

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

IN THE MATTER OF THE CLAIM OF

FREDERICK MUELLER

Under the International Claims Settlement
Act of 1949, as amended

Claim No. G-1332

Decision No. G-1349

Appeal and objection from a Proposed Decision entered on September 26, 1979. Oral Hearing Requested.

Oral Hearing held at Washington, D.C., on November 13, 1980, at 10:00 a.m.

FINAL DECISION

This claim in the amount of \$74,075.00 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 at Krossener Strasse 12 in East Berlin.

The record indicates that claimant became a United States citizen on August 20, 1957.

By Proposed Decision dated September 26, 1979, the Commission denied this claim, for the reason that claimant's beneficial interest in the above property was not owned by a United States national, as required by section 603 of the Act, as of December 18, 1951 when that interest was taken by the German Democratic Republic.

Claimant, through his attorney, has objected to the Proposed Decision. His ground of objection is that the Commission's denial of his claim has operated to deprive him of his right to equal protection under the United States Constitution. Claimant points out that the Act, in requiring a claimant to have been a United States national at the time of loss of the property interest on which his claim is based, and defining "United States national"

as a United States citizen, has set up a classification involving alienage, a classification which has been held "suspect" by the United States Supreme Court and thus must meet a "strict scrutiny" standard of review which can only be withstood by being validly based on an "overriding state interest." He then notes that the nationality requirement was placed in the Act by Congress to serve the State interest of conforming United States law to the relevant rules of international law, but he argues that, because the nationality rule of international law is no longer uniform, the nationality requirement in the Act does not validly serve an overriding State interest. He thus contends that the requirement cannot be relied upon by the Commission as a basis for denying his claim since it fails to withstand the strict scrutiny standard applicable where a suspect classification such as alienage is in issue.

Furthermore, claimant points out that he was a stateless person between 1949 and his naturalization as a United States citizen in 1957, with the result that he could claim the protection of no State when his property in East Berlin was taken in 1951. He then argues that this fact should be considered as a further reason for finding that he was a national of the United States in 1951, notwithstanding the definition of "United States national" set forth in the Act.

In support of his objection, claimant has submitted an extensive brief in which he has cited examples of the lack of uniformity among States in applying the international law rule regarding nationality at time of loss in the espousal of international claims, including instances where stateless persons are involved. In addition, he has cited legal commentators who have written on this subject as well as a number of United States Supreme Court and lower Federal Court decisions relating to the issue of alienage as a suspect classification. Claimant also appeared, both through his attorney and on his own behalf, at an oral hearing before the Commission, and he there presented further legal argument together with a narrative factual statement in support of his claim.

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 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."

In addition, section 601 of the Act provides the following definition:

"(1) The term 'national of the United States' means--
"(a) a natural person who is a citizen of the United States. . ." (Emphasis added)

The Commission has again reviewed the entire record herein, and has given careful consideration to the arguments advanced and the authorities cited in claimant's extensive objection brief and the arguments and statements presented at the oral hearing. The amount of research which has gone into the claimant's objection brief is impressive, and his arguments have raised some valid questions regarding the status of stateless persons in the context of United States law and international law.

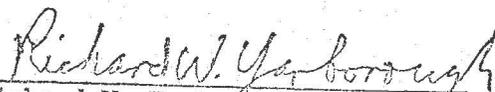
Notwithstanding the persuasive force of these arguments, however, the Commission must conclude that it is powerless under the Act to accept the arguments as a basis for changing the findings of the Proposed Decision so as to find the claimant's claim to be compensable. It may well be true that the Congress did not take into account the presence of formerly stateless persons among the body of potential claimants against the German Democratic Republic when it formulated the provisions of Title VI of the Act. Nevertheless, the Act clearly and expressly defines "national of the United States" as a citizen of the United States, and the Commission must adjudicate

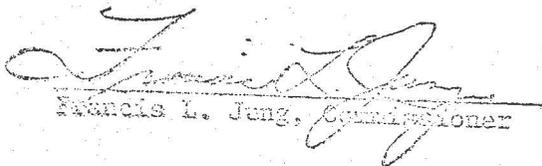
claims before it in conformity with this express language. Moreover, this obligation would remain on the Commission even if it were to accept the claimant's contention that the definition of "national of the United States" in the Act operates to deprive him of his constitutional right to equal protection, for it has generally been held to be beyond the competence of administrative agencies to rule on the constitutionality of Acts of Congress. See, e.g., Johnson v. Robison, 415 U.S. 361, 368 (1974), cited in claimant's objection brief.

Based upon the foregoing, the Commission must conclude that a change in the findings of the Proposed Decision is not warranted. The Commission therefore affirms the denial set forth in the Proposed Decision as its final determination in this claim.

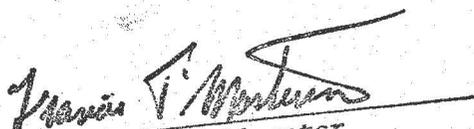
Dated at Washington, D.C.
and entered as the Final
Decision of the Commission.

APR 01 1981


Richard W. Yerborough, Chairman


Francis L. Jung, Commissioner


Ralph W. Emerson, Commissioner


Executive Director

This is a true and correct copy of the decision
of the Commission which was entered as the final
decision on APR 1 1981

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PROPOSED DECISION

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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, and the decree of July 17, 1952, confiscating or taking under administration property of former residents of the GDR, constituted a governmental 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 beneficial ownership interest involved herein, 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 claimant'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.

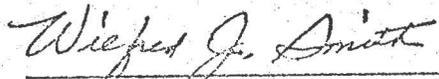
For the above cited reasons, the claim must be and hereby is denied.

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.

SEP 26 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).

At any time after 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).