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

IN THE MATTER OF THE CLAIM OF

MARK PRICEMAN
IDA PRICEMAN

Under the International Claims Settlement Act of 1949, as amended

Claim No. G-2116

Decision No. G-1073

PROPOSED DECISION

This claim in the amount of $200,000.00 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 two apartment houses located in East Berlin.

In support of this claim, claimants have submitted copies of the Grundbuch, business registration, correspondence from Soviet Military Authorities and the Magistrate for Greater Berlin, along with relevant proofs of citizenship and inheritance, from which the Commission finds the following facts:

Claimants' predecessor, Moses Priceman, owned an 85 percent interest in a limited partnership known as "Derraingesellschaft, Berlin-Wilmersdorf", which owned improved real property, numbers 88 and 89 Dunkerstrasse in Berlin. This property was confiscated in 1941 by the Nazi Government pursuant to persecutory decrees of that regime on the basis of the racial or national origin of the owner. In 1943, the property was transferred to an individual named Wilhelm Wönter.

According to a letter from the Soviet Military Administration in Germany dated August 27, 1946, the improvements at Dunkerstrasse 88 and 89 survived the war without substantial damage.

After the end of World War II, on the basis of order number 124 of the Soviet Military Authority, the parcels were taken from Wilhelm Wönter and sequestered as property which had been taken away from the legal owners by measures carried out by the Nazi authorities and title to which was transferred to third parties. Custody of these parcels thereafter passed to the Magistrate of Greater Berlin, Administrative Office for Special Property, Office of Former Jewish Property. As of November 28, 1951, that office was administering the property as trustee as set forth in a letter dated November 28, 1951, from the Magistrate of Greater Berlin which stated as follows:

> "In response to the letter of September 15, 1951, we inform you that the real property referred to above was confiscated in 1941 by the Chief Trustee Office (East) and was later sold to Wilhelm Wönter in Berlin. On the basis of order number 124 of the SMA of Octo ber 30, 1945, the parcels are under our administration as trustees of former Jewish property."

Moses Priceman, who was not a national of the United States died intestate on August 29, 1947. Pursuant to the German laws of intestacy, one forth of his estate passed to his widow, IDA PRICEMAN, and three eighths each to MARK PRICEMAN and his sister. MARK PRICEMAN and IDA PRICEMAN became United States citizens on September 12, 1943, and January 12, 1948, respectively. The sister of MARK PRICEMAN never became a United States citizen.

Moses Priceman, as shown by the facts of this case, was one of many individuals who suffered the consequences of a series of discriminatory and persecutory laws and decrees of the then Nazi Government, some of which called for the confiscation of property by the Third Reich or Nazi Party or required the sale under duress of property for the sole reason of the racial or national origin of the individual owner.

But for the persecutory action of the Nazi regime, the property here in issue would have been partially owned by citizens of the United States as of January 12, 1948.

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 issue which must be decided by the Commission is whether, considering all the circumstances of this claim, there was any action by or on behalf of the German Democratic Republic which, under international law, would constitute an expropriation, nationalization or other taking of property owned directly or indirectly at the time by a United States national.

For reasons set forth hereinafter, the Commission holds that the confiscation of the property in 1941 was illegal as it was based solely upon the Nazi persecutory laws which have been universally condemned as violations of minimum standards of the law of nations. The illegality of that confiscation was recognized by the postwar administering authorities who took custody of the property from the subsequent purchaser, Wilhelm Wönter. Persecutees such as Moses Priceman retained beneficial ownership interests in the property which upon their death passed to their heirs. The Commission finds that certain decrees issued in the German Democratic Republic and East Berlin in 1951 terminated those rights of individuals who had suffered previous persecutory losses and that such governmental action constituted a taking of property interests held by such individuals or their heirs. To the extent that such government action affected rights of individuals who were United States citizens at the time, a loss compensable under Public Law 94-542 has occurred.

The Commission has previously dealt with the issue of such persecutory losses in its determination of claims in the General War Claims Program under the War Claims Act of 1948, as amended, and in its adjudication of claims under the International Claims Settlement Act of 1949, as amended, involving the expropriation of property by the Governments of Yugoslavia, Poland, and Czechoslovakia, the territory of which countries for various periods before May 8, 1945, were under the control of the Third Reich.

