

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

IN THE MATTER OF THE CLAIM OF

ISABELLE GOLDSMITH  
ELINOR GOLDSMITH KASTNER  
DORIS GOLDSMITH COLMES

Under the International Claims Settlement  
Act of 1949, as amended

Claim No. G-3213

Decision No. G-2719

Counsel for Claimants:

Sven A. Johanson, Esquire  
Schneider, Johanson & Silin

---

Hearing on the Record held on **MAY 06 1981**

---

FINAL DECISION

This claim in the amount of \$4,050,000.00 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 an eighteen-room villa at Helenenstrasse 7 in Meiningen, a textile factory building at Ernestinerstrasse 4 in Meiningen, a textile manufacturing business, known as the firm "M. Frank," also at Ernestinerstrasse 4 in Meiningen, certain patents and trademarks related to the production of clothing and shirts, and a variety of furniture, furnishings and other personal property assertedly located in the aforementioned villa on Helenenstrasse.

The Commission denied this claim by Proposed Decision dated November 12, 1980. The reason for denial was that no evidence had been submitted to establish the United States citizenship of the original claimant, ISABELLE GOLDSMITH, or her right to assert her claim as the successor in interest of her late husband, Max Lang Goldsmith. Furthermore, the record failed to establish that any assets of the "M. Frank" textile manufacturing business, other than the real property in which it was located, or any of

the patents and trademarks, household furniture and furnishings, and personal property claimed for, were owned by the Goldsmith family or were in existence after World War II such that they could have been nationalized or otherwise taken by the German Democratic Republic, as required for compensation under the Act.

Claimant ISABELLE GOLDSMITH, through her attorney, has filed an objection to the Proposed Decision. In support of her objection, she has submitted a copy of her birth certificate and documentation relating to the death of her husband and the intestate distribution made of his estate following his death. In addition, her two children, Elinor Goldsmith Kastner and Doris Goldsmith Colmes, have submitted requests to be joined in their mother's claim, together with evidence relating to their naturalization as United States citizens.

The evidence now of record establishes that claimant ISABELLE GOLDSMITH's children, Elinor Goldsmith Kastner and Doris Goldsmith Colmes, became United States citizens on December 14, 1943, and December 18, 1943, respectively. In addition, the record now establishes that their father, Max Lang Goldsmith, died intestate on November 6, 1975, at which time he was a domiciliary of the State of Massachusetts, and that claimant ISABELLE GOLDSMITH and her two children were the heirs of his estate. Based upon this evidence, the Commission hereby revises the Proposed Decision by including ELINOR GOLDSMITH KASTNER and DORIS GOLDSMITH COLMES as additional claimants herein, and it finds that these claimants, along with their mother, claimant ISABELLE GOLDSMITH, are entitled to assert the present claim as the heirs to respective one-third shares in the late Max Lang Goldsmith's estate, in accordance with the intestate succession law of the State of Massachusetts.

Claimants contend in their objection that the real property on Helenenstrasse and Ernestinerstrasse in Meiningen for which they have claimed, as well as the business assets of the "M. Frank" textile factory in the property on Ernestinerstrasse, were

nationalized or otherwise taken by the German Democratic Republic, within the meaning of section 602 of the Act, and that they are entitled to a total award of \$4,135,912.91 for the loss resulting from that taking, based upon their status as the heirs of their predecessor, Max Lang Goldsmith. In support of these contentions, they have submitted three pages of calculations by which they purport to arrive at the above-stated valuation figure, together with a written statement by the late Max Lang Goldsmith dated February 22, 1963, in which he recounted the development of the "M. Frank" textile factory and his loss of legal title thereto during the Nazi regime as a result of religious persecution, and in which he also discussed the possibility of obtaining restitution of the factory. Also submitted is an affidavit by claimant ISABELLE GOLDSMITH containing a statement regarding the loss of the textile factory as well as the residential property on Helenenstrasse, first as a result of Nazi persecution and later through nationalization by the German Democratic Republic. In addition, the affidavit contains assertions as to the value of the textile factory at the time of its nationalization.

