

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

IN THE MATTER OF THE CLAIM OF

LUIS C. ROEVER
RUDOLPH ROEVER

Under the International Claims Settlement
Act of 1949, as amended

Claim No. G-1559

Decision No. G-2684

Counsel for Claimants: Pierson, Semmes, Croluis & Finley

Hearing on the Record held on MAY 06 1981

FINAL DECISION

This claim in the amount of \$644,192.00 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 a vegetable oil business known as "Markische Oelwerke A.G." located in Wittenberge.

By Proposed Decision dated October 20, 1980, the Commission granted claimants awards in the amount of \$23,714.51, each, plus interest, for the loss of their interests in "Markische Oelwerke A.G." The awards granted were net of payments received on account of the loss of the same property interests for which an award was made in Claim No. W-7630 in the General War Claims Program under Public Law 87-846. The Commission found in the Proposed Decision on the instant claim that the subject property interests were taken by the East German authorities on November 19, 1946. This finding was based upon the affidavit of Luis Roever, claimants' father, which was submitted by the claimants in support of their earlier claim under Public Law 87-846. That portion of the claim for other assets of the business, such as raw materials, installations,

fuel and supplies, packaging materials (barrels and bags), finished goods and cash identified in the balance sheet for the business as of December 31, 1944, was denied for the reason that the evidence of record was insufficient to establish that such property was in existence or the value of such property on November 19, 1946, the date of loss. The Commission also denied that portion of these claims based upon the loss of accounts receivable for the reason that the record did not contain sufficient evidence of the value of such accounts on the date of loss.

By letter dated November 10, 1980, claimants, through counsel, objected to the Proposed Decision, but submitted no new documentation in support of their objections. No oral hearing was requested.

Claimants' basic objection is that the Commission erred in finding that the "Markische Oelwerke A.G.", was taken by the East German authorities on November 19, 1946.

In support of the objections, claimants have provided what counsel for claimants terms a listing of key dates, as follows:

1. May 3, 1945, the date the property was seized by the Russian forces. (Direction of the Commission, dated April 10, 1967; Commission Final Decision No. W-20905, p. 2; Luis Roever affidavit of April 28, 1947, p. 4.).

2. June 1945, when the Russian Commandant told claimants' father that his presence was no longer desirable. (Luis Roever affidavit of April 28, 1947, p. 4.).

3. October 30, 1945, the date of Order No. 124 of the Supreme Chief of the Soviet Military Administration in Germany providing for the provisional confiscation of the property in question. (Final Report of Investigation of the Foreign Claims Settlement Commission European Office, dated September 12, 1966, p.2.).

4. August 5, 1946, the date the company was nationalized without compensation pursuant to decree of the Praesidium of the Provincial Administration of Mark Brandenburg. (Incoming Department of State telegram, dated February 4, 1948; translation of Enclosure No. 2, dated September 9, 1946, to Despatch No. 215 from the United States Political Adviser for Germany; translation of Enclosure No. 4 to Despatch No. 215.; Secret letter from the Office of the United States Political Adviser of Germany, dated April 29, 1948.)

5. October 1, 1946, the date on which Maerkische Oelwerke, A.G. was placed under the Main Administration of Provincial Businesses in Mark Brandenburg (effective date of decree of October 19, 1946).

It is claimants' contention that the Commission made a finding of May 3, 1945 as the date of loss of the business in question in its decision on Claim No. W-7630 under Public Law 87-846. Therefore, since the Commission relied upon the balance sheet of December 31, 1944 for determining the value of other assets of the company, this same balance sheet could be relied upon for establishing the existence and value of the personal property interests denied by the Commission in the Proposed Decision on the instant claim, if the May 3, 1945 date was found to have been the date of taking by the East German authorities.

The Commission has considered claimant's arguments and finds, with respect to either the May 3, 1945 or June 1945 dates listed above, that there is no basis for finding that any legal action for which the German Democratic Republic could be held responsible occurred on these dates. The actions were entirely actions of the Soviet Military forces.

Similarly, Order No. 124 which authorizes provisional confiscation of property in the zone of Soviet occupation, along with Order No. 126, effective on October 30-31, provides for the temporary administration of all property interests in the Soviet Occupation Zone owned by: the German State and subsidiary organs; the Nazi Party, its officials and prominent members; and the German military establishment. Such orders were temporary and confiscations under them were in fact carried out by the Soviets until April of 1948. The Commission has consistently held that the temporary application of Decrees Nos. 124 & 126 of the Soviet Military Administration will not be considered as a taking where there is evidence of a later nationalization or expropriation by the East German authorities. In fact, the same field office report cited by counsel for the provisional confiscation of the business under Order No. 124, continues and concludes that the business was then "expropriated by the Provincial Commission of Sequestration and Confiscation in accordance with a letter by the Provincial Commission for Mark Brandenburg dated September 9, 1946."

