

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

IN THE MATTER OF THE CLAIM OF

LILY FARKASH

Under the International Claims Settlement
Act of 1949, as amended

Claim No. G-2236

Decision No. G-3112

Counsel for Claimant:

Frederic M. Alberti, Esquire

Hearing on the Record held on **MAY 13 1981**

FINAL DECISION

This claim in the amount of \$75,000.00 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 an interest in the Kleiderfabrik Toell & Company oHG in Erfurt at Rosengasse 5B.

By Proposed Decision dated February 4, 1981, the Commission denied this claim on the ground that the evidence indicated that the interests of claimant's predecessor in the Kleiderfabrik Toelle & Company oHG in Erfurt was sold by him in 1938 and the nature of the sale was such that claimant's predecessor did not retain a beneficial interest in the property. The Commission concluded that claimant had not established that she or her predecessor owned property in the German Democratic Republic after World War II which could form the basis of a compensable claim.

Claimant objected to the Proposed Decision. Claimant points to the political and social climate in Germany in 1938 and urges that "it should be assumed as a matter of law that sales made by Jews in 1938 were made under duress."

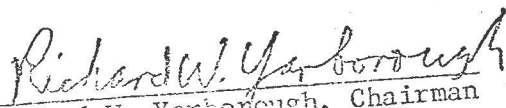
The Commission is well aware of events and circumstances in Germany in 1938 and notes that there is a strong presumption that sales made by Jewish owners in 1938 were made under duress. In light of strong evidence to the contrary, however, as has come to light in this claim, the Commission finds it difficult, without more, to presume a persecutory loss. Claimant has been unable to submit helpful documentation or evidence.

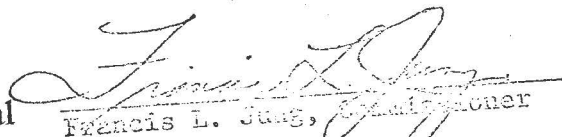
In addition, the Commission finds that even if claimant were able to show that her predecessor's interest in the Kleiderfabrik Toelle & Company OHG was sold under duress, there is no evidence that the business owned any real property or that assets of the business survived World War II to be the subject of a nationalization, expropriation or other taking by the German Democratic Republic as required for compensation under Public Law 94-542.

Therefore, the Commission has no alternative but to affirm its denial of this claim as expressed in the Proposed Decision.

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

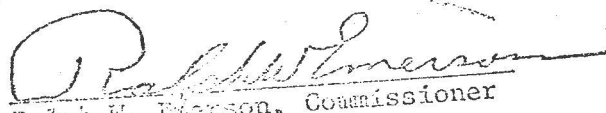
MAY 13 1981


Richard W. Yarborough, Chairman


Francis L. Jung, Vice Chairman

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. Morrison
Executive Director


Ralph W. Emerson, Commissioner

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Counsel for Claimant:

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PROPOSED DECISION

This claim in the amount of \$75,000.00 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 an interest in the Kleiderfabrik Toelle & Company oHG in Erfurt at Rosengasse 5b.

The record indicates that claimant became a United States citizen on April 30, 1945.

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. . ."

Claimant asserts that her predecessor in interest, Egon Doernberg, owned a 1/3 interest in the company Kleiderfabrik Toelle & Company oHG in Erfurt before World War II, but that he was forced to alienate his interest in the company due to the persecutory policies of the Nazi regime. The Commission has held in the Claim of MARTHA TACHAU, Claim No. G-0177, Decision No.

G-1071 that persecutory losses, such as the loss alleged by claimant, will not be considered by the Commission to have cut off all rights of the original owners or their heirs, and that the persecuted owners retained a beneficial interest in the property.

The Commission has received a report from its field office in West Germany which contains findings of a West German agency which investigated the loss of the Kleiderfabrik Toelle & Company oHG. According to the findings of that agency, Egon Eoernberg received a fair price for the sale of his interest in the company in 1938 and the sales price was paid out to him in cash. In light of the findings of the West German agency, the Commission cannot presume, in the absence of additional evidence and clarification, that the interests of Egon Doernberg were lost due to persecutory measures.

The Regulations of the Commission provide:

The claimant shall be the moving party and shall have the burden of proof on all issues involved in the determination of his claim.
(FCSC Reg., 45 C.F.R. §531.6(d) (1977)).

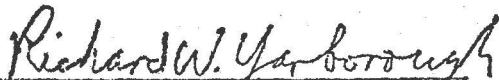
Therefore, the Commission concludes that claimant has not established that she or her predecessor owned a share of the company or a retained interest in the company after World War II which could have been taken by the German Democratic Republic as required for compensation under section 602 of the Act.

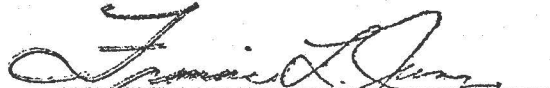
For the above cited reasons, the claim must be and hereby is denied.

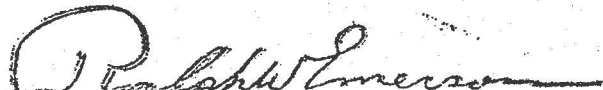
The Commission finds it unnecessary to make determinations with respect to other elements of this claim.

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

FEB 4 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.)

At any time after a 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).