

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

IN THE MATTER OF THE CLAIM OF

HILDE J. HEINRICH
FRED JOHN ROGERS
ANA MARIA GERDA ROHDEN
GABRIELLA KOTTLER

Claim No. G-1108
G-3266

Decision No. G-3141

Under the International Claims Settlement
Act of 1949, as amended

Oral Hearing held on April 7, 1981 at 2:00 p.m.

FINAL DECISION

This claim in the amount of \$2,703,000.00 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 an apartment house in Babelsberg, six pieces of improved real property in East Berlin, a corporation, cash, government bonds, and shares of stock in West German corporations.

By Proposed Decision dated February 11, 1981, the Commission granted claimants HILDE J. HEINRICH and FRED JOHN ROGERS awards for the loss of four pieces of real property in East Berlin. The Commission denied the claims of ANA MARIA GERDA ROHDEN and GABRIELLA KOTTLER because they were not United States citizen at the time their interests in the properties were taken by the German Democratic Republic.

By objection dated February 20, 1981, claimants objected to the Proposed Decision and requested an oral hearing on the claim. Claimants objected to the Proposed Decision on the following grounds: their father, Moritz Rosenthal, the owner of the subject properties, had never received proceeds from any of the sales of his property under the Nazi regime; properties that had been described as being totally destroyed in the Proposed Decision were, in fact, only partially destroyed; mortgages which the Commission had determined encumbered the properties at the time they were sold under duress were not valid encumbrances but had been acquired by Nazi "managers" who took over Moritz Rosenthal's businesses before the real properties were sold under duress; the ownership of a residence in Neu Babelsberg was attested to in an affidavit of claimant GABRIELLA KOTTLER; claimants ANA MARIA GERDA ROHDEN and GABRIELLA KOTTLER submitted affidavits swearing that, in 1948, they had irrevocably assigned all rights of ownership to the subject properties to their sister HILDE J. HEINRICH who, at the time of taking, was a United States citizen.

At the oral hearing held in the Commission's offices in Washington, DC on April 7, 1981, Dr. George Heinrich, the son of claimant HILDE J. HEINRICH, appeared before the Commission. Dr. Heinrich stated that his grandfather's properties were taken over by Nazi managers as early as 1933; that no proceeds from any of the forced sales had been received; and that the mortgages which encumbered two of the properties had been taken out by the Nazi managers in order to extract funds from the businesses. Dr. Heinrich also stated that the property at Klosterstrasse 46, which was under state receivership in 1934, had been forced into bankruptcy because of Nazi measures.

The Commission attempted, through its field office, to verify claimants' assertions as to the mortgages taken out on two of the pieces of property. However, the field office reported that it could not obtain evidence indicating the dates that the mortgages were acquired.

In light of the testimony at the oral hearing as well as the information submitted and the Commission's experience in dealing with properties subject to persecutory measures of the Nazi regime, the Commission has modified its findings in the Proposed Decision, both with respect to the properties awarded and the valuation of those properties. In cases where there were mortgages which could not be verified as having been either persecutory mortgages or valid ones, the Commission has arbitrarily subtracted only one-half the value of the mortgages. Accordingly, the Commission finds that:

1. The property at Stralauerstrasse 41 had a value of \$36,000 on the date of loss.
2. The property at Stralauerstrasse 42-43 had a value of \$224,000 on the date of loss.
3. The property at Stralauerstrasse 44-45, which had not been included in the Proposed Decision, had a value of \$600,000 on the date of loss.
4. The property at Zehdenicker Strasse 12B, which suffered only partial war damage instead of total damage, had a value of \$65,000 on the date of loss.
5. The property at Klosterstrasse 44-45 had been found to have a value of \$120,000 on the date of loss and there is no change in the Final Decision.
6. The property at Klosterstrasse 46, which had not been included in the Proposed Decision, had a value of \$60,000 on the date of loss.
7. The residence at Domstrasse 7 in Neu Babelsberg, which had not been included in the Proposed Decision, had a value of \$32,000 on the date of loss.