The Commission has consistently held that it would not recognize as valid, a purported transfer of title, whether by way of confiscation or by way of sale under duress, to the extent adequate consideration was not received by the persecutee, where such confiscation, sale or other purported transfer of ownership was the direct result of the persecutory laws, decrees or actions of the Nazi regime. The Commission has consistently held that under concepts of international law and justice, such former owners retained a beneficial ownership interest despite the apparent illegal actions by the Nazis. Where such property was subsequently destroyed during World War II or expropriated by a postwar government, the Commission has consistently recognized in the original owners or their heirs a property interest for the loss of which compensation might be payable. (Claim of HERBERT BROWER, Claim No. PO-1246, Decision No. PO-1634; Claim of ARIS GLOVES, INC., Claim No. CZ-1170, Decision No. CZ-3035; Claim of ULRICH O. STRAUSS, Claim No. W-22752, Decision No. W-20487; Claim of GERTRUD KOLISCH, Claim No. Y-1751, Decision No. Y-1447.)

The Commission has affirmed this principle in Claim of MARTHA TACHAU, Claim No. G-0177, Decision No. G-1071 holding that an expropriation of property in 1948 constituted a taking of the beneficial ownership of the heir of a persecutee who was at the time a United States citizen.

In its determination of claims against the Government of Czechoslovakia, the Commission has held that the mere sequestering by a postwar government of property which had been subject to a persecutory transfer did not constitute a taking within the meaning of the International Claims Settlement Act. However, where the Government of Czechoslovakia having so sequestered property, subsequently terminated all rights of restitution to the rightful owner, such a termination of rights itself constituted a compensable taking. (Claim of ERIC WALDER, Claim No. CZ-2594, Decision No. CZ-196)

The Commission now must consider the treatment of such property located in Germany.

The Commission notes that but for such persecutory decrees, such forced transfers of property were void under the then existing German Civil Code.*

One of the first acts of the four power administration of Germany following the termination of World War II was the cancellation of all such persecutory laws and decrees. Such persecutory measures universally have been held to be violative of and abhorant to any civilized concept of international law.

In the British, French and American Zones of Germany property which had been subject to persecutory disposition was taken under administration and an extensive program started to return record title to rightful owners.

*Article 123 of the German Civil Code provided that contracts made under duress or fraud are voidable. Article 138 provided that transactions contra bonos mores are void.

In the area of Germany under Soviet administration, including East Berlin, a similar procedure was commenced. On October 30, 1945, the Soviet Military Administration (SMAD) issued order number 124 which provided for the sequestration and temporary administration of property such as that belonging to the German State and subsidiary organs, Nazi officials, prominent members of the Nazi party, and the German military establishment. Implementing instructions to order number 124 also provided that

> "All property which has been abandoned without supervision, or which is owned by and for the benefit of, persons who have illegally taken possession thereof will be registered and placed under temporary administration. Property which has been taken away from the legal owners in the course of the measures carried out by the German authorities and title to which was transferred to third parties is handled likewise."

Order number 104 issued by SMAD on April 4, 1946, reiterated that declarations were to be filed concerning

> "property . . . expropriated after September 1, 1939, or if it passed from the legal hands into the hands of third parties due to measures of the German authorities."

In Berlin a trustee was appointed in 1945 by the Allied Kommandatura to identify and register former Jewish properties in all four occupation sectors. After the division of Berlin in 1948, SMAD appointed a trustee for the Soviet sector of Berlin. The trustee was later replaced by the Trustee's Office for the Control of Former Polish and Jewish Property in East Berlin. The property so administered was subsequently transferred to a Magistrate of Greater Berlin, Administrative Office for Special Property, Office of Former Jewish Property.

SMAD orders such as 124 were effective throughout the area of Soviet occupation of Germany, as well as East Berlin. It appears to the Commission that the registration and sequestration of property which had been subject to a persecutory loss was most vigorously carried out in East Berlin, however, to varying degrees the order was carried out throughout the territory under Soviet administration and trusteeships for formerly Jewish owned property were created in various cities.

Taken together, these decrees and their implementing regulations created a broad program which required that owners of property illegally obtained during the Nazi regime come forward and register such property which then was sequestered by the government. Principally in Thuringia and sporadically throughout the GDR, record title was returned to former owners, however, most of such property remained in government custodianship as of 1951.

The Commission understands that not all property illegally in private hands may have been registered and sequestered as required by law. However, as far as the interests of United States citizens were concerned, the United States was entitled under international law to a non-discriminatory and effective implementation of such decrees and regulations. The Commission, therefore, will assume the universal application of such registration and sequestration.

The Commission holds that the original sequestration of formerly Jewish owned property and its transfer to a trustee as occurred herein, did not constitute a taking as that term is used in Public Law 94-542. On the contrary, such sequestration was consistent with the announced policy of the United Nations as a necessary initial step to the implementation of a policy of restoration of title. Holding the property in trust was totally consistent with the protection of the beneficial interests of the former owners.

