

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

IN THE MATTER OF THE CLAIM OF

HERBERT A. OTTO
FRANK P. OTTO

Under the International Claims Settlement
Act of 1949, as amended

Claim No. G-1917

Decision No. G-2250

Appeal and objection from a Proposed Decision entered on May 21, 1980. No Oral Hearing Requested.

Hearing on the Record held on OCT 20 1980

FINAL DECISION

This claim in the amount of \$230,000.00 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 loss of a large private residence, on approximately 1.25 hectares (approximately 3.1 acres) of grounds, located at Am Fliederhang 3-7 in Wilhelmshorst, near Potsdam, together with the furniture and furnishings contained in the house.

By Proposed Decision dated May 21, 1980, claimant HERBERT A. OTTO was granted an award in the amount of \$8,635.31 for the loss of a one-half remainder interest in the above-described real property, and for the loss of a suit of 15th century knight's armor, both as of November 19, 1951. Claimant FRANK P. OTTO was granted an award of \$6,635.31 for the loss of his one-half remainder interest in the real property, also as of November 19, 1951. In addition, claimants were together granted a consolidated award in the amount of \$8,729.38 based upon their inherited right to claim for the loss of a life estate interest which their late mother had held in the real property when the property was taken on November 19, 1951. In accordance with the will of their mother, who died in

1971, 30 percent of the consolidated award was granted to the claimant HERBERT A. OTTO and the remaining 70 percent was granted to the claimant FRANK P. OTTO, based upon the division of their mother's estate provided for in the will.

Claimant HERBERT A. OTTO has objected to the findings of the Proposed Decision. His first ground of objection is that the consolidated award granted in the Proposed Decision should be divided equally, rather than being allocated to the extent of 30 percent to himself and 70 percent to his brother, claimant FRANK P. OTTO. His second ground of objection is that the subject real property assertedly had a value of \$32,000.00 at the time of loss, rather than the \$22,000.00 value determined in the Proposed Decision.

Claimant's first argument, that the consolidated award granted in the Proposed Decision should be divided equally, appears in reality to be an objection to the finding in the Proposed Decision that the terms of the will of the claimants' father, who was the original owner of the subject real property and who died in 1937, operated to create a life estate in the property in claimants' mother and to vest in each of the claimants a remainder interest in the property. Claimant contends in his objection that, according to his father's will, his mother was to have use of the property until her death, and that the property was then to be divided between his brother, claimant, FRANK P. OTTO, and himself. He asserts that his mother's will, which provided that 70 percent of her estate was to go to his brother and 30 percent to himself, did not apply to this property, because his mother had only been given the use of it, rather than legal ownership.

If the Commission were to discard the finding in the Proposed Decision that a life estate interest in the subject real property was acquired by the claimants' mother under the will of their father upon his death in 1937, and to find instead, as claimant appears to contend, that legal title to the property passed entirely to him and his brother upon their father's death, it would be unnecessary to grant a consolidated award as part of the decision in the present claim, since, under such a rationale, the

entire ownership interest in the property would have been in the present claimants at the time of the property's loss. However, after thoroughly reviewing and considering the entire record, the Commission concludes that it must affirm the Proposed Decision in this regard, continuing to hold that the terms of the will of claimants' father gave to their mother a life estate interest in the property and left to each of the claimants a one-half remainder interest therein. This conclusion is based on an interpretation of the terms of the will in the context of the Commission's decisions in similar claims, not only in the present program but also in previous claims programs. In particular, note is taken of the provision in the will which gave to claimants' mother "exclusive and sole and free disposition of all interests and returns from my [claimants' father's] capital until her death." The Commission's conclusion is that this provision created what is known in German law as a "usufructuary interest" ("Nutzungsrecht" or "Niessbrauchrecht") in the property, for life, in claimants' mother. Although a precise counterpart to such a property interest does not exist in the American legal system, the Commission has consistently held that this type of interest possesses a sufficient number of similar attributes to qualify it as a life estate interest, or life tenancy, and has treated such interests as "rights or interests in property" the loss of which could form the basis of a compensable claim. See, e.g., Claim of VILMA FERENC, Claim No. HUNG-20151, Decision No. HUNG-966 (filed under Title III of the International Claims Settlement Act of 1949, as amended; Claim of HENRY UTELL, Claim No. G-1885, Decision No. G-1482 (filed in the present program under Title VI of the Act).

