interest in the property. Another one-third interest in the property was inherited by claimant's sister, a non-United States citizen who is not a claimant herein. The last one-third interest in the estate of claimant's father passed to claimant's mother who died in 1963, never having become a United States citizen. With respect to the unimproved property in Belzig, the evidence indicates that claimant's mother and father owned this property in equal shares. Accordingly, claimant inherited a one-sixth interest in this property upon his father's death in 1913.

The record in this claim indicates that legal title to the subject property was originally lost during the Nazi regime as a result of racial and religious persecution. The Commission has

held in the Claim of MARTHA TACHAU, Claim No. G-0177, Decision No. G-1071, that such persecutory losses will not be considered by the Commission to have cut off all rights of the original owners or their heirs, and that the persecuted owners retained a beneficial interest in the property.

Documentation submitted by claimant, including an extract from the land registry of East Berlin, establishes that the unimproved lots at Goerschstrasse 15, 16, 17, 29, 31 and Rettigweg 28/30 were taken by the authorities in the eastern sector of Berlin as of August 25, 1947. The Commission accordingly finds that claimant is entitled to an award for the loss of this property as of that date.

With respect to the other pieces of improved and unimproved property, the Commission has held in the Claim of MARK PRICEMAN, Claim No. G-2116, Decision No. G-1073, that decrees of September 6, 1951, effective in the German Democratic Republic, and December 18, 1951, effective in Berlin, which provided for the taking over of the administration of foreign owned property, constituted a governmental program which terminated all rights of restitution of former persecutees or their heirs. The Commission found such a termination of rights to be a taking of the property interests of such persons; and, where the property interests were owned by United States nationals at the time of loss, the termination of rights would form the basis of a compensable claim. The Commission therefore finds that the beneficial interests in the property in East Berlin were taken by the German Democratic Republic on December 18, 1951, and that the beneficial interest in the unimproved property in Belzig was taken by the German Democratic Republic on September 6, 1951.

At the time of the taking of the unimproved lots at Britzerstrasse 5 in East Berlin and at Weizgunder Weg at Belzig, claimant's mother, who owned interests in both of those properties, was not a United States citizen. Accordingly, the loss of the interests in the property which claimant inherited from his mother in 1963 is not compensable under section 603 of the Act. The Commission

therefore finds that only the one-sixth interests originally inherited from claimant's father in the two properties are compensable. Furthermore, a one-third interest in the property at Hasselwerderstrasse 7 which had been owned by claimant's mother, and which passed to claimant upon her death in 1963, is not compensable under the Act.

With respect to the four pieces of real property in East Berlin for which claimant received compensation under the War Claims program, the Commission has considered the values established for those properties in the previous program, tax assessed values, evidence of mortgages encumbering the properties, and the general increase in land values in Europe. With respect to the property at Muenzstrasse 21/23, the Commission finds that claimant's equity in the remaining building and land had a value on December 18, 1951 of \$100,100.00. With respect to the remaining land at Heilige Geiststrasse 17/18, the Commission finds that the equity in the remaining land had a value of \$7,300.00 on the date of taking. With respect to the remaining land at Frankfurter Allee 30, the Commission finds that claimant's equity in this property totalled \$20,000.00 on December 18, 1951. With respect to the property at Hasselwerderstrasse 7 in East Berlin, there was no evidence of mortgages encumbering this property. Accordingly, claimant's two-third interest in the remaining land had a value of \$4,000.00 on December 18, 1951.

With respect to the property at Invalidenstrasse 14, the evidence of record establishes that the building at this address was totally destroyed during World War II. As the destruction of this property occurred before claimant became a United States citizen, he was not compensated for this loss under the War Claims program. Since war damage is not compensable under Public Law 94-542, the Commission is authorized to grant awards only for that property actually surviving the War and taken by the German Democratic Republic. Accordingly, taking into account the tax assessed value, evidence of the value of the land at Invalidenstrasse 14, mortgages encumbering the property, and the general increase

in land values in Europe, the Commission finds that claimant's equity in the subject property totalled \$10,000.00 on December 18, 1951.

With respect to the unimproved lots at Goerschstrasse 15, 16, 17, 29, 31 and Rettigweg 28/30 in East Berlin, the Commission has taken into account the total size of the lots as registered in the land registry and the value indicated for land at those addresses and finds that they had a value of \$40,000.00 on August 25, 1947. With respect to the unimproved lot at Britzerstrasse 5 in East Berlin, the Commission finds that claimant's one-sixth interest in this property totalled \$1,100.00 on December 18, 1951. The Commission further finds that claimant's one-sixth interest in the unimproved property at Weizgrunder Weg in Belzig had a value of \$450.00 on September 6, 1951.

Accordingly, the Commission finds that the total value of the property taken by the German Democratic Republic was \$182,950.00. The claimant is entitled to an award for this loss under section 602 of the Act.

