

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

IN THE MATTER OF THE CLAIM OF

MAX HOFMANN

Under the International Claims Settlement
Act of 1949, as amended

Claim No. G-1054

Decision No. G-3023

Counsel for Claimant:

Ludwik Seidenman, Esquire

Hearing on the Record held on MAY 13 1981

FINAL DECISION

This claim in the amount of \$119,400.00 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 real property in Plauen at Ziegelstrasse 40, bank accounts and securities.

By decision dated February 11, 1981, the Commission denied this claim. The Commission found that the evidence of record in this claim was insufficient to allow the Commission to conclude that the particular inter-family transfer involved in this claim was of such a persecutory nature that a retained beneficial interest was created in claimant in the real property in Plauen at Siegelstrasse 40.

Claimant objected to the Proposed Decision. Claimant has submitted additional evidence, including an additional explanation, an affidavit and a copy of a letter from claimant's estranged wife which established that claimant transferred under duress the real property at Ziegelstrasse 40 because he was Jewish to his wife, who was an Aryan. The Commission has held that persecutory losses will not be considered to have cut off all rights of the original owner and persecuted owners retained a beneficial interest in the property, (See Claim of MARTHA TACHAU, Claim No. G-0177, Decision No. G-1071.)

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.

Therefore, the Commission concludes that claimant's retained beneficial interests in the real property in Plauen at Ziegelstrasse 40 was taken by the German Democratic Republic on September 6, 1951.

The Commission has examined all the evidence, including descriptions of the property, information concerning the general rise in land values in Eastern Europe after World War II, as well as the complete destruction of the improvements to the property for which no compensation can be made under Public Law 94-542, and concludes that the real property which is the subject of this claim had a value on the date of taking of \$6,000.00.

Claimant has submitted no evidence which would indicate that the Commission should alter that portion of the Proposed Decision which denied the claim for bank account and securities. Therefore, the Commission affirms that portion of the Proposed Decision.

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)).

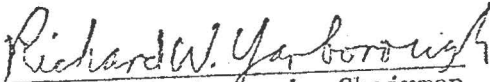
The Commission withdraws that portion of the Proposed Decision denying the claim for the loss of real property and issues the following award to claimant as its final determination on this claim.

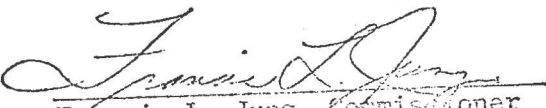
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Claimant, MAX HOFMANN, is therefore entitled to an award in the amount of Six Thousand Dollars (\$6,000.00), plus interest at the rate of 6% simple interest per annum from September 6, 1951 until the date of the conclusion of an agreement for payment of such claims by the German Democratic Republic.


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

MAY 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-1054

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PROPOSED DECISION

This claim in the amount of \$119,400.00 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 real property in Plauen at Ziegelstrasse 40, bank accounts and securities.

The record indicates that claimant became a United States citizen on June 10, 1946.

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. . ."

Based on all the evidence, including the report of an independent investigation conducted by the Commission's field office, the Commission finds that MAX HOFMANN transferred ownership of the subject real property to his wife during World War II. Although there is some indication that the transfer was occasioned by racial and religious persecution of the Nazi era, and while it is true that the Commission has held that persecutory losses will not be considered to have cut off all rights of the original owner

and that persecuted owners retained a beneficial interest in the property, (See, Claim of MARTHA TACHAU, Claim No. G-0177, Decision No. G-1071), the Commission finds that the evidence of record in this claim is insufficient to allow the Commission to conclude that the particular inter-family transfer involved in this claim was of such a persecutory nature that a retained beneficial interest was created in claimant. Rather, the Commission concludes that after the transfer of the property to claimant's wife, he owned no interest in the property which could have been the subject of a nationalization, expropriation or other taking by the German Democratic Republic.

Furthermore, there is no indication in the evidence of record that claimant re-acquired an interest in the property or right to claim for the loss of the property through transfer or inheritance from his wife.

Neither claimant nor the Commission's field office has been able to obtain evidence that claimant was the owner of bank accounts and securities for which a claim is made.

The Regulations of the Commission provide:

The claimant shall be the moving party and shall have the burden of proof on all issues involved in the determination of his claim.
(FCSC Reg., 45 C.F.R. §531.6(d) (1977)).

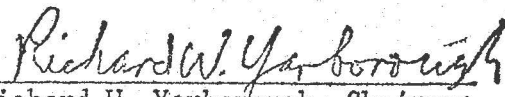
Therefore, the Commission finds that claimant has failed to meet the burden of proving that bank accounts and securities which were owned by United States citizens were nationalized, expropriated or otherwise taken by the German Democratic Republic as required for compensation under section 602 of the Act.

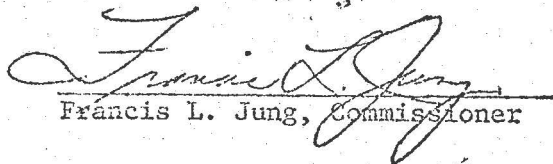
For the above cited reasons, the claim must be and hereby is denied.

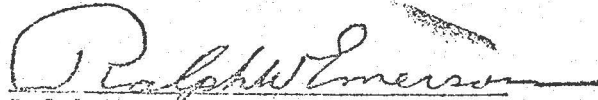
The Commission finds it unnecessary to make determinations with respect to other elements of this claim.

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

FEB 11 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.)

At any time after a Final Decision has been issued on a claim, or a Proposed Decision has become the Final Decision on a claim, but not later than 60 days before the completion date of the Commission's affairs in connection with this program, a petition to reopen on the ground of newly discovered evidence may be filed. (FCSC Reg., 45 C.F.R. 531.5 (1), as amended).