Thus, after claimants' father's death in 1937, the division of ownership of the subject real property into life estate and remainder interests gave claimants' mother, as life tenant, the right to possession and use the property, and placed legal title to the property in the claimants. However, as remaindermen, their rights to possession and use of the property could not be exercised until their mother's death. Hence, when the German Democratic Republic took the property in 1951, it took not only claimants' title to the property, held by them as remaindermen,

but also their mother's then-present interest in the property as life tenant. Upon the occurrence of the taking, claimants' mother's life estate interest was then transformed into a right to claim for the loss of that interest, which, as an asset of her estate, was distributable upon her death in accordance with the terms of her will. The consolidated award in the Proposed Decision based upon the claimants' late mother's right to claim for the loss of her life estate interest was therefore allocated to the extent of 30 percent to claimant HERBERT A. OTTO and 70 percent to claimant FRANK P. OTTO, in compliance with the general distribution of their mother's estate provided for in her will.

Claimant's second ground of objection is that the claimed real property should be held to have had a total value of \$32,000.00 at the time of its loss in 1951, rather than the \$22,000.00 value determined in the Proposed Decision. However, no additional evidence or information has been submitted to support this contention. As was set forth in the Proposed Decision, the \$22,000.00 valuation determined therein was based upon evidence in the record consisting of tax-assessed valuations for 1931 and 1935, two photographs of the property, the architectural plans of the house on the property, copies of certain ledger entries relating to expenditures for maintenance and upkeep of the property during World War II, and a copy of the contract relating to the purchase of the property in 1927. Furthermore, note was taken of the fact that the property was unencumbered after 1943, together with the fact that real property values in Eastern Europe experienced a general increase during the years between the end of World War II and 1951. Having reviewed this evidence, the determination of \$22,000.00 as the value of the property at the time of its loss appears appropriate and reasonable, and a higher valuation is not considered justified.

In summary, having considered the entire record, including claimant's objection, the Commission concludes that a change in the findings made in the Proposed Decision in this claim is not warranted.

Accordingly, it is

ORDERED that the Proposed Decision be and it is hereby affirmed.

The awards granted in the Proposed Decision are restated as follows:

A W A R D S

Claimant, HERBERT A. OTTO, is therefore entitled to an award in the amount of Eight Thousand Six Hundred Thirty-Five Dollars and Thirty-One Cents (\$8,635.31), plus interest at the rate of 6% simple interest per annum from November 19, 1951 until the date of the conclusion of an agreement for payment of such claims by the German Democratic Republic.

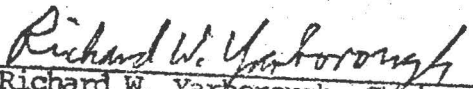
Claimant, FRANK P. OTTO, is therefore entitled to an award in the amount of Six Thousand Six Hundred Thirty-Five Dollars and Thirty-One Cents (\$6,635.31), plus interest at the rate of 6% simple interest per annum from November 19, 1951 until the date of the conclusion of an agreement for payment of such claims by the German Democratic Republic.

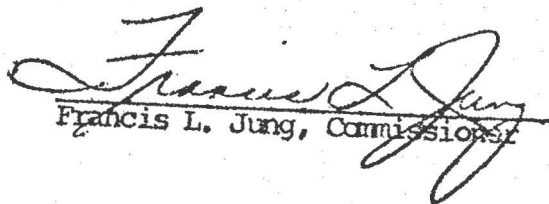
A consolidated award is made in the amount of Eight Thousand Seven Hundred Twenty-Nine Dollars and Thirty-Eight Cents (\$8,729.38), plus interest at the rate of 6% simple interest per annum from November 19, 1951 until the date of the conclusion of an agreement for payment of such claims by the German Democratic Republic, as follows:

| | |
|-----------------------|------------|
| HERBERT A. OTTO (30%) | \$2,618.81 |
| FRANK P. OTTO (70%) | \$6,110.57 |

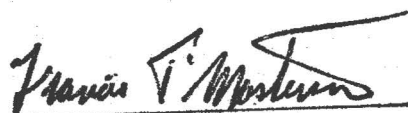
Dated at Washington, DC
and entered as the Final
Decision of the Commission