With respect to the portion of this claim based upon the loss of the residential property at Helenenstrasse 7 in Meiningen, it was stated in the Proposed Decision that, according to the results of an investigation by the Commission's field in West Germany, legal title to the property was listed in the name of the late Max Lang Goldsmith after World War II. Evidence in the record establishes that Max Lang Goldsmith became a United States citizen on January 10, 1944. Based upon the record, the Commission concludes that the property would have come within the "Decree on the Administration and Protection of Foreign-Owned Property in the German Democratic Republic" of September 6, 1951. The Commission has previously held that the action of the German Democratic Republic in placing property under public administration pursuant

to this decree constituted a "nationalization, expropriation or other taking" within the meaning of section 602 of the Act, and that, absent other evidence, this action would be considered to have occurred as of August 11, 1952, the date of the first regulation implementing the decree. The Commission therefore finds that the subject residential property was taken by the German Democratic Republic, within the meaning of the Act, as of August 11, 1952. The present claimants, as the heirs of the late Max Lang Goldsmith, are accordingly entitled to an award for the loss of the property as of that date.

Claimants have asserted a figure of \$64,585.72, plus interest from 1981 until the date of payment on their claim by the German Democratic Republic, as the amount to which they are entitled for this loss. However, while the Commission has held that interest at the rate of 6% simple interest per annum is payable on the awards granted in the present claims program from the date of loss of the property claimed until the date of the conclusion of an agreement for payment on the claims by the German Democratic Republic, it is not the Commission's practice to grant awards of interest in specific dollar amounts. Thus, excluding their claim for interest, claimants' assertion is that the property here in question had a value of \$23,571.43 as of the date of loss. The Commission has reviewed the evidence submitted regarding the property's value, including the claimants' objection and the photographs and description of the property submitted prior to the issuance of the Proposed Decision; in addition, it has reviewed the investigation report from the Commission's West German field office, which states that the property's tax assessed valuation as of 1935 was 39,600 marks. Based upon this review, and having taken into account the general rise in real property values in Eastern Europe in the years following World War II, the Commission finds that the property had a value of \$21,000.00 as of the date of loss of August 11, 1952. Claimants are accordingly entitled to an award in this amount.

With respect to the portion of this claim based upon the loss of the "M. Frank" textile factory, the investigation by the Commission's field office confirmed that legal title thereto was lost during the Nazi regime as a result of religious persecution, and it further disclosed that no restitution of title to the rightful owner, the late Max Lang Goldsmith, was effected after World War II. Instead, the investigation revealed that the factory was converted into "people's property" by the German Democratic Republic some time between 1949 and 1952.

In a substantial number of decisions to date, beginning with the decision in Claim of MARTHA TACHAU, Claim No. G-0177, Decision No. G-1071, the Commission has held that losses of property as the result of Nazi persecution will not be considered to have cut off all rights of the original owners of the property or their heirs, and that the persecuted owners retained a beneficial interest in the property. In addition, beginning with the decision in Claim of MARK PRICEMAN, Claim No. G-2116, Decision No. G-1073, the Commission has held that the decrees of September 6, 1951, effective in the German Democratic Republic, and December 18, 1951, effective in Berlin, which provided for the taking over of 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.

The Commission therefore finds that the subject textile factory was taken by the German Democratic Republic, within the meaning of the Act, as of September 6, 1951. Claimants are accordingly entitled to an award for the loss of the late Max Lang Goldsmith's beneficial interest in the factory as of that date, which award shall augment the award already granted in the foregoing.

Claimants have asserted a figure of \$4,071,327.19 as the total amount to which they are entitled for the loss of the factory and its assets. Here again, however, they have included the payment of interest as a component of the asserted valuation figure. Excluding that interest component, their assertion is that the factory and its assets had a value of \$1,485,886.10 at the time of loss. This figure assertedly represents the value of the real property comprising the factory premises, the business goodwill of the factory business, the loss of income from the business during the year of its nationalization, the "ballooned company assets," and the value, in the year of nationalization, of an investment of 40,000 reichsmarks in the factory business assertedly made by claimant ISABELLE GOLDSMITH in 1932.