Claimants had also objected to the denial of the claims of ANA MARIA GERDA ROHDEN and GABRIELLA KOTTLER. The denial had been based upon the fact that these two claimants were not United States citizens on December 18, 1951, the date of the cut-off of the right of restitution of the subject properties. Claimants submitted affidavits attesting to the fact that they had assigned all rights of ownership to HILDE J. HEINRICH in 1948. However, no contemporaneous documentation was submitted. Accordingly, the Commission finds that there is not sufficient evidence to allow it to determine that the entire ownership interest in the subject properties was owned by a United States citizen on the date of loss. Accordingly, only claimants HILDE J. HEINRICH and FRED JOHN ROGERS are entitled to awards under the Act.

Based upon the values for the properties found above, one-quarter of which were each owned by HILDE J. HEINRICH and FRED JOHN ROGERS, the Commission withdraws its previous awards to these two claimants and issues new awards in the amount of \$284,250.00, as its final dermination on this claim.

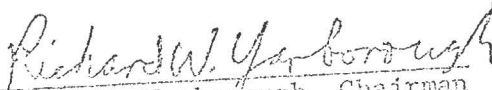
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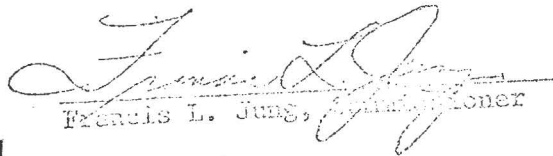
Claimant, HILDE J. HEINRICH, is therefore entitled to an award in the amount of Two Hundred Eighty-Four Thousand Two Hundred Fifty Dollars (\$284,250.00), plus interest at the rate of 6% simple interest per annum from December 18, 1951 until the date of the conclusion of an agreement for payment of such claims by the German Democratic Republic; and,

Claimant, FRED JOHN ROGERS, is therefore entitled to an award in the amount of Two Hundred Eighty-Four Thousand Two Hundred Fifty Dollars (\$284,250.00), 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 Final
Decision of the Commission.

MAY 6 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 6 1981


Executive Director


Ralph W. Emerson, Commissioner

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

IN THE MATTER OF THE CLAIM OF

HILDE J. HEINRICH
FRED JOHN ROGERS
ANA MARIA GERDA ROHDEN
GABRIELLA KOTTLER

Under the International Claims Settlement
Act of 1949, as amended

Claim No. G-1108
G-3266

Decision No. G-3141

PROPOSED DECISION

This claim in the amount of \$2,703,000.00 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 an apartment house in Babelsberg, six pieces of improved real property in East Berlin, a corporation, cash, government bonds, and shares of stock in West German corporations.

The evidence of record in these claims indicates that claimants HILDE J. HEINRICH, FRED JOHN ROGERS and GABRIELLA KOTTLER became citizens of the United States on January 4, 1944, February 7, 1949, and June 24, 1952, respectively. The evidence also indicates that, since ANA MARIA GERDA ROHDEN entered the United States in 1954, she did not become a citizen of the United States until after that time.

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."

At the time of filing, claimants submitted a document purporting to describe properties owned by their father, Moritz Rosenthal, either directly or indirectly through other firms. The document was not identified, and although the Commission asked for the source of the document, no further information was submitted. Nevertheless, because of the content and the form of the document, the Commission is of the opinion that it was written by an official in one of the postwar sectors of Berlin, and thus is probative of Moritz Rosenthal's ownership of several properties.

The evidence of record includes a report from the Commission's field office which provides information other than that contained in the above mentioned document. These two sources of information indicate that a business owned by Moritz Rosenthal was the owner of buildings and land at Stralauerstrasse 41 in East Berlin. Another firm, whose sole owner was Moritz Rosenthal, had been the owner of other buildings at Stralauerstrasse 42-43 in East Berlin. A further complex of buildings at Stralauerstrasse 44-45 was owned directly by Moritz Rosenthal. A manufacturing plant at Zehdenicker Strasse 12b was owned by a corporation, Wolff & Glaserfeld AG, whose sole stock holder was Moritz Rosenthal. The documentation also indicates that another business, whose sole owner was Moritz Rosenthal, owned buildings and land at Klosterstrasse 444-45 in East Berlin.

