

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

IN THE MATTER OF THE CLAIM OF

RITA B. MOLONY  
PETER B. BAUCHWITZ

Claim No. G-2449  
G-2450

Decision No. G-1560

Under the International Claims Settlement  
Act of 1949, as amended

Appeal and objection from a Proposed Decision entered on November 28, 1979. No Oral Hearing Requested.

---

Hearing on the Record held on **OCT 20 1980**

---

FINAL DECISION

These claims in the amounts of \$182,800.00 and \$188,800.00 against the Government of the German Democratic Republic, under Title VI of the International Claims Settlement Act of 1929, as amended by Public Law 94-542 (90 Stat. 2509), are based upon the loss of claimants' respective one-tenth interests in a six story commercial building in Halle, and their interest in a wholesale textile and apparel business in Halle, certain bank accounts and securities, and the furniture and furnishings of an apartment in Halle. Claimants inherited their interests in this property from their father, who died in a Nazi concentration camp during World War II. In addition, claimant, PETER S. BAUCHWITZ, has asserted a separate claim for a stamp collection and a bank account, which were lost by him upon being confiscated by the Nazis in 1939.

The record indicates that claimants, RITA B. MOLONY and PETER S. BAUCHWITZ, became United States citizens on May 11, 1949 and November 4, 1953, respectively.

By its Proposed Decision dated November 28, 1979, the Commission granted to claimant, RITA B. MOLONY, the claimant in Claim No. G-2449, an award of \$5,000 for the loss of her one-tenth interest in the above-described real property in Halle. However, the Commission was constrained to deny the claim of claimant, PETER S. BAUCHWITZ, Claim No. G-2450, for his one-tenth interest in that property, for the reason that his interest in the real property was not owned by a United States national as of September 6, 1951, the date of the property's loss. In addition, the remaining portion of both claims had to be denied for the reason that the evidence of record does not establish that any of the other items of property claimed for were still in existence after World War II to be the subject of a loss "arising as a result of the nationalization, expropriation or other taking" by the German Democratic Republic, as required by section 602 of Title VI of the Act.

Claimant, PETER S. BAUCHWITZ, has objected to the findings of the Proposed Decision. His first ground of objection is that, although he did not acquire United States citizenship until November 4, 1953, he had filed his "first papers," expressing his intent to become a United States citizen, in 1947, and had applied for his final citizenship papers in March 1952. He thus argues that he should be considered to have been a United States national, within the meaning of the Act, at a time when his interest in the real property in question was taken by the German Democratic Republic. Claimant further points out that both of the above dates fell before the date of July 17, 1952, cited in the Proposed Decision as the date of the decree by which the German Democratic Republic confiscated the property of its former residents, and he apparently contends, in addition, that this date should be held to have been the date of loss of the real property involved in his claim.

G-2449  
G-2450

As an alternative argument, claimant points out that his father, from whom he acquired his interest in the subject real property, died intestate, and he asserts, therefore, that "the distribution of the inheritable shares [of his father's estate] is not fixed." His contention is that, in the event the Commission does not accept his argument that he was a United States national at the time of loss of the subject real property, the Commission should find that his inherited interest in the property was 0.001, rather than 0.10 (one-tenth), as found in the Proposed Decision; this would increase the interest in the property held by his sister, claimant, RITA B. MOLONY, to 0.199 and thereby permit an increase in the amount of the award granted to Mrs. Molony in the Proposed Decision.

Under section 602, of 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 . . ."

Section 603 of Title VI of the Act limits the Commission's jurisdiction as follows:

"A claim shall not be favorably considered under section 602 of this title unless the property right on which it is based was owned, wholly or partially, directly or indirectly, by a national of the United States on the date of loss, and if favorably considered, the claim shall be considered only if it has been held by one or more nationals of the United States continuously from the date that the loss occurred until the date of filing with the Commission."

In addition, section 601 of the Act provides the following definition:

"(1) The term 'national of the United States' means--  
    "(a) a natural person who is a citizen of the  
    United States. . ."

With respect to claimant's first argument, that he should be held to have been a United States national, for purposes of his claim, at a time prior to his naturalization as a United States citizen on November 4, 1953, the above-quoted language of the Act makes clear that the Commission is without authority to make such a determination. Claimant can only be considered a United States national, within the meaning of the Act, as of the date upon which he formally acquired United States citizenship, and at no earlier point.

