

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

IN THE MATTER OF THE CLAIM OF

RUTH BENDIX

Under the International Claims Settlement  
Act of 1949, as amended

Claim No. G-2977

Decision No. G-3285

Counsel for Claimant:

Horace W.K. Borchardt, Esquire  
Zucker, Krauss & Borchardt

PROPOSED DECISION

This claim in the amount of \$106,665.00 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 three pieces of improved and unimproved real property in East Berlin.

The record indicates that claimant became a United States citizen on November 12, 1941.

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 establishes that claimant's husband, Emil Bendix, was the owner before World War II of an apartment building at Weissenburgerstrasse 36, as well as 1/2 interests in commercial buildings at Molkenstrasse 4-5 and mixed-use buildings at Molkenmarkt 9-10 and Nikolaikirchplatz 10--all of which properties are located in Berlin-Mitte. Emil Bendix, who acquired United States citizenship on November 12, 1941, died on April 23, 1962. Claimant is his sole successor in interest.

The record in this claim indicates that legal title to the subject 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.

In the Claim of RUTH BENDIX, Claim No. W-17341, Decision No. W-16027, filed under the War Claims Act of 1948, as amended by Public Law 87-846 (the General War Claims Program), the Commission determined that the buildings at Molkenstrasse 4-5 were destroyed in World War II and that the building at Weissenburgerstrasse 36 sustained no war damage. The Commission also held that the property at Molkenmarkt 9-10 and Nikolaikirchplatz 10 was lost as a result of "special measures," since it was administered by the German government as enemy property during World War II and located in an area that was under communist control as of the end of the war and, as a result, never returned to the rightful owners. The Commission found that the buildings at Molkenstrasse 4-5 had a value of \$9,750.00 at the time of their destruction and granted claimant an award of \$4,875.00 for the 1/2 interest in the claim therefor she inherited from Emil Bendix. The Commission also found that the land and buildings at Molkenmarkt 9-10 and Nikolaikirchplatz 10 had a value of \$75,000.00 at the time of loss as a result of "special measures" during World War II, for which claimant, who inherited her husband's 1/2 interest in the claim therefor, was granted an award of \$37,500.00.

In the current German Democratic Republic Claims Program, the Commission has 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 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.

In the aforementioned General War Claims Program, however, claimant was granted an award for her 1/2 interest in the claim for the land and buildings at Molkenmarkt 9-10 and Nikolaikirchplatz 10 that was based on the full value of this property at the time it was lost as a result of "special measures" during World War II. The evidence of record indicates that the subject buildings were destroyed during World War II. Thus, only the land at Molkenmarkt 9-10 and Nikolaikirchplatz 10 could have been the subject of a taking by the German Democratic Republic after World War II.

Section 605 of Public Law 94-542 provides as follows:

"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."

Since the claimant has already received an award based on the full value of the subject land under the aforementioned General War Claims Program, the Commission holds that she is not entitled to any additional award in the German Democratic Republic Claims Program. Therefore, the part of this claim based upon the real property at Molkenmarkt 9-10 and Nikolaikirchplatz 10 in East Berlin must be and hereby is denied.

In determining the values of the remaining real property interests involved in the claim, the Commission has reviewed the entire record in the War Claim of RUTH BENDIX, Claim No. W-17341, Decision No. W-16027, as well as a report, dated June 30, 1980, from the Commission's field office in West Germany. The Commission has found that the buildings at Molkenstrasse 4-5 were destroyed in World War II. Thus, only the land at that address would form the basis of a compensable claim under Public Law 94-542. The report from the Commission's field office indicates that the property at Weissenburgerstrasse 36 was mortgaged in an undetermined amount. In her Statement of Claim filed in the General War Claims Program, RUTH BENDIX estimated that all of her properties

were mortgaged to the extent of about 40% of their wartime value. Based upon all the evidence of record, the Commission determines that the land at Molkenstrasse 4-5 had an equitable value of \$7,000.00 at the time of taking by the German Democratic Republic in 1951. The value of claimant's 1/2 interest, therefore, was \$3,500.00. The Commission also determines that the improved real property at Weissenburgerstrasse 36, which did not sustain any significant damage during World War II, had an equitable value of \$38,000.00 at the time of taking by the German Democratic Republic in 1951.

Thus, claimant is entitled to a total award of \$41,500.00 for the loss of her interests in unimproved real property in East Berlin at Molkenstrasse 4-5 along with improved real property in East Berlin at Weissenburgerstrasse 36.

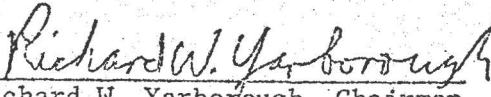
The Commission has concluded that in granting awards on claims under section 602 of Title VI of the Act, for the nationalization or other taking of property or interests therein, interest shall be allowed at the rate of 6% per annum from the date of loss to the date of settlement. (Claim of GEORGE L.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

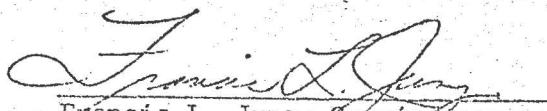
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Claimant, RUTH BENDIX, is therefore entitled to an award in the amount of Forty-One Thousand Five Hundred Dollars (\$41,500.00), plus interest at the rate of 6% simple interest per annum from December 18, 1951 until the date of the conclusion of an agreement for payment of such claims by the German Democratic Republic.

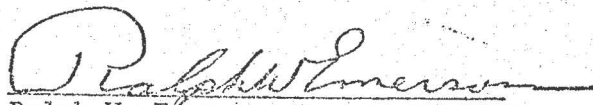
Dated at Washington, D.C.  
and entered as the Proposed  
Decision of the Commission.


FEB 25 1981

  
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 APR 8 1981

  
Ralph W. Emerson, Commissioner

  
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 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.)