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

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

IN THE MATTER OF THE CLAIM OF

HERBERT A. OTTO
FRANK P. OTTO

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Act of 1949, as amended

Claim No. G-1917

Decision No. G-2250

PROPOSED DECISION

This claim in the amount of \$230,000.00 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 loss of a large private residence, on approximately 1.25 hectares (approximately 3.1 acres) of grounds, located at Am Fliederhang 3-7 in Wilhelmsdorf, near Potsdam, together with the furniture and furnishings contained in the house. Claimants assertedly acquired their interests in this property under the will of their father, Arthur Otto, upon his death in Berlin in October 1937, and under the will of their mother, Mrs. Frieda Otto, upon her death in 1971. In addition, claimant, HERBERT A. OTTO, has asserted in his own right a claim for the loss of a suit of 15th century knight's armor, a stamp collection, and a coin collection.

The record indicates that claimants, HERBERT A. OTTO and FRANK P. OTTO, became United States citizens by birth on May 19, 1922, and February 9, 1924, respectively. Claimants' father was also a United States citizen at the time of his death in 1937. In addition, the record indicates that claimants' mother became a United States citizen by marriage to the claimants' father in 1921.

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. . ."

According to the record in this claim, the claimants' father provided in his will that the claimants would receive title to the real property subject herein upon his death; however, he further provided that the claimants' mother was to have the use and benefit of the property comprising his estate, which would have included the subject real property, during her life. The Commission concludes that these testamentary provisions operated to create a life estate in the subject property in the claimants' mother, and to vest in each of the claimants a remainder interest in the property.

The record further establishes that the real property subject herein was placed under administration by the Government of the German Democratic Republic on or about November 19, 1951, pursuant to the "Decree on the Administration and Protection of Foreign Owned Property in the German Democratic Republic" of September 6, 1951. The Commission has previously held that the action of the German Democratic Republic in placing property of United States citizens under administration pursuant to this decree constitutes a "nationalization, expropriation or other taking" of property as defined by section 602 of the Act. Accordingly, the Commission finds that both the life estate interest in the subject property held by claimants' mother, as well as the claimants' remainder interests in the property, were taken by the German Democratic Republic, within the meaning of the Act, as of November 19, 1951. Claimants are therefore entitled to awards for the loss of their remainder interests in the property as of that date. In addition,

based on their status as beneficiaries of their mother's estate, claimants are entitled to a consolidated award for the loss of their mother's life estate interest in the property on that same date. Pursuant to the provisions made for the respective claimants in their mother's will, claimant, HERBERT A. OTTO, will share in this consolidated award to the extent of 30 percent, and claimant, FRANK P. OTTO, will share in the consolidated award to the extent of 70 percent.

Claimants have asserted a figure of \$220,000.00 as the value of the real property on which their claim is based. The evidence submitted in support of this asserted valuation consists of documentation reflecting the tax assessed value of the property in 1931 and 1935, two photographs of the property, the architectural plans of the house on the property, copies of certain ledger entries relating to the expenses of maintenance and upkeep of the property during World War II, and a copy of the contract by which the property was purchased in 1927. In addition, the record indicates that all remaining mortgages on the property were paid off in 1943.

Based upon the entire record, and taking into account the general rise in real property values in Eastern Europe in the years following World War II, the Commission finds that the real property subject herein had a value of \$22,000.00 as of the previously determined date of loss of November 19, 1951.