In light of the foregoing, even if the Commission were to accept claimant's contention that the date of July 17, 1952, should be treated as the date of taking of the real property in which he had owned an interest, it would still be unable to find his claim compensable, since this date also fell before the date of his acquisition of United citizenship.

G-2449

G-2450

As an alternative argument, claimant contends that his inherited interest in the subject real property should be found to have amounted only to 0.001 and that of his sister, Mrs. Rita Molony, to have amounted to 0.199, instead of the interests of one-tenth (0.10) each determined in the Proposed Decision, thereby permitting an increase in the award granted his sister in the Proposed Decision. Claimant points out that his father, from whom he and his sister acquired their interests in the subject real property, died without a will, and he asserts that in such instances, the law of inheritance makes no provision for the size of the respective shares in the estate which are received by the heirs of the estate, but instead leaves that determination to the heirs' agreement.

The Commission recognizes the beneficent intent of the claimant in making this alternative argument. However, it is unable to except the argument as a basis for changing the findings and the award in the Proposed Decision. While it is true that the certificate of inheritance in the record, by which claimant and his sister were established as the heirs of their father, names them only as his "community of heirs" or co-heirs, it is also true that they are the only heirs of his estate and that, as son and daughter, they were both related to him in equal degree.

It would, of course, have been possible for the claimant and his sister to agree to other than an equal division of their father's estate after his death. However, as of the time of issuance of the Proposed Decision, the record contained no evidence that such an agreement had been made at any time prior to the date of taking of the claimed real property. The Commission therefore had to presume that the one-fifth interest in the property which had been owned by claimant's father was succeeded to in equal shares by the claimant and his sister, in accordance not only with the normal pattern of intestate succession which is followed in Germany, but also with the pattern of intestate

succession generally followed in the United States. Inasmuch as no evidence has since been submitted to overcome this presumption, the Commission concludes that a revision in the Proposed Decision with regard to the presumption cannot be justified.

In summary, having considered the entire record, the Commission finds that the arguments submitted by the claimant, PETER S. BAUCHWITZ, in his objection do not warrant a change in the Proposed Decision, either with respect to his claim or with respect to the claim of the claimant, RITA B. MOLONY, Claim No. G-2449.

Accordingly, it is

ORDERED that the award granted in the Proposed Decision be restated as set forth below, and that in all other respects the Proposed Decision be affirmed.

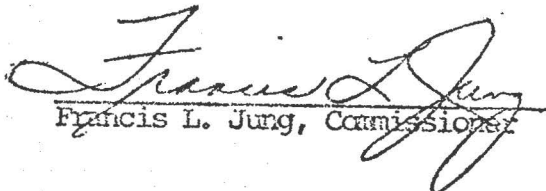
A W A R D

Claimant, RITA B. MOLONY, is therefore entitled to an award in the amount of Five Thousand Dollars (\$5,000.00), plus interest at the rate of 6% simple interest per annum from September 6, 1951 until the date of the conclusion of an agreement for payment of such claims by the German Democratic Republic.

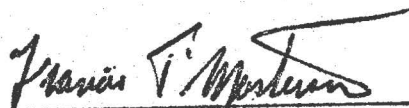
Dated at Washington, D.C.  
and entered as the Final  
Decision of the Commission.

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

G-2449  
G-2450

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

IN THE MATTER OF THE CLAIM OF

RITA B. MOLONY  
PETER S. BAUCHWITZ

Under the International Claims Settlement  
Act of 1949, as amended

Claim No. G-2449  
G-2450

Decision No. G-1560

PROPOSED DECISION

These claims in the amounts of \$182,800.00 and \$188,800.00 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), are based upon the loss of the claimants' respective one-tenth interests in a six story commercial building in Halle, and their interests in a wholesale textile and apparel business in Halle, certain bank accounts and securities, and the furniture and furnishings of an apartment in Halle. Claimants inherited their interests in this property from their father, who died in a Nazi concentration camp during World War II. In addition, claimant, PETER S. BAUCHWITZ, has asserted a separate claim for a stamp collection and a bank account, which were lost by him upon being confiscated by the Nazis in 1939.

