

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

IN THE MATTER OF THE CLAIM OF

WALTER W. JAFFE
ROSE JAFFE

Under the International Claims Settlement
Act of 1949, as amended

Claim No. G-1731

Decision No. G-0444

Counsel for Claimant: Brauner, Baron, Rosenzweig, Kligler & Sparber
By Lester J. Koch, Esquire

PROPOSED DECISION

This claim in the amount of \$100,000.00 against the Government of the German Democratic Republic, under Title VI of the International Claims Settlement Act of 1949, as amended, is based upon a grain mill in Niesky that was allegedly sold under duress in 1936.

Claimant, Walter Jaffe, asserts that he became a United States citizen in 1947. Rose Jaffe is claiming as the heir of Fritz Jaffe, a United States citizen since 1946, who died in 1968.

Section 603 of Title VI, of the International Claims Settlement Act of 1949, as amended by Public Law 94-542 (90 Stat. 2509), 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."

The original loss of business property, real property, and personal property occurred, according to the claimants, by a sale under duress in 1936, while the owners at that time, Fritz Jaffe and Walter Jaffe, did not become United States citizens until 1946 and 1947, respectively. Therefore, any claim based upon the loss of such property in 1936 may not be favorably considered by the Commission if for no other reason than that the property was not owned by United States citizens at that time.

On the basis of the entire record, including a decision rendered by the district court in Goettingen, West Germany, in 1966, the Commission also finds as follows:

The "Muehle Niesky GmbH" was a grain mill company founded by claimant Walter Jaffe and Fritz Jaffe, the husband of claimant Rose Jaffe, in 1931. Walter Jaffe and Fritz Jaffe each held 50% ownership interests in the company. In 1936, the business was sold to a Mr. Philipp Niedenthal. The purchase price agreed upon was 16,000 English pounds, minus the amount by which the company's liabilities exceeded inventory and accounts receivable. At the time of sale, this amount was 4,000 pounds. Thus, the contract called for Phillip Niedenthal to pay 12,000 pounds for the Muehle Niesky GmbH. In fact, however, only 8,050 pounds were received by the sellers.

After World War II, Walter Jaffe and Fritz Jaffe filed a claim under the West German "Federal Restitution Law." Their claim was denied in 1961, on the grounds that the proper avenue for relief was a civil suit under private law. Walter Jaffe thereupon brought suit against Phillip Niedenthal in the District Court of Goettingen and, in 1966, received a judgment in his favor.

In neither the federal restitution claim nor in the civil suit did the claimant attempt to have the 1936 contract of sale voided on the grounds that it was consummated under duress. In suing for and collecting damages after the war based on the contract, it appears to the Commission that Walter Jaffe expressly ratified that contract. Therefore, the Commission concludes that the ownership rights of Walter Jaffe and Fritz Jaffe in the Muehle Niesky GmbH ceased as of 1936. Any action that might subsequently have been taken against this property by the German Democratic Republic would not have involved property in which the claimants had an ownership interest.

Therefore, based upon the foregoing, the Commission finds that the claimants, WALTER JAFFE and ROSE JAFFE, have failed to submit evidence to establish that they owned property which was nationalized or otherwise taken by the German Democratic Republic at a time when they were United States nationals as required for compensation under the Act, supra.

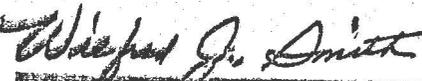
Accordingly, for the above cited reason the claim must be and hereby is denied.

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.

FEB 6 1979


Richard W. Yarborough, Chairman


Wilfred J. Smith, Commissioner

This is a true and correct copy of the decision
of the Commission which was entered as the final
decision on MAR 20 1979


Executive Director

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.)