

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

IN THE MATTER OF THE CLAIM OF

HERTA DAVID

Under the International Claims Settlement
Act of 1949, as amended

Claim No. G-1644

Decision No. G-2071

Hearing on the Record held on APR 01 1981

FINAL DECISION

This claim for an unstated amount 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 interest in a business with the "right to build on a valuable piece of land" which was located at the corner of Wilhelmstrasse and Leipziger Strasse in East Berlin.

The record indicates that claimant became a United States national on February 24, 1944.

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. . ."

By Proposed Decision dated April 2, 1980, this claim was denied for the reason that the record did not indicate that claimant's predecessor in interest, her late husband, Felix M. David, a United States national from 1944 until his death on February 23, 1954, had owned an interest in property which was nationalized or otherwise taken by the German Democratic Republic.

Claimant filed objections to the Proposed Decision and has submitted new evidence.

Based upon a review of the entire record, including a report from the Commission's field office in Munich, the Commission now finds that Felix David was the owner, prior to World War II, of a 15% interest in a partnership known as Erbbaurecht G.m.b.H., whose only asset was an "option to build" on property located at the corner of Wilhelmstrasse and Leipziger Strasse in East Berlin. The Commission further finds, that upon his death in 1954, his widow, HERTA DAVID, succeeded to his interest in the partnership.

The record in this claim indicates that legal title to the subject property interest 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. Accordingly, the Commission finds that claimant's predecessor's interest in the sole asset of the partnership known as Erbbaurecht G.m.b.H was taken by the German Democratic Republic on December 18, 1951

In determining the value of the "option to build" on which this claim is based, the Commission has considered the fact that the total capital of the partnership was valued at 50,000 reichsmarks, that the option was for 99 years, that the subject real property was in a very good location and that the value of real property, in general, has increase in Eastern Europe after World War II. Based upon all the evidence of record concerning value, the Commission finds that the value of the "option to build" on property located at Wilhelmstrasse and Leipziger Strasse in East Berlin was \$20,000 on the date of loss and that HERTA DAVID is therefore entitled to an award in the amount of \$3,000 for her 15% interest in this loss as compensation under section 602 of 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 interest therein, interest shall be allowed at the rate of 6% per annum from the date of loss of the date of settlement. (Claim of GEORGE L. ROSENBLATT, Claim No. G-0030, Decision No. G-0100 (1978)).

Full consideration having been given to the entire record, the Commission concludes that the Proposed Decision denying this claim be vacated and that an award be granted to the claimant as set forth below.

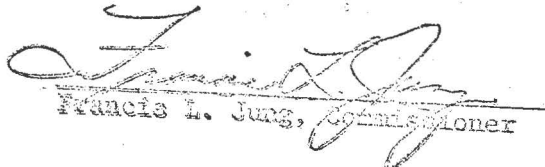
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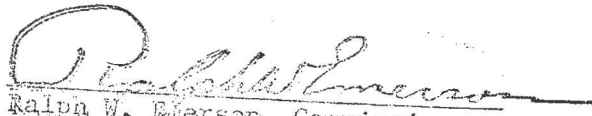
Claimant, HERTA DAVID, is therefore entitled to an award in the amount of Three Thousand Dollars (\$3,000.00), plus interest at the rate of 6% simple interest per annum from December 18, 1951 until the date of the conclusion of an agreement for payment of such claims by the German Democratic Republic.

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

APR 01 1981


Richard W. Yarborough, Chairman


Francis L. Jung, Commissioner


Ralph W. Emerson, Commissioner

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


Executive Director

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HERTA DAVID

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PROPOSED DECISION

This claim for an unstated amount 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 interest in a business with the "right to build on a valuable piece of land" which was located at the corner of Wilhelm and Leipziger streets in East Berlin.

The record indicates that claimant became a United States citizen on February 24, 1944.

Under section 602, Title VI of the Act the Commission is given jurisdiction as follows:

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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."

Based upon all the evidence of record, including evidence obtained by the Commission's field office in West Germany, the Commission finds that the late Felix David, claimant's asserted predecessor in interest, was a co-owner in a business known as "Erbbaurecht GmbH" which in the early 1930's had its business facilities at Leipziger Strasse 26 and later at Franzoesische Strasse 47 in what is now East Berlin. The Commission further finds that the business owned no real property and that there is no evidence to establish that any of the assets of the business survived World War II or that such assets were taken by the German Democratic Republic as required for compensation under section 602 of the Act.

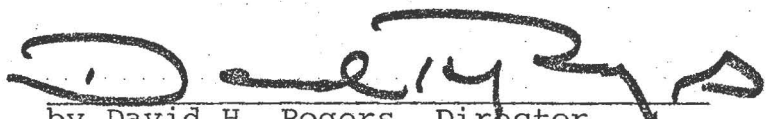
For the above cited reasons, the claim must be and hereby is denied.

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.

APR 2 1980

For Presentation to the Commission


by David H. Rogers, Director
German Democratic Republic Claims
Division

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, a Final Decision based upon the Proposed Decision will be issued upon approval by the Commission any time after the expiration of the 30 day period following such service or receipt of notice. (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.)