G-1108
G-3266

With respect to the buildings and land at Stralauerstrasse 44-45, documentation indicates that, in 1933 and 1934, Moritz Rosenthal executed a contract of sale of these properties to the government of Berlin, assertedly under duress. While the Commission does not doubt that Moritz Rosenthal might have been forced to sell these properties under duress, it concludes he received the sales price and was able to dispose of the proceeds freely. The Commission realizes that in many sales under duress during the Nazi regime the sellers of the property did not receive the proceeds from the sale. This was particularly true in the late 1930's, when restrictions against Jews were extremely rigid. However, the evidence indicates that Moritz Rosenthal continued to live in Germany until his death during World War II, and, in fact, did not sell the rest of his properties until 1937 and 1938. Accordingly, the Commission concludes that Moritz Rosenthal did receive the proceeds from the sale of this property and was able to dispose of the money during the succeeding years in Germany.

With respect to the building and land at Klosterstrasse 46 in East Berlin, the evidence of record indicates that, as of 1934, this property was under state receivership and was no longer owned by Moritz Rosenthal. Accordingly, the portion of the claim involving the properties at Stralauerstrasse 44-45 and Klosterstrasse 46 are denied since claimants' predecessor in interest, Moritz Rosenthal, had parted with title and had no interest in the properties to pass to his heirs.

G-1108
G-3266

With respect to the other pieces of property referred to above, 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.

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 therefore finds that the beneficial interests in the subject properties were taken by the German Democratic Republic on December 18, 1951.

The Commission notes that information obtained by the Commission's field office indicates that the losses of Moritz Rosenthal were largely due to risky financial transactions and the over-obligation of his assets. This would appear to be supported by the fact that the property at Klosterstrasse 46 was under receivership as early as 1934. Nevertheless, the Commission recognizes that, were it not for the restrictions placed upon Jews under the Nazi regime, Moritz Rosenthal might have been able to find sources to salvage his businesses and might have avoided their loss. Accordingly, it has found that the loss of his properties was indeed due to the measures of the Nazi regime and that he therefore retained a beneficial interest in his properties.

G-1108
G-3266

Moritz Rosenthal had died in Germany in 1944, leaving his estate in equal shares to his children, the four claimants. As ANA MARIA GERDA ROHDEN and GABRIELLA KOTTLER were not citizens of the United States on the date that the German Democratic Republic cut off the right of restitution to the subject properties, their interests in this claim must be and hereby are denied. As HILDE J. HEINRICH and FRED JOHN ROGERS were citizens of the United States on December 18, 1951, the loss of their interests is compensable.

Considering all the evidence of record, including the sales price and the prewar official appraisal of the property at Stralauerstrasse 41, as well as the general increase in land values in Europe, the Commission finds that this property had a value of \$28,000.00 on December 18, 1951. Accordingly, HILDE J. HEINRICH and FRED JOHN ROGERS are entitled to awards for 1/4 that amount each, or \$7,000.00 each. With respect to the property at Stralauerstrasse 42-43, the evidence of record includes the appraisal figure, information indicating that the property was approximately one-half destroyed during World War II and information indicating that a mortgage had encumbered the property at the time of its loss under the Nazi regime. Since war damage is not compensable under the Act, the Commission is authorized to grant awards only for that property actually surviving the war and taken by the German Democratic Republic. Accordingly, taking these facts into account, and considering the general increase in land values in Europe, the Commission finds that the equity in the remaining building and the land at Stralauerstrasse 42-43 had a value of \$148,000.00 on December 18, 1951. Accordingly, HILDE J. REINRICH and FRED JOHN ROGERS are entitled to awards of \$37,000.00 each for loss of this property.

G-1108
G-3266

With respect to the manufacturing plant at Zehdenicker Strasse 12b, the evidence of record includes the prewar market value, evidence that the improvements on the land were totally destroyed during the war, and information indicating the fact that mortgages encumbered the property. Taking into account these facts as well as the general increase in land values in Europe, the Commission finds that the equity in the remaining plot of land at Zehdenicker Strasse 12b had a value of \$12,000.00 on December 18, 1951. Accordingly, HILDE J. REINRICH and FRED JOHN ROGERS are entitled to awards of \$3,000.00 each for the loss of this property. With respect to the property at Klosterstrasse 44-45, the evidence of record indicates that the building on this land was also destroyed during the war. Taking into account information concerning the size of the plot of land, values for land at that address, and the claimants' statement as to the value of the property, the Commission finds that the plot of land had a value of \$120,000.00 on December 18, 1951 and that HILDE J. REINRICH and FRED JOHN ROGERS are entitled to awards of \$30,000.00 each for the loss of this property.

