

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

IN THE MATTER OF THE CLAIM OF

F. W. WOOLWORTH CO

Under the International Claims Settlement  
Act of 1949, as amended

Claim No. G-1993

Decision No. G-3219

Counsel for Claimant:

S.W. Manteria  
Assistant Secretary

Hearing on the Record held on MAY 13 1981

FINAL DECISION

This claim in the amount of \$875,831.13 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 real and personal property in the German Democratic Republic.

By Proposed Decision dated February 18, 1981, the Commission granted claimant an award the loss of real property in Halle and Sonneberg, which survived World War II. Since claimant had received an award in the War Claims Program for the loss of the same properties, the amount paid to the claimant for those properties was subtracted from the value of the property taken by the German Democratic Republic, and an award was issued for the remaining unpaid value, in the amount of \$96,526.00. The Commission denied the portion of the claim pertaining to improvements and personal property which had been destroyed during World War II and therefore could not have been taken by the East German authorities after the end of the war. The Commission further denied the portion of the claim pertaining to properties in Magdeburg and Erfurt because the Commission concluded that the claimant had purchased these properties in sales under duress before World War II and therefore had not acquired valid title to them.

By letter dated March 12, 1981, claimant objected to the Proposed Decision, requesting that the valuation of the property in Halle be reconsidered. Claimant further requested that the Commission revise its findings with respect to the Erfurt and Magdeburg properties because it had paid a substantial part of the purchase price by satisfying existing mortgages on both properties and because the property in Erfurt was purchased in 1936, before a presumption of a forced sale could be found to be applicable.

With respect to the property in Erfurt and Madgeburg which the Commission found had been purchased by claimant's 97%-owned subsidiary in Germany in sales under duress, claimant has asserted that, as partial payment for these properties, existing mortgages were satisfied by the purchaser and the remainder of the purchase price was deposited into bank accounts in the sellers' names. The Commission found in the Proposed Decision, and this does not appear to be disputed by the claimant, that funds placed into bank accounts in the name of the sellers of the property would not have been received by the sellers inasmuch as the accounts were blocked accounts established for Jews under the laws of the Nazi regime. Claimant has asserted, however, that since a substantial portion of the purchase price served to satisfy the existing mortgages, then the former owners did receive substantial actual value for the property.

The Commission has considered claimant's statements with respect to the mortgages and concludes that the asserted satisfaction of existing mortgages is not sufficient to vitiate the nature of the forced sales under the Nazi regime. The satisfaction of existing mortgages, where the sellers' equity was not received in a freely disposable form, is not sufficient to have transferred valid title to the subject properties to the purchaser. The Commission notes that in the claimant's Final Decision in the War

Claims Program, Claim Nos. W-7115--W-7122, Decision Nos. W-18763 and W-18764, the issue of mortgages' being satisfied was referred to by the Commission. The evidence of record in the War Claims files had consisted of detailed information concerning the purchase price of various properties, the redemption of mortgages, and the amount paid to the various sellers. The Commission in the War Claims Program concluded that in instances where monies for the purchase of Jewish-owned property were placed into blocked accounts, not at the free disposal of the sellers, the claimant did not acquire valid title to the subject properties. The Commission, therefore, in considering whether claimant had acquired valid title to ten pieces of real property purchased under the Nazi regime, had had before it the facts and issues to have enabled it to find that claimant had paid a substantial enough portion of the purchase price through the satisfaction of mortgages to have acquired full or partial valid title to the subject properties. The fact that the Commission in the War Claims Program found that claimant had not acquired any valid interest in the properties reflected the prevailing views of the Commission at that time, which are now reaffirmed by this Commission in the instant claim.

Furthermore, with respect to the property in Erfurt, claimant submitted a copy of the contract by which the property was purchased. The contract was executed in October of 1936. However, the contract stated that, after the payment of an existing mortgage, the remainder of the purchase price was to be paid into a bank account on January 31, 1937. The Commission in the Proposed Decision found that, since the proceeds from the forced sale of Jewish property in the years 1937 and later were normally kept in blocked accounts and were not available for the free disposition of the sellers, claimant had not received valid title to this property.

