

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

IN THE MATTER OF THE CLAIM OF

WERNER C. VON CLEMM

Under the International Claims Settlement  
Act of 1949, as amended

Claim No. G-1287

Decision No. G-0675

Counsel for Claimant: Thomas G. Corcoran, Esquire

Appeal and objection from a Proposed Decision entered on April 18, 1979.

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Oral Hearing scheduled for September 18, 1980. Neither claimant nor counsel appeared. Hearing on the Record held on **OCT 20 1980**

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FINAL DECISION

This claim in the amount of \$450,000.00 against the Government of the German Democratic Republic, under Title VI of the International Claims Settlement Act of 1949, as amended, is based upon the asserted loss of assets of the former Bank fuer Realbesitz in Leipzig allegedly owned by the claimant because of his loss of an equivalent value of shares in another company during World War II.

By Proposed Decision dated April 18, 1979, the Commission denied this claim on the grounds that there had been no evidence submitted to establish that claimant acquired any ownership right to the stock or assets of the Bank fuer Realbesitz or its successor in Leipzig.

Claimant, by letter dated March 1, 1979, objected to the Commission's Proposed Decision, stating that since he had been deprived of shares of stock of one corporation, he was entitled to an equivalent value of stocks or assets of the former Bank fuer Realbesitz in Leipzig. By letter dated June 1, 1979, he requested

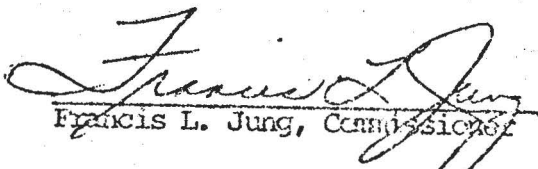
an oral hearing before the Commission. The Commission accordingly scheduled an oral hearing on July 31, 1979. By letter dated July 11, 1979, claimant's counsel requested an indefinite postponement of the oral hearing. The Commission granted the postponement and subsequently scheduled the oral hearing for September 18, 1980 at 2:00 p.m., at the Commission's offices in Washington, D.C. Neither the claimant nor his counsel appeared at the hearing nor did they notify the Commission of their intended absence prior to the time of the hearing.

As neither claimant nor his counsel appeared before the Commission, and no evidence has been submitted to warrant a change in the findings of the Commission with respect to this claim, the Commission orders that the Proposed Decision be affirmed.

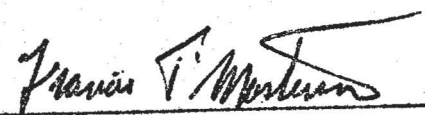
Dated at Washington, D.C.  
and entered as the Final  
Decision of the Commission.

OCT 20 1980

  
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 OCT 20 1980

  
Executive Director

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PROPOSED DECISION

This claim in the amount of \$450,000.00 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 asserted loss of assets of the former Bank fuer Realbesitz in Leipzig allegedly owned by the claimant because of his loss of an equivalent value of shares in another company during World War II.

The record indicates that the claimant became a United States citizen on September 8, 1932.

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 facts of the claim appear to be as follows: the shares of the Bank fuer Realbesitz for which claim is made were originally owned by Hans Kroch, a Jewish banker in Leipzig. Kroch sold a quantity of the Realbesitz shares to GFHA, a company controlled by Hardy & Co., a banking firm in Berlin. The shares were sold pursuant

to a "double option" agreement which provided that, should GFHA so determine, the agreement would be rescinded and Kroch would refund the purchase price of the stock. If Kroch were unable to refund the purchase price, he would repay GFHA with 4500 shares of stock of the International Mortgage and Investment Corporation, an American corporation which was controlled by Hardy. The agreement provided that the right to demand rescission of the contract would expire on March 31, 1938. After a series of financial maneuvers, Hardy caused the purchase of the Realbesitz stock to be rescinded. In the meantime, Kroch had been arrested and taken to a concentration camp, and his bank's business had become immobilized. Because of this Kroch could not return the purchase price of the stock. Nevertheless, in the expectation that a means could be found to refund the purchase price, Kroch instructed his representative not to return the stock yet to GFHA. The representative, however, fearing reprisal, returned the 4500 shares of IMC to GFHA.

Hardy & Co. eventually sold the shares of IMC to SAPAVAH, a Swiss corporation established by claimant, WERNER C. VON CLEMM. SAPAVAH then attempted to transfer the stock to New York, where it was vested as enemy assets by the United States Alien Property Custodian. After the close of the War, both Kroch and VON CLEMM filed with the Office of Alien Property (OAP) for the return of the IMC shares. The OAP Hearing Examiner determined that GFHA's re-acquisition of the IMC shares was void as contra bonos mores, that SAPAVAH did not acquire title to the shares, and that Kroch was entitled to their return.

Claimant, WERNER C. VON CLEMM, filed his claim under Public Law 94-542 on the grounds that since his claim before the OAP for the 4500 IMC shares was denied in favor of Kroch, he is entitled to the Realbesitz shares under the "double option" agreement as successor to GFHA's title to the shares.

After reviewing the materials provided by the claimant, as well as the files of the Office of Alien Property, the Commission has concluded that the evidence of record does not support the contention of claimant, WERNER C. VON CLEMM, that he has an ownership interest in the shares and/or assets of the Bank fuer Realbesitz, or its successor in Leipzig.

Claimant's contention of having acquired some ownership interest in shares of Realbesitz through a so called "double-option" agreement is without merit. That agreement gave GFHA the right to rescind and return the Realbesitz shares to the representative of Kroch. This right was exercised by GFHA. The agreement gave no further contractual right to GFHA or any alleged successors in interest to further acquire title to Realbesitz shares. Therefore, even if claimant were in some way privy to this agreement, a proposition which itself is unsupported by the evidence, it would provide no basis for a present claim of ownership of any shares of Realbesitz.


Therefore, based upon the foregoing, the Commission finds that the claimant has failed to submit evidence to establish that he owned property which was nationalized or otherwise taken by the German Democratic Republic at a time when he was a United States national as required for compensation under 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.

APR 18 1979

  
Richard W. Yarborough, Chairman

  
Wilfred J. Smith, 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).