With respect to the dates August 5, 1946 and October 1, 1946, listed above, the Commission finds that even if either of these dates were found to have been the date of taking by the East German authorities, the difficulty in valuing the assets of the business on the date of loss, based upon a balance sheet for the period ending December 31, 1944, would still be at issue.

The Commission notes that claimants received an award for the loss of tangible property in the General War Claims Program under Public Law 87-846 based upon a finding by the Commission in its Final Decision on Claim No. W-7630 that the loss of the factory was the result of "special measures", which was defined as a wartime confiscation or taking of American-owned property located in an area which was under Communist control at the end of hostilities, precluding restoration after the war. No award

could be granted under Public Law 87-846 for losses occurring after May 8, 1945. The award in that claims program was limited, by statute, to tangible assets and the payments on the awards granted under Public Law 87-846 were derived from vested German assets in the United States. Awards on claims filed under Public Law 94-542 are to be paid from funds obtained under the future claims settlement agreement between the governments of the German Democratic Republic and the United States. The Commission finds that it was the intention of Congress in mandating the present program for losses in the German Democratic Republic, including East Berlin, that the Commission determine the value of American owned assets taken by the German Democratic Republic or East German authorities for which the present German Democratic Republic is responsible under international law. In order to establish such a loss the Commission has consistently held that there must be sufficient evidence in the record to find that the German Democratic Republic, or East German authorities before October 7, 1949, took American owned property, whether tangible or intangible, and the value of such property at the time of taking under international law.

However, having reviewed the entire record in the present matter and having considered claimant's arguments in support of their objections, the Commission concludes that the evidence of record in the instant claim under Public Law 94-542 is not sufficient to warrant a finding that additional assets, for which an award was not granted in the Proposed Decision on this claim, were taken by the East German authorities at any time during the latter part of 1946 or the value of such additional assets, as required for compensation under the Act.

Accordingly, it is ordered that the Proposed Decision issued on this claim be affirmed and that the foregoing be entered as the Commission's final determination on this matter.

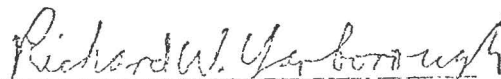
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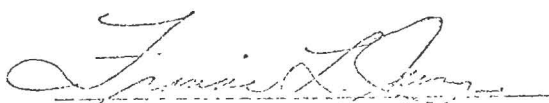
Claimant, LUIS C. ROEVER, is therefore entitled to an award in the amount of Twenty-Three Thousand Seven Hundred Fourteen Dollars and Fifty-One Cents (\$23,714.51), plus interest at the rate of 6% simple interest per annum from November 19, 1946 until the date of the conclusion of an agreement for payment of such claims by the German Democratic Republic; and,

Claimant, RUDOLPH ROEVER, is therefore entitled to an award in the amount of Twenty-Three Thousand Seven Hundred Fourteen Dollars and Fifty-One Cents (\$23,714.51), plus interest at the rate of 6% simple interest per annum from November 19, 1946 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.

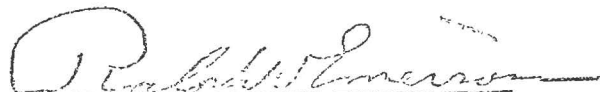
MAY 6 1981


Richard W. Yarborough, Chairman


Francis L. Jung, Vice-Chairman

This is a true and correct copy of the decision
of the Commission which was entered as the final
decision on MAY 6 1981


Francis T. Martin
Executive Director


Ralph W. Emerson, Commissioner

"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 . . ."

Claimants previously filed a claim with the Commission, Claim No. W-7630, under the General War Claims Program, pursuant to Public Law 87-846, for the loss of the same business property. In its decision on that claim the Commission found that LUIS C. ROEVER and RUDOLPH ROEVER were the joint owners of 791 shares of the 1600 outstanding shares of the "Markische Oelwerke A.G." and that the assets of the company had been lost as the result of "special measures", that is, the business had been confiscated during World War II because it was American-owned property and it was located in an area which was under communist control at the end of World War II, which precluded restoration. Claimants were granted awards in the amount of \$254,618.95 each for their interests in the loss of land, buildings, equipment and tangible personal property owned by the business.

Based upon all the evidence of record, including the record in Claim No. W-7630, the Commission now finds that claimants owned a one-half interest each in 791 shares out of a total of 1600 outstanding shares in the "Markische Oelwerke A.G.", and, based upon an affidavit dated April 28, 1947, by Luis Roever, the father of the claimants herein, the Commission further finds that the "Markische Oelwerke A.G." was taken by the East German authorities on November 19, 1946.

With respect to the date of loss found by the Commission, it is noted that counsel for claimants has submitted a memorandum or brief urging that "Disqualification of losses suffered before May 8, 1945 would be directly contrary to the unambiguous statutory language [of Public Law 94-542]." Counsel further argues that a more realistic date, at least with respect to the property seized by Soviet forces and later nationalized by the German Democratic Republic, would be on or about January 23, 1945, when Soviet troops first reached the present border of the German Democratic Republic.