Claimant, in objecting to this portion of the Proposed Decision, stated that "it is inequitable to apply a presumption of a forced sale to any sale negotiated in good faith prior to 1937. Though later events may have effectively deprived the former owners of a portion of the proceeds of such a sale those events could not necessarily have been foreseen." The Commission finds that, in light of the existence of the persecutory laws of the Nazi regime, already well in force in October of 1936, it is not able to conclude that the sale of the Erfurt property was untainted by circumstances affecting Jewish property owners at that time.

When the Commission refers to a sale under duress, it is not necessarily making a finding as to the acts of any particular buyer. What the Commission is referring to is that there was a general climate of persecution in Germany during the years preceeding World War II, so that any sale of Jewish-owned property was, in fact, made under less than fair free market conditions. The climate of persecution starting in 1933 heightened with the passage of the Nuremberg Laws in 1935, and became increasingly stringent in the years 1937 and later. The Commission therefore reiterates its finding in the Proposed Decision that payment into a blocked Jewish account in January of 1937 can be presumed not to have been received by the seller. Accordingly, in such circumstances, the Commission finds that the purchaser of the property, F.W. Woolworth G.m.b.H, did not receive valid title to the property.

With respect to the property in Halle, the evidence which the Commission had considered in finding its value included information that the purchase price was 600,000 reichsmarks. Claimant, on objection, submitted information indicating that the purchase price was, in fact, 700,000.00 reichsmarks. Accordingly, as the new information indicates that the property in Halle was more valuable then was previously calculated, the Commission finds that the surviving portion of the property had a value of \$120,000.00. As F.W. WOOLWORTH had a 97% interest in its subsidiary

F.W. Woolworth G.m.b.H., which owned the property, the claimant's interest in the property totalled \$116,400.00. The proportionate amount of the payment received by the claimant for the loss of the property in Halle totalled \$40,315.00, leaving a difference of \$71,085.00 unpaid for the loss of this property. Accordingly, the Commission finds that claimant is entitled to an award for the unpaid difference for the Halle property, as well as the unpaid difference for the Sonneberg property of \$49,096.00.

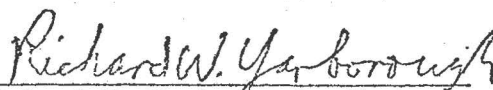
Based upon the above, the Commission affirms the portions of the Proposed Decision pertaining to the properties in Erfurt and Madgeburg. It further withdraws its award to the claimant for the loss of the Halle and Sonneberg properties and issues a new award in the amount of \$120,181.00 as its final determination on this claim.

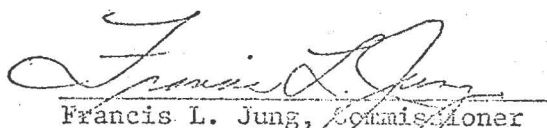
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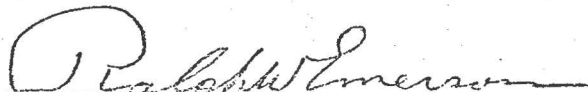
Claimant, F.W. WOOLWORTH CO., is therefore entitled to an award in the amount of One Hundred Twenty Thousand One Hundred Eighty-One Dollars (\$120,181.00), plus interest at the rate of 6% simple interest per annum from August 11, 1952 until the date of the conclusion of an agreement for payment of such claims by the German Democratic Republic.

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

MAY 13 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 MAY 13 1981

  
Francis T. Martens  
Executive Director

G-1993

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F.W. WOOLWORTH CO.

Under the International Claims Settlement  
Act of 1949, as amended

Claim No. G-1993

Decision No. G-3219

Counsel for claimant:

S.W. Manteria,  
Assistant Secretary

PROPOSED DECISION

This claim in the amount of \$875,831.13 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 real and personal property in the German Democratic Republic.

The evidence of record indicates that claimant is a corporation organized in 1911 under the laws of the State of New York. It therefore qualifies as a national of the United States within the meaning of the Act.

