

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

IN THE MATTER OF THE CLAIM OF

ESTATE OF WALTER ALEXANDER

Under the International Claims Settlement  
Act of 1949, as amended

Claim No. G-2886

Decision No. G-1874

FINAL 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 real property in Berlin at Potsdamer Platz 1.

By Proposed Decision issued by the staff on February 13, 1980, the following findings of fact were made:

"The evidence of record in this claim indicates that the real property at Potsdamer Platz 1 was owned during and after World War II by the community of heirs of the Alexander family. After the division of Berlin at the end of World War II, Potsdamer Platz 1 was located in the Soviet sector of Berlin. Claimant asserts that the real property at Potsdamer Platz 1 was later taken by the German Democratic Republic.

In 1972 the boundary between East and West Berlin was adjusted, and thereafter Potsdamer Platz 1 was located in West Berlin. West Berlin officials then undertook to restore the property to its original owners. The record indicates that Walter Alexander died on May 4, 1976 and that on April 19, 1977, claimant, the ESTATE OF WALTER ALEXANDER and one other person were entered in the land records as owners of the parcel at Potsdamer Platz 1."

After considering several decisions from prior claims programs, the Proposed Decision held that "property which has actually been restored to the rightful owners may not be the subject of a valid claim under section 602" of Title VI of the International Claims Settlement Act of 1949. Therefore, the claim was denied.

Upon review by the Commission prior to finalizing the Proposed Decision, the Commission reconsidered the holding of the Proposed Decision. Although the Commission does not disagree with the holdings in the claims which were considered in connection with

the Proposed Decision, it now finds that the holdings in those claims are not applicable to the facts of the instant claim. Based on the evidence, the Commission finds that the property which is the subject of this claim was taken by the German Democratic Republic in 1952. That taking was executed in violation of the obligation under international law of the German Democratic Republic to pay prompt, adequate and effective consideration, and, in contrast to the fact pattern in the precedent decisions relied upon in the Proposed Decision, the failure of the German Democratic Republic to honor its obligation under international law was never cured by a return of the property by the German Democratic Republic directly to its rightful owner.

The Commission now holds that the loss of the property on Potsdamer Platz 1 in Berlin in 1952 was a taking as that term is used in section 602 of the Act. The fact that the parcel was subsequently returned to its rightful owners after it came into the possession of West Berlin does not affect the validity of the claim.

The Commission notes, however, that in deciding the amount of claims, it must apply the provisions of section 605 of the Act, which states:

"OFFSETS"

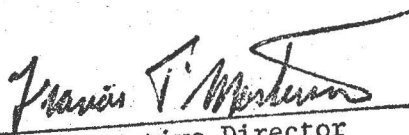
"Section 605. In determining the amount of any claim, the Commission shall deduct all amounts the claimant has received from any source on account of the same loss or losses, including any amount claimant received under section 202(a) of the War Claims Act of 1948, as amended, for losses which occurred as a direct consequence of special measures directed against such property in any area covered under this title."

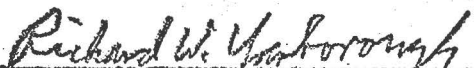
Under section 605 the value of the property on April 19, 1977, the date on which the property was returned to the rightful owners, must be deducted from the amount of the loss suffered by Walter Alexander in 1952. The Commission takes judicial notice of the fact that the value of the parcel in 1977 would have exceeded the value of the parcel in 1952 due to rising land values in Germany since World War II and the relocation of the border which placed the property in West Berlin. This increase in value would have offset the amount the Commission would otherwise have awarded as just compensation including the value of the property in East Berlin in 1952 and interest on that amount from the date of loss. The Commission, therefore, affirms its denial of this claim, but does so for the reasons stated herein, and not for the reasons expressed in the Proposed Decision.

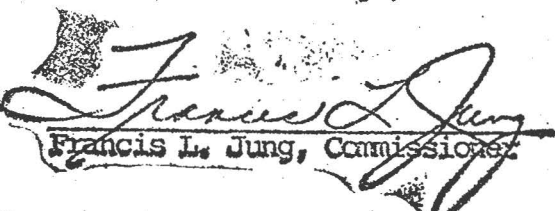
Dated at Washington, D.C.  
and entered as the Final  
Decision of the Commission.

**OCT 29 1980**

This is a true and correct copy of the decision  
of the Commission which was entered as the final  
decision on **OCT 29 1980**

  
Executive Director

  
Richard W. Yarborough, Chairman

  
Francis L. Jung, Commissioner

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Counsel for Claimant:

Kenneth B. Newman, Esquire

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 by Public Law 94-542 (90 Stat. 2509), is based upon the loss of real property in Berlin at Potsdamer Platz 1.

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 evidence of record in this claim indicates that the real property at Potsdamer Platz 1 was owned during and after World War II by the community of heirs of the Alexander family. After the division of Berlin at the end of World War II, Potsdamer Platz 1 was located in the Soviet sector of Berlin. Claimant asserts that the real property at Potsdamer Platz 1 was later taken by the German Democratic Republic.

In 1972 the boundary between East and West Berlin was adjusted, and thereafter Potsdamer Platz 1 was located in West Berlin. West Berlin officials then undertook to restore the property to its original owners. The record indicates that Walter Alexander died on May 4, 1976 and that on April 19, 1977, claimant, the ESTATE OF WALTER ALEXANDER and one other person were entered in the land records as owners of the parcel at Potsdamer Platz 1.

Under prior programs of the Commission, the Commission has been presented with the issue of whether claims for expropriated property which has subsequently been restored to the claimant were compensable. (Claim of ALFRED SCHUTZ, Claim No. Y-1097, Decision No. 637; Claim of ISAK OLINER and ROCHME OLINER Claim No. CZ-2039, Decision No. CZ-1871; Claim of MARIE HAHNEL and GABRIELE HAHNEL, Claim No. CZ-1320, Decision No. CZ-394.) In each of those cases the claim was denied by the Commission on the ground that property which has been restored to the claimant cannot form the basis of a compensable claim.

In the Claim of ALFRED SCHUTZ (final decision), cited above, the Commission explained its reasoning as follows:

Since the ownership of the property has been restored to the claimant, an award by this Commission would not be warranted. In such event, the claimant would be compensated for the property while still retaining ownership. Furthermore, an award of compensation under these circumstances would be unfair to all other claimants who are entitled to share in a fund which may prove inadequate.

The Commission finds that the reasoning of the above cited claims applies to the instant claim under Public Law 94-542, and holds that property which has actually been restored to the rightful owners may not be subject of a valid claim under section 602 of the Act.



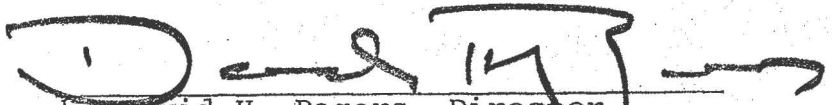
For the above cited reasons, the claim must be and hereby is denied.

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 13 1980

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.)

At any time after 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.)