

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

IN THE MATTER OF THE CLAIM OF

EUGENE RUDOLF HARZER

Under the International Claims Settlement
Act of 1949, as amended

Claim No. G-3069

Decision No. G-3193

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

FINAL DECISION

This claim in the amount of \$20,695.00 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 bank accounts and buildings and land in Kemtau, German Democratic Republic.

By Proposed Decision dated February 18, 1981, the Commission denied this claim because the evidence of record did not indicate that there was a taking of claimant's property by the German Democratic Republic. The Commission also found that, even if claimant's sale of the property did amount to a taking, the sale was consummated on October 31, 1976, which, since it was after the date upon which Public Law 94-542 was approved on October 18, 1976, the Commission could not favorably consider. With respect to the subject bank accounts, the Commission denied the claim for their loss since the accounts were blocked accounts and therefore not compensable under the Act.

By letter dated February 23, 1981, claimant objected to the Proposed Decision and reiterated that he had sold his property in Kemtau because of a threat by the Town Council of Kemtau to appropriate money from his trust account as security for a forced mortgage on the property. Claimant also stated that the decision to sell the property took place soon after November 1975 and, only because the Town Council "dragged its feet," was the sale not concluded until October 31, 1976.

The Commission has reviewed all the evidence of record and it has carefully considered claimant's statements. It recognizes that claimant was in a very difficult situation with respect to his property in Kemtau, both because of the loss of profits and because of his dependency upon the approval of the Town Council in selling the property. The Commission finds, however, that the circumstances surrounding the sale of the property, as threatening as they might have been to the claimant's interest, did not amount to a taking of his property. Claimant has stated that what would have happened had he not sold the property was that money would have been taken from one of his bank accounts; the evidence does not reflect that the property itself was or would have been seized.

The Commission is also aware of the length of time that it takes to consummate a sales transaction, especially with another government. However, as the evidence of record indicates that the sale was not completed until October 31, 1976, it finds that it cannot favorably consider a claim against the German Democratic Republic on that date.

With respect to the bank accounts, the evidence of record indicates that these accounts were blocked bank accounts and, therefore, they had not been taken by the German Democratic Republic inasmuch as a sovereign State has a right under international law to put restrictions upon currency within its territory and to limit or prohibit the conversion to a foreign currency.

Accordingly for the above cited reasons, the Commission affirms its previous denial as its final determination on this claim.

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

MAY 13 1981

Richard W. Yarborough
Richard W. Yarborough, Chairman

Francis L. Jung
Francis L. Jung, Commissioner

Ralph W. Emerson
Ralph W. Emerson, Commissioner

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. Merriam
Executive Director

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PROPOSED DECISION

This claim in the amount of \$20,695.00 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 bank accounts and buildings and land in Kemtau, German Democratic Republic.

The record indicates that claimant became a United States citizen on June 14, 1937.

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 establishes that, as of 1969, claimant had inherited a factory, residence, and land at Amhang No. 1 in Kemtau, German Democratic Republic. Claimant has stated that substantially all the income from his property between the years 1970 and 1976 had been spent on the upkeep of his property. He further stated that, in order to avoid spending money that was held in bank accounts in the German Democratic Republic on the further upkeep of his property, he sold the subject property in a sale that was completed on October 31, 1976.

Documentation submitted by claimant establishes that the tax-assessed value of the property in 1970 was 11,300 Marks. In 1975 the property was appraised at 19,000 Marks. The property was actually sold for 13,300 Marks. Information in the file indicates that the sales price and the purchasers of the property had been designated by the Council of the District of Karl-Marx-Stadt, Department of Prices for Real Estate Sales. Claimant has asserted that he sold his property because of harassment from the Government of the German Democratic Republic in connection with the maintenance of his property and that the "deliberately low evaluation" amounted to confiscation of his property.

Considering the documentation submitted and the claimant's statements, the Commission finds that there has been no taking of the subject property, as the term "taking" is used under section 602 of the Act. While the Commission recognizes that claimant was not making a large profit from his property in the German Democratic Republic, it finds that, based upon his statements, he sold the property voluntarily and accepted the sales price, even though it was several thousand marks below the appraised price.

Furthermore, even if the sale were considered to be a taking of claimant's property, the issue arises of whether the Commission has the authority to consider claims which arose after October 18, 1976, the date on which Public Law 94-542 was approved.

The Commission notes that Public Law 94-542 does not expressly limit the Commission's authority to the consideration of claims arising between specific dates. The Commission, however, has examined the language and purpose of Public Law 94-542 and the practice of the Commission in other claims programs in order to determine whether such a limitation exists. The Commission, having examined the statutory language, legislative history, and reasoning of past claims programs, held in Claim of Irmgard Gertrude Bullock, Claim No. G-2298, Decision No. G-0734, that it could not favorably consider any claim against the German Democratic Republic which arose after October 18, 1976, the date on which Public Law 94-542 was approved.

Accordingly, for the above-cited reasons, the portion of this claim pertaining to the sale of claimant's real property must be and hereby is denied.

The evidence of record in this claim also establishes that claimant owns two bank accounts in the German Democratic Republic, one holding, as of 1979, 13,293.83 Deutsche Marks, and the other holding 9,065.52 Deutsche Marks. The documentation indicates, and claimant has stated, that he is allowed the use of 15 marks per day if he were to visit the German Democratic Republic. The Commission finds that the evidence establishes that these bank accounts are blocked accounts, and therefore are not compensable under Public Law 94-542.

Currency regulations in the German Democratic Republic, as in many other countries, place limitations upon the free use of bank accounts, allowing withdrawal within the German Democratic Republic in certain amounts for certain specified purposes, but prohibiting the conversion of the funds to foreign currency. An account subject to such regulations is termed a "blocked account."

The Commission has held that it is a well established principle of international law that such blocking of a bank account is an exercise of sovereign authority which does not give rise to a compensable claim (Claim of MARTIN BENDRICK, Claim No. G-3285, Decision No. G-0220).

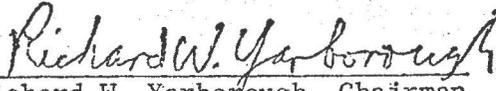
While the fact of the blocking of an account may cause non-residents of the German Democratic Republic some hardship, the Commission concludes that such action does not constitute a nationalization, expropriation or other taking as required for compensation under section 602 of the Act.

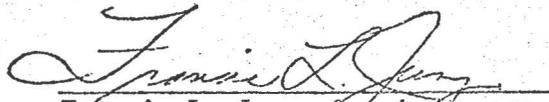
For the above cited reasons, the claim must be and hereby is denied.

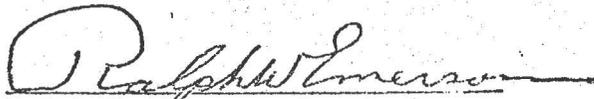
The Commission finds it unnecessary to make determinations with respect to other elements of this claim.

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

FEB 18 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.)