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. . ."

The evidence of record in this claim includes the materials filed in W-7115, and the Proposed and Final Decisions issued under Title II of the War Claims Act of 1948, as amended. In the decisions issued under the War Claims program, claimant was awarded compensation for war damage to 13 of its stores in Germany;

the loss of furniture, fixtures, equipment, and merchandise; and a special measures award for the total loss of three stores and a warehouse with cash and goods in the eastern zone of Germany. The claim herein is for the loss of the land and buildings of three stores in Halle, Erfurt, and Magdeburg; the loss of the warehouse and the cash and goods contained in Sonnenberg; and the loss of furniture, fixtures, equipment and merchandise.

Under the War Claims program claimant had claimed for the loss of 23 stores. The Commission denied the claim for 10 of the stores, on the basis that they had been purchased under the persecutory measures under the Nazi regime. In the Proposed Decision issued in the War Claims program, the Commission found that "claimant [had] not established that the German company [a 97% owned subsidiary of claimant] acquired valid title to the ten buildings described. . .as having been purchased in 1937, 1938, and 1939." Accordingly, the Commission in the War Claims Program denied that portion of the F.W. WOOLWORTH claim.

In the War Claims program, the Commission granted awards for the loss and damage to 13 stores owned by F.W. Woolworth Co. GmbH, the 97% owned subsidiary of the claimant. Among those stores were a store at Breiter Weg 146 in Magdeburg and a store at Anger 59 in Erfurt. The Commission in the War Claims Proposed Decision had stated that the 13 stores, including those in Magdeburg and Erfurt, had been purchased prior to 1937, and therefore the question of a forced sale to claimant's subsidiary had not arisen.

Evidence available to the Commission now, however, indicates that, with respect to the building and land at Breiter Weg 146 in Magdeburg, this property was, in fact, the subject of a forced sale to F.W. Woolworth Co. GmbH in November of 1938. The documentation supporting this fact includes a report from the Commission's West German field office as well as a document from the Jewish Community of Magdeburg. Since the Commission considers that the new evidence establishes that this property was purchased in a sale under duress, it finds that claimant did not acquire a valid ownership

interest in the subject property. Accordingly, this portion of the claim must be and hereby is denied.

With respect to the property at Anger 59 in Erfurt, the report from the Commission's West German field office establishes that this property had been owned by the Reibstein Corporation, which was mainly owned by a Mr. Strassburg, who was half Jewish, and therefore considered Jewish under the Nuremberg Laws of Nazi Germany. Claimant has submitted a copy of the contract by which this property was purchased, executed in October of 1936. However, the text of the contract reveals that part of the purchase price of the property included the payment of an existing mortgage encumbering the property. This mortgage was to be paid on January 31, 1937. The contract further specified that after the extinguishment of the mortgage, the remainder of the purchase price was to be put in a bank account for Mr. Strassburg.

A letter from the Leo Baeck Institute in New York, an historical research institute devoted to the study and presentation of the history of German-speaking Jews in central Europe, states in part that "proceeds from the forced sale of Jewish property in the years 1937 and later were not available for free disposition of the venders. They were usually kept in blocked accounts." In addition, the Commission itself in the War Claims program had stated that the purchase of property from a Jewish owner in 1937, 1938, 1939 gave rise to a presumption of a forced sale. The Commission finds, with respect to the property in Erfurt, that even though the contract was executed in 1936, the actual payment to the vendor did not occur until 1937, when it is highly unlikely that the proceeds could have been freely disposed of by the former owner. Accordingly, the Commission finds that the evidence is not sufficient to establish that claimant's subsidiary in Germany acquired valid title to the subject property in Erfurt. Accordingly this portion of the claim must be and hereby is denied.

With respect to the store at Leipzigerstrasse 94 in Halle, and the warehouse in Sonnenberg, the Commission finds that claimant's subsidiary did have valid title to the former, and claimant itself had valid title to the latter. Both the property at Halle and that in Sonnenberg were subject to special measures of the Nazi regime, and claimant received an award compensating it for its interest in both the buildings and land of the two properties, as well as the goods contained in the warehouse in Sonnenberg.