The record indicates that claimants, RITA B. MOLONY and PETER S. BAUCHWITZ, became United States citizens on May 11, 1949 and November 4, 1953, respectively.

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. . ."

With regard to the real property claimed herein, the record in these claims indicates that legal title to this property was originally lost during the Nazi regime as a result of racial and religious persecution. The Commission has held in the Claim of MARTHA TACHAU, Claim No. G-0177, Decision No. G-1071, that such persecutory losses 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 also held in the Claim of MARK PRICEMAN, Claim No. G-2116, Decision No. G-1073, that decrees of September 6, 1951, effective in the German Democratic Republic, and December 18, 1951, effective in Berlin, which provided for taking over the administration of foreign owned property, and the decree of July 17, 1952, confiscating or taking under administration property of former residents of the GDR, constituted a governmental program which terminated all rights of restitution of former persecutees or their heirs. The Commission found such a termination of rights to be a taking of the property interests of such persons; and, where the property interests were owned by United States nationals at the time of loss, the termination of rights would form the basis of a compensable claim.

The evidence of record herein establishes the claimants' ownership of the real property interests for which they have claimed. Based on the discussion set forth above, the Commission finds that the claimants' interests in this property were taken by the German Democratic Republic Government, within the meaning of the Act, as of September 6, 1951. Claimant, RITA B. MOLONY, is therefore entitled to an award for the loss of her interest in the property as of that date.

G-2449

G-2450



As for the beneficial ownership interest of the claimant, PETER S. BAUCHWITZ, however, it has already been noted that he did not become a United States citizen until November 4, 1953. As such, his interest in the subject real property was not owned by a United States national when his right of restitution with respect to the property was terminated by the German Democratic Republic on September 6, 1951.

Section 603 of Title VI of the Act limits the Commission's jurisdiction as follows:

"A claim shall not be favorably considered under section 602 of this title unless the property right on which it is based was owned, wholly or partially, directly or indirectly, by a national of the United States on the date of loss, and if favorably considered, the claim shall be considered only if it has been held by one or more nationals of the United States continuously from the date that the loss occurred until the date of filing with the Commission."

Accordingly, the claim of the claimant, PETER S. BAUCHWITZ, for his interest in the real property in question must be and hereby is denied.

A figure of \$828,000.00 has been asserted as the value of the real property claimed for herein. In asserted support of this figure, evidence has been submitted as to the tax assessed value of the property in 1931, 1935, and 1940, the estimated market value of the property during that period, and the under duress sale price of the property in 1939.

The Commission notes that in arriving at the asserted valuation figure, claimants have based their calculations on present day currency conversion ratios. However, the Commission is required to determine the amount of the award to be granted for a loss of property based on the conversion ratio prevailing at the time the property was taken by the German Democratic Republic. Considering the evidence submitted, and taking into account the general rise in real property values in Eastern Europe in the years following World War II, the Commission finds the equity in the subject real

property had a value of \$50,000.00 as of the above determined date of loss, September 6, 1951. For her one-tenth interest in the subject property, claimant, RITA B. MOLONY, is therefore entitled to an award of \$5,000.00.

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)).

The remaining items of property for which the claimants have claimed herein consist of a business, business inventory, equipment and assets, furniture and furnishings, bank accounts and securities, and a stamp collection. Although the loss of this property also resulted from religious and racial persecution by the Nazi regime, and thus could be considered not to have cut off all of the claimants' rights in the property, the evidence of record does not establish that any of these items of property survived World War II. As such, it cannot be said that the property was in existence to be the subject of a loss "arising as a result of the nationalization, expropriation or other taking" by the German Democratic Republic, as required by section 602 of Title VI of the Act.

Accordingly, the claims for the aforementioned items of business and personal property must be and hereby are denied.

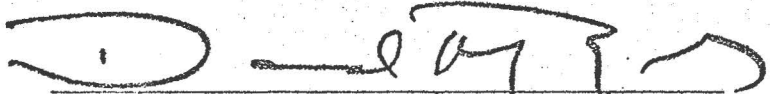
A W A R D

Claimant, RITA B. MOLONY, is therefore entitled to an award in the amount of \$5,000.00 (Five Thousand Dollars), plus interest at the rate of 6% simple interest per annum from September 6, 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.

NOV 28 1979

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.)

G-2449

G-2450