

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

IN THE MATTER OF THE CLAIM OF

BENNO JANSON
JOHN JANSON

Under the International Claims Settlement
Act of 1949, as amended

Claim No. G-0770
G-1823

Decision No. G-2652

Hearing on the Record held on APR 15 1981

FINAL DECISION

These claims in unstated amounts 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 apartment buildings located at Markgrafendamm 33 and 35 in East Berlin.

In its Proposed Decision, issued on October 8, 1980, the Commission granted claimant BENNO JANSON an award of \$4,166.67 for a 1/6 interest in the subject property at Markgrafendamm 35, which the Commission determined had a total equitable value of \$25,000.00 at the time of taking by the German Democratic Republic in 1951. The Commission also found that claimant JOHN JANSON had a 1/6 interest in this property, but granted him no award since he was not a United States national on the date of taking by the German Democratic Republic--which the Commission determined to be December 18, 1951--as required for compensation under the Act. No award was granted to either claimant for the subject property at Markgrafendamm 33 since the Commission found that the claimants had failed to establish their inheritance rights in conformance with the laws and regulations of the German Democratic Republic. The Commission held that the resulting transfer of

administrative duties to the VEB Communal Housing Administration of Berlin-Friedrichshain on January 1, 1970 did not constitute a loss that would be compensable under Public Law 94-542.

Objection has been filed against that portion of the Proposed Decision denying the claim for the property at Markgrafendamm 33. The claimants assert that they made numerous attempts to establish their inheritance rights with authorities in East Berlin, but that they were unable to do so because of the lack of cooperation on the part of such officials.

The record establishes that the East Berlin attorney, Georg Prickler, was appointed by the State Notary Office in 1957 to serve as executor of the estate of Flora Rosenthal, the claimants' predecessor in interest, which included the subject property at Markgrafendamm 33. The evidence includes a letter from Mr. Prickler to claimant BENNO JANSON, dated August 21, 1968, indicating that he had written to the claimants' attorney in West Berlin in 1959 outlining the requirements for establishing inheritance rights, but had received no reply. He advised Mr. Jansen to apply for a certificate of inheritance at the State Notary Office in East Berlin and indicated that the subject property would be turned over to the VEB Communal Housing Administration of Berlin-Friedrichshain if inheritance rights were not established by December 31, 1968. In a subsequent letter to the claimants' attorney in West Berlin, dated January 18, 1973, Georg Prickler asserted that the required evidence of inheritance had not been received and indicated that administration of the subject property at Markgrafendamm 33 had been turned over to the aforementioned Communal Housing Administration on January 1, 1970.

The claimants have submitted new evidence, in the form of a letter dated November 5, 1968 from their West Berlin attorney to Georg Prickler in East Berlin, indicating that West Berlin claims authorities would forward the necessary evidence of inheritance to the appropriate State Notary Office in East Berlin. Based upon this new evidence and the claimants' assertions that there were continual efforts over the years to comply with the inheritance regulations of the German Democratic Republic, the Commission

concludes that the responsibility for the claimants' failure to establish their ownership rights in the property at Markgrafendamm 33 rests with officials of the German Democratic Republic. Accordingly, the Commission finds that the transfer of administration to the VEB Communal Housing Administration of Berlin-Friedrichshain on January 1, 1970 and the subsequent lack of any communication from this governmental organ constitutes a taking of the subject property within the meaning of section 602 of the Act. Since both of the instant claimants were United States citizens by 1970, they are each entitled to awards under the statute.

In determining the value of the property at Markgrafendamm 33, the Commission has considered such evidence as the type of building involved, the size of the lot, and the value previously determined for the adjoining property at Markgrafendamm 35. The record indicates that the subject building was a 46-unit, mixed-use structure that did not sustain any significant damage during World War II. The record indicates that the property was encumbered by a prewar mortgage of 75,000 reichsmarks, and there is no evidence that this mortgage was paid off prior to the taking by the German Democratic Republic in 1970. Based upon the entire record, the Commission determines that the property at Markgrafendamm 33 had an equitable value of \$50,000.00 at the time of its taking by the German Democratic Republic in 1970. Each of the claimants had a 1/6 interest therein worth \$8,333.33.

Claimant JOHN JANSON is therefore entitled to an award of \$8,333.33 for the loss of his 1/6 interest in the property at Markgrafendamm 33. Claimant BENNO JANSON is entitled to an award of \$8,333.33 for his 1/6 interest in this property, plus \$4,166.67 for his 1/6 interest in the property at Markgrafendamm 35. The Commission therefore withdraws its award to BENNO JANSON of \$4,166.67 in the Proposed Decision and hereby grants the said claimant an award in the total amount of \$12,500.00 for the loss of his 1/6 interests in the subject properties at Markgrafendamm 33 and 35.

A W A R D S

Claimant, BENNO JANSON, is therefore entitled to an award in the amount of Twelve Thousand Five Hundred Dollars (\$12,500.00), plus interest at the rate of 6% simple interest per annum, on \$4,166.67 from December 18, 1951 and on \$8,333.33 from January 1, 1970, until the date of the conclusion of an agreement for payment of such claims by the German Democratic Republic.

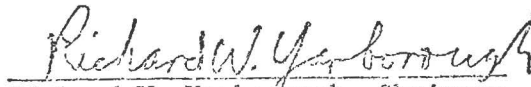
Claimant, JOEN JANSON, is therefore entitled to an award in the amount of Eight Thousand Three Hundred Thirty-Three Dollars and Thirty-Three Cents (\$8,333.33), plus interest at the rate of 6% simple interest per annum from January 1, 1970 until the date of the conclusion of an agreement for payment of such claims by the German Democratic Republic.