The investigation by the Commission's field office established that the pre-war tax-assessed value of the real property comprising the factory premises amounted to approximately 53,900 reichsmarks, and it also disclosed that in the adjudication of a parallel claim filed by the claimants in West Germany, the West German Government determined that the tax assessed valuation of the movable assets of the factory business would have amounted to approximately 204,500 reichsmarks prior to World War II. The only other evidence in the record regarding the factory's value consist of two photographs of the front of the factory, together with the previously mentioned statement by Max Lang Goldsmith, written in 1963, according to which the average pre-World War II annual profit earned by the business amounted to approximately 200,000 reichsmarks, and the profit earned in 1937 was approximately 310,000 reichsmarks.

Mr. Goldsmith also estimated in his statement that the "good will" of the factory business, based upon the annual profit figures, would have amounted to over a million reichsmarks at that time; however, this appears to be an estimate of the capitalized value of the business at the time. It is therefore incorrect for the claimants to include "good will" as a separate element among the assets of the business, in addition to the annual income element, as was done in their objection.

Mr. Goldsmith mentioned in his statement that, according to his understanding, the factory business had grown during the period following the loss of his ownership rights during the Nazi regime, and was "now. . . employing over seven hundred workers." However, it must be noted that this statement refers to the business as it existed at the time of Mr. Goldsmith's writing, in 1963--some twelve years after the taking of his remaining beneficial interest in the business in 1951. Furthermore, his statement that, according to his information, "the firm does a yearly business of about seven million marks" also refers to conditions existing in 1963. In addition, that figure relates to gross annual income rather than net income or profit, as claimants have apparently assumed in their objection.

It is also redundant for the claimants to treat the forty thousand-reichsmark investment assertedly made by claimant ISABELLE GOLDSMITH in the business in 1932 as a separate element of compensability in their claim. As a threshold matter, the record contains no evidence to establish that this investment was made. However, even assuming it was made, claimants cannot validly claim for that ownership interest while claiming at the same time for the entire value of the factory business.

Finally, to the extent that the Commission is able to understand the claimants' reasoning, it is unable to accept the contention that the entire assets of the factory business were subject to a "ballooning effect" factor of 2.96 between 1935 and 1951. In the first place, this factor is apparently derived based on the erroneous assumption that the figures of 310,000 marks and 7,000,000 marks represented total income of the business in 1937 and 1963, whereas it has already been noted that the former figure was said to represent an annual profit and the latter figure was said to represent gross income. Secondly, the record contains no evidence to support the assumption that the "good will" asset of the business--viewing that element as business reputation rather than



capitalized value--amounted to as much as 1,500,000 marks before World War II. Moreover, the reputation that the business may have enjoyed prior to World War II, to the extent that it was related directly to the connection of the claimants' predecessor with the business, would likely have been substantially dissipated by 1951. Thirdly, it is redundant to claim both for the entire capitalized value of the business ("company assets") as valued in 1951, while claiming at the same time for loss of income therefrom in 1951. Lastly, it has already been pointed out that it is redundant to claim for the loss of claimant ISABELLE GOLDSMITH's asserted investment in the factory business, whether in the original 40,000 mark amount or in some "ballooned" amount, while at the same time claiming for the entire value of the factory business.

Based upon all of the evidence of record, including the information obtained by the Commission's West German field office and the photographs and statements submitted by the claimants, the Commission finds that the subject textile factory, including the real property and movable assets pertaining thereto, had a value of \$150,000.00 when claimants' predecessor's beneficial interest in the business was taken by the German Democratic Republic on September 6, 1951. Claimants are accordingly entitled to an award in this additional amount, thereby bringing the amount to which they are entitled in their claim to a total of \$171,000.00.

Section 606 of the Act provides:

"With respect to any claim under section 602 of this title which, at the time of the award, is vested in persons other than the person by whom the original loss was sustained, the Commission shall issue a consolidated award in favor of all claimants then entitled thereto, which award shall indicate the respective interests of such claimants therein, and all such claimants shall participate, in proportion to their indicated interests, in any payment that may be made under this title in all respects as if the award had been in favor of a single person."



As the heirs of the late Max Lang Goldsmith's estate, claimants are accordingly entitled to share equally in a consolidated award of \$171,000.00.

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 award granted to the claimants is accordingly set forth below. This decision constitutes the Commission's final determination in this claim.

