

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

IN THE MATTER OF THE CLAIM OF

ELSE KAY

Under the International Claims Settlement
Act of 1949, as amended

Claim No. G-2201

Decision No. G-2052

AMENDED PROPOSED DECISION

This claim in an unstated dollar amount against the Government of the German Democratic Republic, under Title VI of the International Claims Settlement Act of 1949, as amended, is based upon the loss of improved real property in Berlin at Herzbergstrasse 26 and Schoenhauser Allee 127.

By Proposed Decision dated March 26, 1980 in the above captioned claim the Commission made the following findings:

Anna Meyer was the owner before World War II of two parcels of improved real property in Berlin at Herzbergstrasse 26 and Schoenhauser Allee 127;

Anna Meyer lost legal title to the two parcels of real property during the Nazi regime, but retained a beneficial ownership in both parcels;

Anna Meyer became a citizen of the United States on December 19, 1949;

The real property in Berlin at Herzbergstrasse 26 was taken by the German Democratic Republic on May 21, 1949, and therefore could not form the basis of a compensable claim;

The real property at Schoenhauser Allee 127 was taken by the German Democratic Republic on December 18, 1951 at a time when it was owned by a United States citizen;

Claimant, ELSE KAY, became a United States citizen on March 25, 1946; and,

Claimant succeeded to the entire right to claim for the loss of the property upon the death of Anna Meyer in 1974.

The Commission hereby reaffirms all of those findings set out above.

In its decision issued March 26, 1980, the Commission found that the value of Anna Meyer's equity in the property on the date of taking was \$42,142.86. In reaching its conclusion as to the value of claimant's equity in the property, the Commission took into consideration evidence submitted by the claimant that the 1925 tax assessed valuation of the apartment building and land was RM 183,395, that the gross rentals for a five month period in 1939 totaled approximately RM 15,000 and that there were outstanding mortgages upon the property in the amount of RM 180,000. The Commission further took into consideration statements made by claimant in the claim form that the tax assessed value of the property, presumably made under the 1934 Reich evaluation law, was RM 190,300 and that the property was sold under duress for the amount originally of RM 229,000 which was lowered to RM 213,000. At the time of making its decision, the Commission had received a report from its office in Munich which indicated that the building had survived the war without damage and, therefore, the Commission made an award based upon the value of the building and the land.

Subsequently, on April 2, 1980, the Commission received a supplemental report from its office in Munich which contained a report from the information office for East Berlin (Auskunftstelle Ost Berlin). In reference to the property at Schoenhauser Allee 127, the report states ". . . according to the official map of damages of 1947, more than 50% of the real property was destroyed. This definition does not exclude total damage." By letter dated April 10, 1980 the staff of the Commission informed claimant of the newly received information and that the Commission was not authorized under Public Law 94-542 to make an award of compensation for war damage. The claimant was further informed that the

Commission might wish to reopen the claim in order to consider the new information concerning war damage and the claimant was invited to submit any information she might have concerning war damage to the property and any comments concerning the extent of war damage and its affect on the value of the real property. By letter dated April 14, 1980 claimant acknowledged receipt of this letter and stated that, unfortunately, she had no more information to provide to the Commission.

Therefore, on its own motion and in the interest of justice and consistent treatment of all claimants, the Commission has reopened this claim and, based upon the information contained in the report from the Commission's field office, finds that the improvements to the subject real property were substantially damaged during World War II. Based upon a review of the entire record, including the evidence of value previously cited and the evidence provided concerning war damage and taking into consideration an increase in value of property in Eastern Europe after World War II, the Commission finds that the value of Anna Meyer's equity in the remaining property on the date of taking was \$25,000.00.

Therefore, the original Proposed Decision in this claim, issued March 26, 1980, is hereby amended by substituting the amount of \$25,000.00 as the amount to which claimant is entitled for the loss of the real property at Schoenhauser Allee 127.

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)).

Therefore, the award originally made in the Proposed Decision of March 26, 1980 is hereby withdrawn and the Commission makes the following award.

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Claimant, ELSE KAY, is therefore entitled to an award in the amount of Twenty-five Thousand Dollars (\$25,000.00), 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 Amended Proposed Decision of the Commission.

SEP 17 1980

Richard W. Yarborough
Richard W. Yarborough, Chairman

Francis L. Jung
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 MAR 25 1981

Francis T. Matthews
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 Amended 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.)