In view of the fact that the ownership interests in the subject property were divided between the claimants and their mother when the property was taken by the German Democratic Republic, it is necessary to determine the respective values of those interests in order to arrive at the amounts of the awards to which claimants are entitled for the loss of their remainder interests in the property and for the loss of their mother's life estate interest therein. As a basis for valuation of life estate and remainder interests in property, the Commission has adopted the Makehamized Mortality Table, appearing at Table 34 of

United States Life Tables and Actuarial Tables 1939-41, and a three and one-half percent interest rate, compounded annually, as prescribed by United States Treasury Department Regulations of June 3 and 4, 1952, for the collection of gift and estate taxes, respectively. According to the record, claimants' mother was 60 years old when the subject property was taken on November 19, 1951. Using the aforementioned method of valuation, a life estate interest in property which is owned by a person aged 60 years is valued at 39.679 percent of the entire value of the property, thereby leaving a figure of 60.321 percent as the proportional value of the remainder interest in the property.

Applying the above figures to the value of the subject real property determined above, the claimants are each entitled to an award of \$6,635.31 for the loss of their remainder interests in the property.

With regard to the additional award to be granted to claimants for the loss of their mother's life estate interest in the subject property, section 606 of the Act provides:

"With respect to any claim under section 602 of this title which, at the time of the award is vested in persons other than the person by whom the original loss was sustained, the Commission shall issue a consolidated award in favor of all claimants then entitled thereto, which award shall indicate the respective interests of such claimants therein, and all such claimants shall participate, in proportion to their indicated interests, in any payments that may be made under this title in all respects as if the award had been in favor of a single person."

For the life estate interest in question, claimants are therefore entitled to a consolidated award in the amount of \$8,729.38, to be shared as follows, in accordance with the provisions made in their mother's will:

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|-----------------------|------------|
| HERBERT A. OTTO (30%) | \$2,618.81 |
| FRANK P. OTTO (70%) | \$6,110.57 |

With respect to the personal property for which a claim has been asserted, consisting of furniture and furnishings, a suit of 15th century armor, a stamp collection and a coin collection, it is stated that this property was left in the subject house in

Wilhelmshorst when it was taken over by the authorities in the territory of the present day German Democratic Republic after the end of World War II. However, except for the suit of 15th century armor owned by the claimant, HERBERT A. OTTO, no evidence or other information has been submitted to establish that any of the property was still in the house when the latter was placed under administration by the German Democratic Republic.

Based on the record, which includes an account given by the claimant, HERBERT A. OTTO, of a visit he made to the subject house in Wilhelmshorst in the 1960s, wherein he found that his suit of armor had only recently been removed from the house, the Commission concludes that the armor was still present when the house and grounds were taken by the German Democratic Republic on November 19, 1951. Accordingly, the Commission finds that the subject suit of armor was also taken by the German Democratic Republic on November 19, 1951, and that the claimant, HERBERT A. OTTO, is entitled to an additional award for his loss of this property on that date. Having considered the record, the Commission further finds that this property had a value of \$2,000.00 at the time of its loss.

With respect to the remaining items of personal property claimed for, inasmuch as no evidence has been submitted to indicate that any of these items of property were still present in the house when it was taken by the German Democratic Republic on November 19, 1951, no basis is available for a finding that any of the property was nationalized, expropriated or otherwise taken by the German Democratic Republic within the meaning of section 602 of the Act. Accordingly, the portion of the present claim based upon the asserted loss of this property must be and is hereby denied.

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)).

A W A R D S

Claimant, HERBERT A. OTTO, is therefore entitled to an award in the amount of Eight Thousand Six Hundred Thirty-five Dollars and Thirty-one Cents (\$8,635.31), plus interest at the rate of 6% simple interest per annum from November 19, 1951 until the date of the conclusion of an agreement for payment of such claims by the German Democratic Republic.

Claimant, FRANK P. OTTO, is therefore entitled to an award in the amount of Six Thousand Six Hundred Thirty-five Dollars and Thirty-one Cents (\$6,635.31), plus interest at the rate of 6% simple interest per annum from November 19, 1951 until the date of the conclusion of an agreement for payment of such claims by the German Democratic Republic.


A consolidated award is made in the amount of Eight Thousand Seven Hundred Twenty-nine Dollars and Thirty-eight Cents (\$8,729.38), plus interest at the rate of 6% simple interest per annum from November 19, 1951 until the date of the conclusion of an agreement for payment of such claims by the German Democratic Republic, as follows:

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

MAY 21 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).