

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

IN THE MATTER OF THE CLAIM OF

MAY W. MINTER

Under the International Claims Settlement
Act of 1949, as amended

Claim No. G-2879

Decision No. G-3295

Counsels for Claimant:

Robert D. Abrahams, Esquire
and Eric D. Turner, Esquire

PROPOSED DECISION

This claim in the amount of \$195,000.00 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 a factory building and apartment house in Plauen, an automobile, an embroidery machine, and four patents.

The record indicates that claimant was born a United States citizen on April 6, 1924. The record also establishes that claimant is the successor in interest to her mother, Wilhelmina Bauer, who was born a United States citizen July 19, 1891 and died in 1968, and that Wilhelmina Bauer was the the successor in interest to her husband, Rudolf Bauer, who acquired United States citizenship on October 4, 1921 and died in 1967.

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 record indicates that claimant's father and predecessor in interest, Rudolf Bauer, purchased in 1920 a factory building and apartment house on a 320 acre lot at Heinrichstrasse 9 in Plauen. Before World War II the factory was used for the production of embroidery items. After the war, however, the embroidery factory was no longer in operation. The record includes a letter from the VEB Kommunale Wohnungsverwaltung (Communal Housing Administration) in Plauen, dated July 8, 1966, advising Rudolf Bauer that the subject property at Heinrichstrasse 9 was under its administration and that no information could be given with regard to the property.

On the basis of this communication, the Commission concludes that the Heinrichstrasse property has been taken by the German Democratic Republic within the meaning of section 602 of the Act. Based upon the Commission's knowledge of post-war decrees and regulations in the German Democratic Republic, the Commission finds that this property would have come under the purview of the "Decree on the Administration and Protection of Foreign Owned Property in the German Democratic Republic," dated September 6, 1951. In the absence of more specific evidence as to the exact date of taking, the Commission finds that the subject property was taken as of August 11, 1952, the date of the first implementing regulation for the decree. See Claim of GEORGE L. ROSENBLATT, Claim No. G-0030, Decision No. G-0100.

In determining the value of the property at Heinrichstrasse 9 in Plauen, the Commission has considered such evidence as the size of the lot and various descriptions of the improvements thereon. The record indicates that the apartment house contained one apartment on each of three floors and additional rooms in the attic, while the factory was a two-story building. The record indicates that minor war damage was sustained by the buildings, but that they had been repaired by 1949. On the basis of the entire record, the Commission determines that the apartment house, factory, and land had a total value of \$10,000.00 at the time of taking in 1952.

The record also establishes that claimant's father, Rudolf Bauer, purchased a "Vomag Schiffli" embroidery machine on October 29, 1945 for a price of 4,000 reichsmarks. In March 1949 Rudolf Bauer had the machine disassembled and attempted to transport it to West Germany. He was prevented from doing so by East German authorities, however, and was forced to leave the machine in storage with the "Gebrueder Kupfer" forwarding company in Plauen. A letter from "Gebrueder Kupfer" dated October 24, 1956 informed Rudolf Bauer that the embroidery machine was being delivered that day to the VEB Plauener Spitze, a government-owned company in Plauen. The Commission finds, therefore, that the embroidery machine was taken by the German Democratic Republic on October 24, 1956.

Based upon the evidence of record the Commission determines that the subject embroidery machine had a value of \$1,000.00 at the time of taking in 1956. The record includes a statement of account from "Gebrueder Kupfer," dated December 8, 1956, indicating that Rudolf Bauer paid a total of 5,186.55 ostmarks between July 2, 1949 and October 11, 1956 in storage costs for the machine. While there may have been a legitimate basis for the storage expenses if the machine had been returned to Rudolf Bauer, the taking of the machine by the German Democratic Republic denied Rudolf Bauer any benefit he could ultimately have expected to received through the payment of temporary storage costs. The Commission finds that this denial of any benefit to Rudolf Bauer for the storage payments extracted from him constitutes a taking of such payments made from 1949 to 1956. The Commission holds that the date of taking was October 24, 1956, the day the embroidery machine itself was taken. Based on currency charts and the Commission's knowledge of foreign exchange practices in the German Democratic Republic, the Commission finds that 4.2 ostmarks equalled one dollar in 1956. Thus, claimant is entitled to an award of \$1,234.89 for the storage expenses from July 2, 1949 to October 11, 1956, in addition to \$1,000.00 for the loss of the embroidery machine.