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

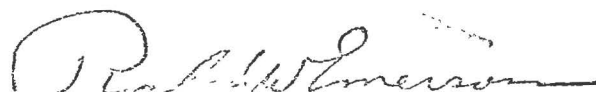
APR 15 1981

This is a true and correct copy of the decision
of the Commission which was entered as the final
decision on APR 15 1981


Executive Director


Richard W. Yarborough, Chairman


Francis L. Jung, Commissioner


Ralph W. Emerson, Commissioner

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PROPOSED DECISION

These claims in unstated amounts 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 apartment buildings located at Markgrafendamm 33 and 35 in East Berlin.

The record indicates that claimant BENNO JANSON became a United States citizen on February 8, 1944, and that claimant JOHN JANSON became a United States citizen on November 11, 1954.

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 the claimants' grandmother, Flora Fromet Rosenthal, was the owner of both of the properties involved in this claim before World War II. Flora Rosenthal, a German national, died in Berlin on January 23, 1943. Her will designated the claimants' mother, Rosa Alma Jacobsohn, as the beneficiary of 1/3 of her estate. Rosa Jacobsohn, also a German national, died during World War II. Her successors in interest are her two sons, BENNO JANSON and JOHN JANSON--the claimants herein.

The record in this claim indicates that legal title to the property at Markgrafendamm 35 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.

The Commission has also 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 taking over the administration of foreign owned property, constituted a 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 finds, therefore, that the 1/6 beneficial interest inherited by claimant BENNO JANSON in the Markgrafendamm 35 property was taken by the German Democratic Republic as of December 18, 1951, at which time it was owned by a United States national at required for compensation under section 602 of the Act.

The 1/6 beneficial interest in the Markgrafendamm 35 property inherited by claimant JOHN JANSON, however, was not owned by a United States national at the time of the termination of the right of restitution on December 18, 1951 by the German Democratic Republic and the Commission concludes, therefore, that the loss of this property occurred on a date when JOHN JANSON's interest therein was not owned by a national of the United States as required by section 603 of the Act. See Claim of ARTHUR SIMON, Claim No. G-0479, Decision No. G-1072. The Claim of JOHN JANSON for the loss of the Markgrafendamm 35 property, therefore, must be denied.

In determining the value of the property at Markgrafendamm 35 in East Berlin, the Commission has considered such evidence as the size and type of building located thereon, its year of construction, and its 1928 purchase price. The record indicates that the improvements consisted of a mixed-use building with thirty-four apartments and two stores and that the building did not sustain any significant damage during World War II. The evidence also indicates, however, that the property was encumbered by a mortgage in the amount of 68,000 reichsmarks at the time of its sale under duress as a result of Nazi persecutory measures in 1940. Based upon the entire record, the Commission determines that the subject property had an equitable value of \$25,000.00 at the time of its taking by the German Democratic Republic in 1951. Claimant BENNO JANSON is therefore entitled to an award of \$4,166.67 for the 1/6 beneficial interest he inherited in the property.

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The evidence of record, which includes a report from the Commission's field office in West Germany, does not indicate that the property at Markgrafendamm 33 in Berlin was either sold under duress or confiscated as a result of Nazi persecutory measures before the death of the registered owner, Flora Fromet Rosenthal, in January 1943. A letter from an attorney in the German Democratic Republic, Georg Prickler, dated January 18, 1973, indicates that this property was administered on behalf of the estate of Flora Rosenthal until 1970. Control of the property passed to the VEB Communal Housing Administration of Berlin-Friedrichshain on January 1, 1970, however, because the successors in interest to Flora Rosenthal had not established their respective inheritance rights in the property. The successors in interest were advised in the aforementioned letter to contact the State Notary Office of Greater Berlin to establish their inheritance rights. The record includes copies of two letters written by BENNO JANSON to the State Notary Office in 1978 requesting the issuance of a certificate of inheritance, to which he asserts no reply has been received.

On the basis of the foregoing evidence, the Commission concludes that the property at Markgrafendamm 33 in Berlin was taken over by authorities in the German Democratic Republic in 1970 because the successors in interest to Flora Fromet Rosenthal did not comply with the legal requirements of the German Democratic Republic in establishing their inheritance rights in the property. Although claimant BENNO JANSON asserts that he has attempted to establish his ownership interest in the property through West Berlin attorneys for over twenty years, the record does not indicate that he attempted to obtain a certificate of inheritance from the proper authorities in East Berlin until 1978, five years after he was first advised to do so by the East Berlin attorney, Georg Prickler.

Under the general principals of international law, which this Commission is required to apply by Public Law 94-542 to claims against the German Democratic Republic, it is well recognized that an independent government has the right to regulate inheritance matters within its jurisdiction by establishing procedures for successors in interest to prove their rights of inheritance. In the instant claim, therefore, the Commission finds that the claimants lost their rights in the property at Markgrafendamm 33 in Berlin as a result of their non-compliance with the inheritance regulations of the German Democratic Republic, which does not give rise to a valid claim under international law or under the provisions of Public Law 94-542. Accordingly, the portions of the claims of BENNO JANSON and JOHN JANSON based upon this property must be 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)).

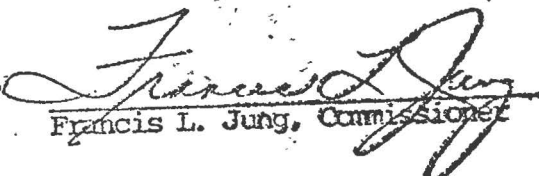
A W A R D

Claimant, BENNO JANSON, is therefore entitled to an award in the amount of Four Thousand One Hundred Sixty-Six Dollars and Sixty-Seven Cents (\$4,166.67), plus interest at the rate of 6% simple interest per annum 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.

OCT 8 1980


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.)