

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

IN THE MATTER OF THE CLAIM OF

LARRY LUBIN

Under the International Claims Settlement
Act of 1949, as amended

Claim No. G-0704

Decision No. G-1627

Counsel for claimant:

Erda and Leichter

PROPOSED DECISION

This claim in the amount of 380,000 Reichsmarks 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 real property, a pharmacy, and an apothecary privilege, all of which losses arose in Berlin.

The record indicates that claimant became a United States citizen on October 9, 1943. The record also indicates that claimant is heir to one-half of the estate of his father, Martin Lubinski, a German national who died during World War II.

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 establishes that claimant's father and predecessor in interest, Martin Lubinski, purchased in 1927 the "Kronen-Apotheke," a pharmacy located at Friedrichstrasse 160, in Berlin. Included in the purchase was the pharmacy's stock and trade,

equipment, moveable assets, trade rights, outstanding contracts, and the apothecary privilege. The evidence 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.

Claimant originally included the loss of the real property at Friedrichstrasse 160 in his Statement of Claim. The evidence of record, however, including a report from the Commission's field office in West Germany, indicates that Martin Lubinski never owned this property. Similarly, the record contains no evidence that Martin Lubinski had a leasehold on Friedrichstrasse 160. Thus, claimant did not have a beneficial interest in the real property that could have been taken by the German Democratic Republic. This part of the claim, therefore, must be denied.

The record indicates that the pharmacy was severely damaged in an air raid on June 21, 1944, in which the building at Friedrichstrasse 160 was almost totally burned out. No evidence has been submitted to establish that any of the assets of the pharmacy lost by Martin Lubinski during the Nazi era survived World War II and were taken over thereafter by the German Democratic Republic. The part of this claim based upon the loss of the pharmacy itself, therefore, must also be denied.

The apothecary privilege, however, was recorded in the Grundbuch for Berlin-Mitte. The record includes a letter from the attorney, Dr. Siegfried Kurt Jacob, dated October 9, 1946, indicating that the privilege was still registered at that time in the names of August Tuechert, who purchased the pharmacy by way of sale under duress during the Nazi era, and his son, Guenther. As the heir of Martin Lubinski, therefore, claimant retained a beneficial interest in the apothecary privilege. In the "Decree on the Rearrangement of the Pharmacy System," issued by the German Economic Commission on June 22, 1949, all apothecary privileges

were abolished within the territory of the German Democratic Republic. The decree stipulated that claims for compensation could be filed by those persons whose privileges were abolished. The decree made no provision, however, for the filing of claims by or compensation for persecutees or their heirs, whose apothecary privileges were originally lost as a result of discriminatory measures during the Nazi era.

Section 601(3) of the Act provides that:

"As used in this title- The term 'property' means any property, right, or interest, including any leasehold interest, and debts owed by enterprises which have been nationalized, expropriated, or taken by the German Democratic Republic for which no restoration or no adequate compensation has been made to the former owners of such property."

The record indicates that a considerable portion of the 1927 contract price, under which Martin Lubinski acquired the "Kronen-Apotheke," covered the purchase of the apothecary privilege. The record also indicates that August Tuechert, who purchased the pharmacy by way of the duress transaction in 1939, paid a considerable sum for the apothecary privilege. Martin Lubinski did not receive any of the money. As aforementioned, the apothecary privilege was recorded in the land register and extinguished pursuant to the 1949 "Decree on the Rearrangement of the Pharmacy System." This decree did not afford persecutees, who had originally lost apothecary privileges as a result of discriminatory measures during the Nazi era, the right of compensation.

Based upon the foregoing, the Commission concludes that the beneficial interest in the apothecary privilege involved herein constitutes a "right or interest. . . taken by the German Democratic Republic for which no restoration or no adequate compensation has been made to the former owners," as defined by section 601(3) of the Act. The Commission concludes, therefore, that the apothecary privilege has been taken within the meaning of section 602 of the Act, and that the date of taking was June 22, 1949, when the "Decree on the Rearrangement of the Pharmacy System" was issued in the German Democratic Republic.

The Commission's knowledge of apothecary privileges in Germany indicates that their value bore a direct relation to the volume of business carried on by the pharmacy. The record in this claim, however, shows that the "Kronen-Apotheke" was gutted by fire during an air raid on Berlin in 1944. Although the evidence indicates that the pharmacy may have been reopened, no evidence has been submitted as to the volume of business during the postwar years. The record is insufficient, therefore, for the Commission to determine the actual value of the privilege after World War II.

The aforementioned 1949 "Decree on the Rearrangement of the Pharmacy System," however, stipulated that compensation was to be paid citizens of the German Democratic Republic whose apothecary privileges were extinguished. The amount of compensation was regulated by a subsequent decree issued on December 23, 1954, which provided for indemnification in ostmarks at 50% of the pharmacy's average sales volume in reichsmarks for the years 1936, 1937 and 1938. The Commission determines, therefore, that claimant is entitled to an award in the amount he would have been compensated under the 1954 law, if that law had not been restricted to the indemnification of GDR citizens.

The record in this claim includes a copy of an August 1936 contract whereby Martin Lubinski leased the "Kronen-Apotheke" to its subsequent purchaser, August Tuechert. The contract price was based on, among other factors, the average annual sales volume of the previous three years - a figure of 181,102 reichsmarks. In the absence of additional evidence of the pharmacy's business operations after its lease to August Tuechert, the Commission considers it reasonable to assume that the average annual sales volume for the years 1936, 1937 and 1938 was about the same as it was for the three years prior to the lease. The Commission determines that this figure was approximately 180,000 reichsmarks. Under the compensation law of the German Democratic Republic, therefore, the amount of indemnification for the apothecary privilege involved herein should have been 50% of 180,000 or 90,000 ostmarks.

Based on world currency charts and the Commission's knowledge of foreign exchange practices in the German Democratic Republic, the Commission finds that 4.2 ostmarks equaled one dollar during the 1950's, when compensation was made available to GDR citizens. The Commission determines, therefore, that the apothecary privilege, within the context of the GDR compensation law, had a value of \$21,428.57. For his one-half interest therein, claimant is entitled to an award of \$10,714.29.

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)).

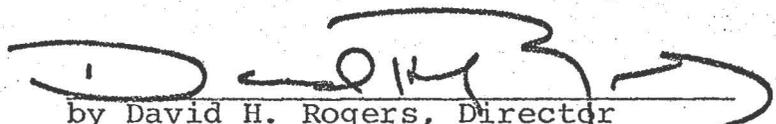
A W A R D

Claimant, LARRY LUBIN, is therefore entitled to an award in the amount of Ten Thousand Seven Hundred Fourteen Dollars and Twenty-nine Cents (\$10,714.29), plus interest at the rate of 6% simple interest per annum from June 22, 1949 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.

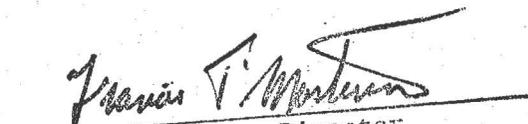
JAN 16 1980

For Presentation to the Commission



by David H. Rogers, Director
German Democratic Republic Claims
Division

This is a true and correct copy of the decision
of the Commission which was entered as the final
decision on SEP 10 1980


Executive Director

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, a Final Decision based upon the Proposed Decision will be issued upon approval by the Commission any time after the expiration of the 30 day period following such service or receipt of notice. (FCSC Reg., 45 C.F.R. 531.5(e) and (g), as amended.)