The Commission agrees with counsel's first contention and holds that it was not the intent of Congress when enacting Public Law 94-542 to exclude claims based upon American-owned property which had been seized by either the government of Nazi Germany or the Soviet Military authorities. However, the Commission has no basis for finding that any particular date during World War II should be held to cut-off or exclude claims based upon American-owned property which was taken by the East German authorities after the war. Rather, the Commission finds that the language of the statute (Section 605, set forth, *infra*) providing for an offset for payments received on account of the loss of the same property both during World War II and subsequently by the East German authorities, evidences an intent to include such claims under the present law by insuring that no double payments may be received as the result of a favorable determination in both the present and any past programs of the Commission.

At the time of filing this claim, it was stated that the value of claimants' interests in the real property on which the claim is based was \$150,039.00 and that the value of their interests in the equipment, both transportation equipment and machinery, new installations, furniture and fixtures, raw materials, fuel and supplies, barrels and bags, finished goods, accounts receivable and cash was \$494,153.00. For the value of the real property and equipment, claimants rely upon the findings of the Commission in W-7630. No award for the accounts receivable was granted in W-7630 for the reason that as debts these were intangible personal property and as such were expressly excluded from compensation under the terms of Public Law 87-846. The Commission also denied that portion of Claim W-7630 based upon the loss of cash for the reason that no probative evidence of actual loss and value of the currency had been submitted.

Based upon the entire record in the instant claim and in Claim No. W-7630, the Commission finds that the claimants combined interest in the real property, both improved and unimproved, equipment, machinery, new installation and furniture and fixture, owned by the "Markische Oelwerke, A.G." had a total value of \$234,289.50 on November 19, 1946, the date of loss, and that the interest of LUIS C. ROEVER and RUDOLPH ROEVER in this amount is \$117,144.75 each therein as compensation under section 602 of the Act.

With respect to that portion of this claim based upon the loss of raw materials, installations, fuel and supplies, packaging materials (barrels & bags), finished goods and cash, as identified in the balance sheet for the business as of December 31, 1944, the Commission finds that the evidence of record is insufficient to establish the existence and value of such property as of November 19, 1946, the date of loss. Accordingly, this portion of the claim must be and it is hereby denied.

With respect to that portion of this claim based upon accounts receivable, the Commission finds also that the record in this claim is insufficient to establish the value of such accounts receivable as of November 19, 1946, the date of loss. Moreover, with respect to this portion of the claim it is noted that the record contains a copy of a letter dated September 13, 1947, signed by claimants' father, Luis Roever, who states "The Company had in both the British and American Zones large amounts of money due to the Company for deliveries of oil. Of course I was obligated to collect the monies for the benefit of the Company." From the rest of the letter it is not clear exactly how successful Mr. Roever was in making such collections, although some payments were evidently made, or what disposition was made of the funds collected. However, all of the record taken together does not provide a basis for a finding by the Commission of the value of accounts receivable owned by "Markische Oelwerke, A.G." on November 19, 1946, for which the German Democratic Republic could be held responsible under the Act. Accordingly, this portion of the claim must be and it is hereby denied.

Section 605 of the Act provides as follows:

"In determining the amounts of any claim, the Commission shall deduct all amounts the claimant has received from any source on account of the same loss or losses, including any amount claimant received under section 202(a) of the War Claims Act of 1948, as amended, for losses which occurred as a direct consequence of special measures directed against such property in any area covered under this title.

Therefore, the Commission finds that, since claimants received a proportional payment of \$93,430.24 each under Public Law 87-846 for the loss of improved and unimproved real property, machinery, equipment, new installation, furniture and fixtures, and, since the value of claimants' one-half interest each in their total share in the same property found to have been taken under Public Law 94-542 is \$117,144.75, LUIS C. ROEVER and RUDOLPH ROEVER are entitled to an award in the total amount of \$23,714.51 each under the Act.

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)).

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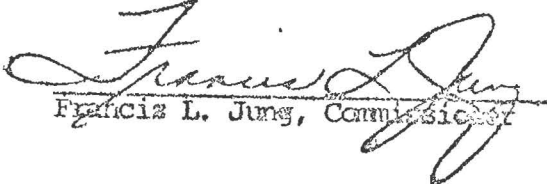
Claimant, LUIS C. ROEVER, is therefore entitled to an award in the amount of Twenty-Three Thousand Seven Hundred Fourteen Dollars Fifty-One Cents (\$23,714.51), plus interest at the rate of 6% simple interest per annum from November 19, 1946 until the date of the conclusion of an agreement for payment of such claims by the German Democratic Republic; and,

Claimant, RUDOLPH ROEVER, is therefore entitled to an award in the amount of Twenty-Three Thousand Seven Hundred Fourteen Dollars and Fifty-One Cents (\$23,714.51), plus interest at the rate of 6% simple interest per annum from November 19, 1946 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 20 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.)