In 1951, however, the German Democratic Republic took specific governmental action to foreclose the right of persecutees to seek restoration of their title and in so doing destroyed those beneficial interests of the former persecutees. On September 6, 1951, the Decree for the Protection of Foreign Owned Property was issued in the German Democratic Republic. An almost indentical decree was issued covering East Berlin on December 18, 1951. The impact of these decrees was to take under permanent administration

all foreign owned property and foreclose any efforts by persecutees who were foreigners to seek restitution of title. Successful reinstatement of title would have immediately subjected foreign owned property to loss by permanent administration. In Claim of ROSENBLATT, Claim No. G-0030, Decision No. G-0100, the effect of these decrees upon a persecutee was clearly illustrated. The claimant therein had been forced to sell his property due to the persecutory measures of the Nazi regime. In 1949, under the restitution law of Thuringia, he obtained the return of title from the East German purchaser. Because the property was recorded in claimant's name and he had become a United States citizen, the property was considered as foreign owned and was taken by the German Democratic Republic pursuant to the decree of September 6, 1951.

In the German Democratic Republic, the District Court of Erfurt, Third Civil Council, in the indemnification case of Karoline Friedmann nee Ambach et al. v. Thueringer Zentral-Viehverwertonge G.m.b.H. et al., held in 1953 that the decree of September 6, 1951, cut off restitution rights. The reasoning stated by the court for the denial of five indemnification claims was stated, in relevant part,

> "Pursuant to the decree concerning the Administration and Protection of Foreign Property in the GDR of September 6, 1951 (Law Gazette, p. 839), indemnification cannot be sought before the civil courts anymore, because part one, section three, of said decree expressly provides that the questions concerning foreign property will be settled finally in a peace treaty. Legal proceedings are thus barred in this case so that the arbitration and complaint had to be dismissed as was hereby done."

Therefore, the decree of September 6, 1951, effective in the German Democratic Republic , and the corresponding decree of December 18, 1951, effective in East Berlin, had the effect of terminating rights of persecutees who were not residents of the German Democratic Republic or of the Federal Republic of Germany, on those dates, unless the property had been previously confiscated in some other manner by the German Democratic Republic, in which

case the prior confiscation would have already terminated such rights.

As to persecutees who were residents of the Federal Republic of Germany, property in which they had a beneficial interest became subject to seizure pursuant to a decree of July 17, 1952, which confiscated or put under administration property of individuals who had formerly resided in the territory which now constitutes the German Democratic Republic and who had not returned or of individuals who had left the German Democratic Republic without permission. With the passage of the decree of July 17, 1952, therefore, a complete design had been created which cut off all restitution rights of former persecutees or their heirs residing outside the GDR.

The Commission holds, consistent with its treatment of similar action by the Government of Czechoslovakia, that this governmental action by the German Democratic Republic undertaken within two years of its creation constitutes a taking of a property interest as that term is used in Public Law 94-542.

Applying these conclusions to the present claim, the Commission finds that the apartment houses located at 88 and 89 Dunkerstrasse in Berlin were taken as of December 18, 1951, at a time when 85 percent of the beneficial ownership thereof was held by the heirs of Moses Priceman. Claimant IDA PRICEMAN as recipient of one fourth of the estate held a 21.25 percent interest in the apartment houses, while claimant MARK PRICEMAN as recipient of three eighths of the estate held a 31.87 percent interest in the real property.

To establish the value of the apartment houses, claimant has submitted a copy of a letter dated Janaury 22, 1947, from Emil Kolarz, who had been named as an emergency administrator of the property by the Nazi Government in 1941. The letter states the original purchase price of the apartments in the 1920's was in the amount of 292,500 RM and that as of 1942 the property was

subject to certain mortgages. Claimant has also submitted a copy of a May 21, 1946, letter from the Office of Military Government for Germany (US) which makes reference to a report prepared by the Soviet Military Authority which refers to the property of Moses Priceman and provides what apparently was the 1935 Einheitswert of RM 164,900. Claimant has also furnished a general description of the property estimating the number of tenants and the approximate size and construction of the apartment houses and taking into consideration increased land and building costs after the date of purchase and applying appropriate depreciation, the Commission finds that the equity in the property in 1951 had a value of $40,000.00. Therefore, IDA PRICEMAN's 21.25 percent interest in the equity amounted to $8,500.00 and MARK PRICEMAN's 31.875 percent interest in the equity had a value of $12,750.00. Therefore, the Commission finds claimants are entitled to awards in those principal amounts.

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, MARK PRICEMAN, is therefore entitled to an award in the amount of $12,750.00 (Twelve Thousand Seven Hundred Fifty Dollars), 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.

Claimant, IDA PRICEMAN, is therefore entitled to an award in the amount of $8,500.00 (Eight Thousand Five Hundred Dollars), 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 Proposed
Decision of the Commission.

JUL 25 1979

Richard W. Yarborough

Richard W. Yarborough, Chairman

Wilfred J. Smith

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 SEP 5 1979

Francis T. Mortimer

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.)