Accordingly, the Commission finds that the total awards for HILDE J. REINRICH and FRED JOHN ROGERS are \$77,000.00 each under section 602 of the Act.

Claimants also asserted the loss of ownership interests in the firm Gebruder Ritter Waesche Fabrik AG, formerly called Wolff & Glaserfeld. The evidence of record indicates that this firm was cancelled on the commercial register in 1943 and thus did not survive World War II. As it was not in existence to be taken by the German Democratic Republic, the Commission finds that this part of the claim must be and hereby is denied.

G-1108
G-3266

Claimant HILDE J. REINRICH asserted the loss of a corporation located in West Berlin as well as government bonds issued by the governments of what are now Austria, the Soviet Union and Poland. As none of these properties could have been subject to the jurisdiction of the Government of the German Democratic Republic, there is no loss which could be the responsibility of that government. Accordingly, this portion of the claim must be and hereby is denied.

HILDE J. REINRICH also asserted the loss of shares in three corporations which are now domiciled in West Germany. Although one of those corporations held interests in subsidiary companies which were located in what is now the German Democratic Republic, the Commission finds that there is no evidence of ownership by United States citizens of a 25% interest in the parent corporation in order to give rise to a compensable claim under section 604(c) of the Act.

Section 604 (d) of the Act provide:

"A claim under section 602 of this title for losses based upon an indirect ownership interest in a corporation, association, or other entity, shall be considered, subject to the other provisions of this title, only if at least 25 per centum of the entire ownership interest thereof, at the time of such loss, was vested in nationals of the United States."

HILDE J. REINRICH further asserted the loss of bonds issued by the government of Germany before World War II. It is a well established principle of international law, which this Commission has affirmed in past claims programs, that the mere nonpayment of a debt owed by a foreign government does not constitute a nationalization or other taking of property under international law, as required by section 602 of the Act.

The Commission, in certain past programs, has found claims for the debt obligations of a foreign government compensable where the evidence established that there was an express annulment or cancellation of specific debt obligations by government decree or regulation which constituted a taking of the property right of the claimant or his predecessor in interest.

However, the claimant herein has submitted no evidence of any such express repudiation, annulment, or cancellation of these bonds. The Commission 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 cancellation of bond obligations by the German Democratic Republic. Accordingly, this portion of the claim must also be denied.

Claimants also asserted the loss of an apartment house at Domstrasse 7 in Babelsberg, German Democratic Republic. As the file contains no evidence establishing the ownership of this property by the claimants' predecessor in interest, the Commission finds that 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)).

G-1108
G-3266

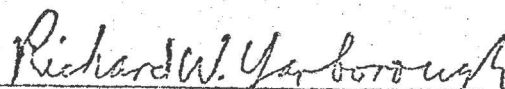
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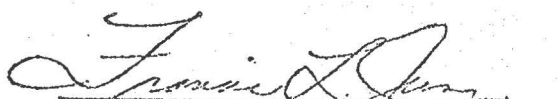
Claimant, HILDE J. HEINRICH, is therefore entitled to an award in the amount of Seventy-Seven Thousand Dollars (\$77,000.00), plus interest at the rate of 6% simple interest per annum from December 18, 1951 until the date of the conclusion of an agreement for payment of such claims by the German Democratic Republic; and,

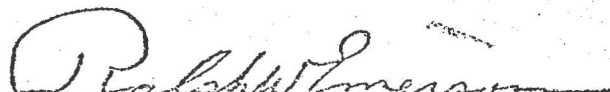
Claimant, FRED JOHN ROGERS, is therefore entitled to an award in the amount of Seventy-Seven Thousand Dollars (\$77,000.00), plus interest at the rate of 6% simple interest per annum from December 18, 1951 until the date of the conclusion of an agreement for payment of such claims by the German Democratic Republic.

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

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.)

G-1108
G-3266