A W A R D

A consolidated award is made in a total amount of One Hundred Seventy-One Thousand Dollars (\$171,000.00), consisting of \$150,000.00 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, and \$21,000.00 plus interest at the rate of 6% simple interest per annum from August 11, 1952, until the date of the conclusion of an agreement for payment of such claims by the German Democratic Republic. The total award shall be distributed as follows:

ISABELLE GOLDSMITH	(1/3)	\$57,000.00
ELINOR GOLDSMITH KASTNER	(1/3)	\$57,000.00
DORIS GOLDSMITH COLMES	(1/3)	\$57,000.00

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

MAY 6 1981

*Richard W. Yarborough*  
Richard W. Yarborough, Chairman

*Francis L. Jung*  
Francis L. Jung, Commissioner

*Francis T. Peterson*  
Executive Director

*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 6 1981

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

IN THE MATTER OF THE CLAIM OF

ISABELLE GOLDSMITH

Under the International Claims Settlement  
Act of 1949, as amended

Claim No. G-3213

Decision No. G-2719

Counsel for Claimant:

Sven A. Johanson, Esquire  
Schneider, Johanson & Silin

PROPOSED DECISION

This claim in the amount of \$4,050,000.00 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 an eighteen-room villa at Helenenstrasse 7 in Meiningen, a textile factory building at Ernestinerstrasse 4 in Meiningen, a textile manufacturing business, known as the firm "M. Frank," also at Ernestinerstrasse 4 in Meiningen, certain patents and trademarks related to the production of clothing and shirts, and a variety of furniture, furnishings and other personal property assertedly located in the aforementioned villa on Helenenstrasse.

Claimant ISABELLE GOLDSMITH, assertedly acquired United States citizenship by birth on August 6, 1892; however, no documentation to corroborate this assertion has yet been submitted.

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 . . ."

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."

With respect to the villa and the factory building for which a claim is asserted herein, claimant stated at the time of filing that she and her husband, Mr. Max Lang Goldsmith, were co-owners of these properties before World War II. Evidence in the record establishes that Max Lang Goldsmith became a United States citizen on January 10, 1944. Claimant further stated that the properties were nationalized by the German Democratic Republic some time between 1949 and 1951, and she asserted that she is entitled to claim for the loss of the properties resulting from this nationalization both in her own right and as Max Lang Goldsmith's widow and heir. It appears from the record that Mr. Goldsmith died some time after June 1975, although the date of his death has not been stated. Claimant has submitted no documentation or other evidence, however, to support any of the foregoing statements. The only evidence of any kind which she has submitted consists of certain photographs showing the exterior and interior of the property on Helenenstrasse and the exterior of the factory on Ernestinerstrasse.

In an effort to obtain additional information to clarify the facts of this claim, an investigation of the claim was conducted by the Commission's field office in West Germany. According to the investigation report, the subject properties were solely owned by Max Lang Goldsmith at all pertinent times; the report gives no indication that an ownership interest in either of the properties was held by the present claimant. With respect to the

Helenenstrasse property, the investigation further disclosed that legal title to the property was lost during the Nazi regime as a result of religious and racial persecution, but that title was restored to claimant's late husband, as rightful owner, in the years immediately following World War II. As for the factory property, the investigation disclosed that legal title to it was also lost during the Nazi regime, but that a restoration of title was not effected after the end of the war. The investigation report indicates instead that the factory was converted into "people's property" by the governmental authorities in Meiningen some time between 1949 and 1952.

In a substantial number of decisions to date, the Commission has granted awards for losses of property in circumstances such as those outlined in the foregoing. In the case of property in the German Democratic Republic to which legal title was retained by its pre-war owner or restored to him after the war, and the owner had established his permanent residence outside of Germany either before or shortly after the end of the war, the Commission has assumed, in the absence of other evidence, that his property would have come within the purview of the "Decree on the Administration and Protection of Foreign Owned Property in the German Democratic Republic" of September 6, 1951, and would be considered to have been taken by the German Democratic Republic as of August 11, 1952, the date of the first regulation implementing that decree. If the owner was a United States national on the date of this assumed loss, and his claim was subsequently owned continuously by a United States national until the date of filing in the present claims program, the Commission has then found his claim compensable under the Act.