Claimant asserted the loss of a right of preemption to property located at Warschauerstrasse 2 in East Berlin. Claimant indicated that he had originally bought this lot in conjunction with the lot at Frankfurter Allee 30, located at the corner of Warschauerstrasse 1. As a result of subsequent litigation arising out of a dispute about the title to the two properties, claimant retained title to the property at Frankfurter Allee 30 but returned the property at Warschauerstrasse 2 to the former owner. In exchange, claimant received a right of preemption to the Warschauerstrasse 2 property, which was registered in the Berlin land registry. The Commission recognizes that the right of preemption owned by the claimant constitutes a property right which claimant lost when his properties were taken under the Nazi regime. However, any value placed upon the right of preemption is a speculative one. Claimant's own assertions as to the value of the right were based upon his original purchase price for the two lots at Frankfurter Allee 30 and Warschauerstrasse 2 as well as litigation costs. These costs, however, do not constitute the value of a right of

preemption which was never exercised. Accordingly, the Commission finds that since the value of the right of preemption is entirely speculative, this portion of the claim must be and hereby is denied. The Commission does recognize, however, that the right did have a value to the claimant and might have made the property at Frankfurter Allee 30/Warschauerstrasse 1 more valuable. Accordingly, the increase in the value to the Frankfurter Allee 30 property was taken into account in the Commission's calculation of its value, above.

Claimant asserted the loss of mortgages he held on his own property at Muenzstrasse 21/23 and Invalidenstrasse 14 in East Berlin. The mortgages on those two properties which were taken into account by the Commission did not include the mortgages held by the claimant himself. Accordingly, the Commission finds that title to those two properties and title to the mortgages were merged at the time the properties were taken by the German Democratic Republic. Claimant therefore is not entitled to a separate award for those mortgages and this portion of the claim must be and hereby is denied.

Claimant also asserted the loss of shares in Schesische Bergwerk Beuthen A.G., a company located in what is now Poland. As there is no evidence of action taken against this company by the Government of the German Democratic Republic after World War II, this portion of the claim must be and hereby is denied.

This claim also involves the loss of bonds issued by the Government of Province of Saxony, the Province of Pommerania, and the city of Danzig. The Commission has previously held in the Claim of RUFUS M. ULLMAN, Claim No. G-0018, Decision No. G-0205, that it is a well-established principle of international law, which this Commission has affirmed in past claims programs, that mere non-payment of a debt owed by a foreign government does not constitute a nationalization or other taking of property under international law, as required for compensation by section 602 of the Act. The file contains no evidence of any repudiation, annulment, or cancelation of the bonds formerly owned by the claimant. The Commission, moreover, has reviewed the laws,

regulations and decrees of the German Democratic Republic since the end of World War II, and finds no such repudiation, annulment or cancelation of bond obligations by the German Democratic Republic. Accordingly, the Commission finds that this portion of the claim must be and hereby is denied.

Claimant also asserted the loss of claims against debtors in the German Democratic Republic. One of his claims was against a furniture dealer in East Berlin for the illegal occupation of part of claimant's property. The Commission finds that such a claim against a private individual does not indicate any taking of a property right by the government of the German Democratic Republic, as required for compensation under the Act. Accordingly this portion of the claim is denied. Another claim against the German Democratic Republic involves a claim against a tax collection office of the city of Berlin for recovery of a tax security deposit of 10,000 reichsmarks. The Commission finds that there is no evidence of the existence of a tax security deposit, its survival of World War II, or its taking by the German Democratic Republic. Accordingly, this portion of the claim must also be denied. The third claim against a debtor in the German Democratic Republic involves a claim against the city of Berlin under a contract to restore damage which occurred when city authorities built a subway under claimant's property at Muenzstrasse 21/23. The building at Muenzstrasse 21/23, however, was destroyed during World War II. Accordingly, any question of damage to the building or its foundation became moot at the time of its destruction. Furthermore, as the claim was still being litigated at the time claimant lost his rights under the Nazi regime, the damages incurred because of the subway construction would be speculative. Accordingly, this portion of the claim must be and hereby is 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)).

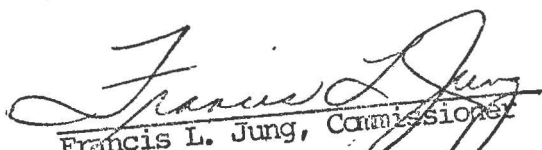
A W A R D

Claimant, ERIC G. KAUFMAN, is therefore entitled to an award in the amount of One Hundred Eighty-Two Thousand Nine Hundred Fifty Dollars (\$182,950.00), with interest on \$40,000.00 from August 25, 1947, interest on \$450.00 from September 6, 1951, and interest on \$142,500.00 from December 18, 1951, 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.

JAN 21 1981


Richard W. Yarborough, Chairman


Francis L. Jung, 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.)