From the materials in the War Claims file, as well as materials in the current file, the Commission finds that the improvements on the property in Sonnenberg were totally destroyed during World War II. In addition, the furniture, fixtures, equipment and merchandise involved in the current claim were also destroyed or looted during World War II. As these properties did not survive the war, they could not have been taken by the Government of the German Democratic Republic, as required for compensation under the Act. Accordingly, the portion of the claim pertaining to these properties must be and thereby is denied.

The properties in which claimant had a valid ownership interest, and which survived World War II, were the undamaged portion of the property in Halle and the remaining land in Sonneberg. The evidence of record in this claim, including a report from the Commission's West German field office, indicates that these properties would have been taken by the Government of the German Democratic Republic pursuant to the decree of September 6, 1951, which took under administration foreign owned assets in the German Democratic Republic. The Commission has previously held that, absent further evidence of a specific date of taking, the taking of such property will be considered to have occurred on August 11, 1952, the date of the first implementing regulation for the above decree.

With respect to the property in Halle, the Commission in the War Claims program had not found an independent value for this property. It had, instead, found a combined value for the undamaged improvements in Halle and in Erfurt of \$200,000.00. Based upon the purchase prices of the two pieces of property, the Commission finds that the Erfurt property had been slightly more valuable.

The Commission therefore concludes that the remaining property in Halle had a value of \$80,000.00 on the date of taking. As claimant owned a 97% interest in this property, its interest totalled \$77,600.00. The land in Sonnenberg has been determined by the Commission to have had a value of \$80,348.00. Accordingly, the Commission finds that the total value of the property taken by the German Democratic Republic was \$157,948.00.

The total loss to the claimant in the War Claims program was found to have been \$3,086,242.55. Of that total loss, the loss of claimant's interest in the Halle property totalled 2.51%. Its loss of the land in Sonnenberg totalled 2.60% of the total loss. A report from the Department of Treasury establishes that, of the total award granted to the claimant, payment has been received in the amount of \$1,202,007.07. Accordingly, the proportionate amount of the payment received for the loss of the property in Halle totals \$30,170.00. The proportionate amount of the payment received for the land in Sonnenberg totals \$31,252.00. Therefore, payments in the amount of \$61,422.00 have been received by the claimant for the loss of the surviving properties in Halle and Sonnenberg.

Section 605 of the Act states that any award granted by the Commission must be offset by payments previously received on account of the same loss.

In determining the amount 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.

Accordingly, the Commission concludes that claimant F.W. WOOLWORTH COMPANY is entitled to an award of \$96,526.00 for the loss of the properties in Halle and Sonnenberg for which it has not been compensated.

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,

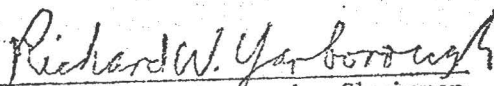
interest shall be allowed at the rate of 6% per annum from the date of loss to the date of settlement. (Claim of GEORGE L. ROSENBLATT, Claim No. G-0030, Decision No. G-0100 (1978)).

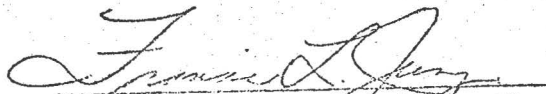
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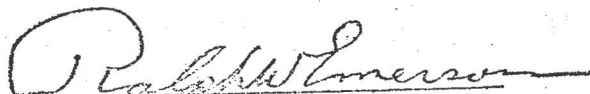
Claimant, F.W. WOOLWORTH COMPANY, is therefore entitled to an award in the amount of Ninety-Six Thousand Five Hundred Twenty-Six Dollars (\$96,526.00) plus interest at the rate of 6% simple interest per annum from August 11, 1952 until the date of the conclusion of an agreement for payment of such claims by the German Democratic Republic.

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

FEB 18 1981

  
Richard W. Yarborough, Chairman

  
Francis L. Jung, Commissioner

  
Ralph W. Emerson, 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.)