In the case of property to which legal title was lost through Nazi persecution and not subsequently returned, the Commission has held that the rightful owner retained a "beneficial interest" in his property notwithstanding the loss of legal title. Then, if the nationality requirements of the Act are met, the Commission has also granted an award for the loss of that beneficial interest through action effected by the German Democratic Republic after World War II. In some instances, this action took the form of outright governmental nationalization or other taking of the claimed property; in others, it occurred through governmental termination of the former owner's right of restitution of title to his property in 1951, pursuant to decrees such as the one cited above.

In the present claim, it is established that Max Lang Goldsmith, the legal owner of the Helenenstrasse property claimed herein and the beneficial owner of the claimed factory property, was a United States national at all times between 1949 and 1952, during which period the Commission would hold that the properties were taken by the German Democratic Republic, within the meaning of section 602 of the Act. However, as will be noted, section 603 of the Act further requires that the Commission give favorable consideration to a claim ". . . 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." Since the record indicates that Max Lang Goldsmith died prior to the filing of the present claim in May 1978, it is thus necessary for the claimant to establish that she succeeded to ownership of her husband's claim, either pursuant to his will or by inheritance, and that she was a United States national at all times between the date of her husband's death and the date of filing of her claim. Although she has asserted that she is a United States

citizen, and thus a national of the United States, by birth, she has failed to submit documentation to this effect. Furthermore, despite having been requested, via three letters to her attorney dated February 26, 1979, November 9, 1979, and April 15, 1980, to provide a copy of her husband's probated will or other documentation to establish her right to claim as his legal successor in interest, she has failed to submit any such documentation.

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 determinations of his claim.  
(FCSC Reg., 45 C.F.R. § 531.6 (d) (1977)).

The Commission therefore finds that claimant has not met the burden of proof with respect to this portion of her claim, in that she has failed to submit evidence to establish her United States citizenship or her right to claim as the successor in interest of her late husband, Max Lang Goldsmith. Accordingly, this portion of her claim must be and it is hereby denied.

With respect to the portion of this claim based upon the asserted loss of the "M. Frank" firm at Ernestinerstrasse 4 in Meiningen, the investigation by the Commission's field office confirmed that Max Lang Goldsmith was the firm's original owner and that legal title to the firm was also lost during the Nazi regime as a result of religious and racial persecution. Here again, however, claimant has submitted no documentation to establish her right to claim for the loss of Max Lang Goldsmith's beneficial ownership interest in the firm, or her status as a United States national. The record therefore fails to provide a basis for finding her claim for this loss to be compensable.

As a further point, it must be noted that, although the field office investigation disclosed that the subject business firm was apparently still in existence after World War II, it could not be established whether the firm then owned assets of any value other than the factory premises in which it was located. In the absence of evidence on this question, the record thus provides no basis for a finding that action was effected against the firm by the German Democratic Republic after World War II which could be held to have amounted to a compensable taking of Max Lang Goldsmith's beneficial interest in the firm or in any of its assets other than factory premises discussed in the foregoing.

For these reasons, this portion of the claimant's claim must also be and it is hereby denied.

With respect to the portion of this claim based upon the asserted loss of certain patents and trademarks, household furniture and furnishings, and personal property, the record contains no evidence or information, other than claimant's own statements, as to the existence or ownership of the patents and trademarks in question. Furthermore, no evidence has been submitted, other than claimant's own statements and the photographs previously referred to, regarding the existence, characteristics, or ownership of the claimed personal property, and no basis is available in the record for a finding that any of these items of intangible and tangible property were nationalized or otherwise taken by the German Democratic Republic after World War II. Accordingly, this portion of the claimant's claim must also be and it is hereby denied.

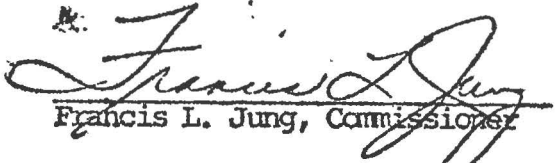


The Commission finds it unnecessary to make determinations with respect to other elements of this claim.

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

NOV 12 1980

  
Richard W. Yarborough, Chairman

  
Francis L. Jung, 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.)

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.)