Claimant also asserts the loss of two patents for "stocking holders for embroidery machines"--patent no. 1,519,833 issued in the United States on December 16, 1924 to Albert Hager and Paul Sehrig and patent no. 377,389 issued in Germany on October 8, 1922, also to Albert Hager and Paul Sehrig. The record indicates that United States patent no. 1,519,833 was assigned to the Seamless Hosiery Cloxing Company in 1931. Claimant asserts that this company, a New Jersey corporation, was owned by her father, Rudolf Bauer, but no evidence of such ownership has been submitted. The record also indicates that Paul Sehrig offered to sell his one-half interest in German patent no. 377,389 to the Seamless Hosiery Cloxing Company in December 1923. These two patents were issued in the United States and Germany for a device attached to the "Vomag Schiffli" embroidery machine involved in this claim. Claimant asserts that the taking of the machine in 1956 constitutes a taking of the patents as well.

No evidence has been submitted, however, to establish the claimant's ownership interest in either of these two patents. The Commission notes that United States patent no. 1,519,833, issued in 1924, had only a 17-year term. It would therefore have expired in 1941, long before the taking of the embroidery machine by the German Democratic Republic in 1956. The record does not indicate that this patent was renewed and the Commission concludes, therefore, that it was valueless at the time the embroidery machine was taken. No evidence has been submitted to indicate what value German patent no. 377,389 might have had above and beyond the value of the embroidery machine to which the patented stocking holders were attached.

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 finds that claimant has failed to meet the burden of proof in that she has not established her ownership interest in the two patents for "stocking holders for embroidery machines" or that these patents had any value at the time the "Vomag Schiffli" embroidery machine involved herein was taken by the German Democratic Republic. The part of this claim based upon the loss of these two patents must therefore be denied.

Claimant also asserts the loss of United States patent no. 917,402 issued on April 6, 1909 for "corrodible groundwork for lace," and United States patent no. 1,990,864 issued on February 12, 1935 for "process and agent for delustering textile materials." The record indicates that claimant's father, Rudolf Bauer, had a one-half interest in the former patent and a one-half interest in the latter patent which was assigned to General Aniline Works Inc. of New York. No evidence has been submitted to establish the value of these patents or that they were the subject of a "nationalization, expropriation, or other taking" by the German Democratic Republic, as required for compensation under section 602 of the Act. The part of this claim based upon the loss of these two patents, therefore, must also be denied.

Claim is additionally made for the loss of an "Opel Kapitän" automobile which the record indicates was purchased by Rudolf Bauer on June 30, 1945 for 5,000 reichsmarks and was confiscated by the Soviet Military Administration of Germany on September 3, 1945. The Commission has held that expropriation of property by the Soviet Military Administration after August 2, 1945 is the legal responsibility of the German Democratic Republic. (Claim of INTERNATIONAL TELEPHONE & TELEGRAPH, Claim No. G-2401, Decision No. G-3164.) Therefore, the Commission finds that the loss of the subject automobile forms the basis of a compensable claim under the Act. For the purpose of determining an award, the Commission holds that 4.2 reichsmarks equalled one dollar in 1945. Based on the purchase price paid by Rudolf Bauer in 1945, the Commission finds that the subject automobile had a value of \$1,200 at the time of taking.

The Commission concludes, therefore, that claimant is entitled to a total award of \$13,434.89 for the taking in 1945 of the "Opel Kapitaeln" automobile, the taking in 1952 of the factory building and apartment house at Heinrichstrasse 9 in Plauen, and the taking in 1956 of the "Vomag Schiffli" embroidery machine and lost storage expenses.

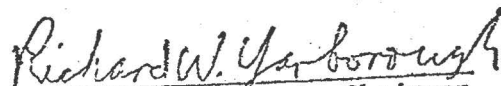
The Commission has concluded that in granting awards on claims under section 602 of Title VI of the Act, for the nationalization or other taking of property or interests therein, interest shall be allowed at the rate of 6% per annum from the date of loss to the date of settlement. (Claim of GEORGE L. ROSENBLATT, Claim No. G-0030, Decision No. G-0100 (1978)).

A W A R D

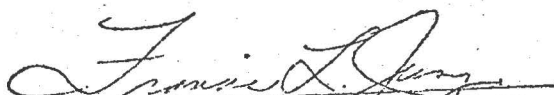
Claimant, MAY W. MINTER, is therefore entitled to an award in the amount of Thirteen Thousand Four Hundred Thirty-Four Dollars and Eighty-Nine Cents (\$13,434.89), plus interest at the rate of 6% simple interest per annum, on \$1,200 from September 3, 1945, on \$10,000 from August 11, 1952, and on \$2,234.89 from October 24, 1956, 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 25 1981


Richard W. Yarborough, Chairman

This is a true and correct copy of the decision
of the Commission which was entered as the final
decision on APR 8 1981


Francis L. Jung, Commissioner


Executive Director


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.)