

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

IN THE MATTER OF THE CLAIM OF

RITA KESTENBAUM
ELEONORE S. ROTHSCHILD
JULES M. BIER
SIEGFRIED F. BIER

Under the International Claims Settlement
Act of 1949, as amended

Claim No. G-3220
G-3273
G-3282

Decision No. G-3270

Oral Hearing held on April 28, 1981

FINAL DECISION

These claims in the aggregate amount of \$1,631,250.00 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), are based upon the loss of a leasehold on property in East Berlin, business assets, an art collection, two pieces of real property in Leipzig and five pieces of real property in East and West Berlin.

By Proposed Decision dated February 25, 1981, the Commission granted to the claimants three awards totalling \$332,700.00 based upon the loss of beneficial ownership interests in parcels of real property at Leipziger Strasse 31/32, Alexanderstrasse 9, Schiffbauerdamm 9, and Mohrenstrasse 19 in East Berlin as of December 18, 1951. The remaining portions of the claims were denied, however, for the reason that the record failed to establish that the property interests claimed were lost as a result of nationalization or other taking by the German Democratic Republic, as required for compensation under the Act.

Claimants filed an objection to the denial in the Proposed Decision of the portion of their claims based upon the loss of a 60-year "inheritable building right" on a parcel of real property located at Leipziger Strasse 5 in East Berlin. Claimants requested an oral hearing at which to present their objection, and in accordance with their request, a hearing was scheduled and held at 10:00 a.m. on April 28, 1981, in the Commission's hearing room in Washington, D.C. Claimant RITA KESTENBAUM, together with her husband, Paul Kestenbaum, and a nephew, Lionel Kestenbaum, Esquire, appeared at the hearing and presented further argument and statements regarding the nature of the property interest represented by the claimed "building right" and the value it would have had as of 1951, when, under the reasoning set forth in the Proposed Decision, it could be considered to have been taken by the German Democratic Republic. In support of the objection, claimants submitted a copy of the contract by which the building right was acquired in 1930, together with a written statement by claimant SIEGFRIED F. BIER which includes a description of the property at Leipziger Strasse 5, an estimate of the amount expended by the "Erbbau Recht G.m.b.H.," the Bier family company which was the legal owner of the building right, in preparation for carrying out the provisions of the building right contract, and estimates of the eventual costs of carrying out those provisions and of the profits which the company expected to realize therefrom.

An examination of the contract by which the claimants' family acquired their building-right interest in the property at Leipziger Strasse 5 reveals that it was executed on May 17, 1930, and provided that the right would run for a term of 60 years. Thus, the right was essentially a 60-year leasehold interest in the property. The contract further provided that the lessee, Erbbau Recht G.m.b.H., would pay to the lessor and fee owner, the "Prussian State," installments totalling 150,000 marks for the leasehold interest, and that the lessee was obligated either to

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carry out a major renovation of the existing building on the property to convert it into a commercial and office building, or to raze that structure and replace it with a new office and commercial building. During the term of the leasehold, the lessee was to have essentially full rights to the management and control of the renovated or new building and to the profits from its rental, and at the end of the term it was to be obligated to return the property, free and clear, to the lessor, the Prussian State. The enhancement in the value of the property through renovation or new construction was thus to comprise the preponderant portion of the consideration for the leasehold interest, with the 150,000-mark payment of interest or "rent" being primarily in the nature of a nominal or token payment.

It is further stated in the record, however, that authorities of the Nazi regime forced the claimants' family's company, Erbbau Recht G.m.b.H., to relinquish the leasehold interest in April 1935, in furtherance of the regime's policies of religious and racial persecution. Based upon the evidence now of record and in accordance with the reasoning set forth in the Proposed Decision, the Commission now finds that, notwithstanding this loss, claimants' family retained a beneficial leasehold interest in the property, and that this beneficial interest was then taken by the German Democratic Republic as of December 18, 1951. Claimants are accordingly entitled to further awards for that loss, in proportion to their rights as owners of fractional shares in their former family company, Erbbau Recht G.m.b.H., or as successors to such owners, as applicable.

With respect to the value to be attributed to this beneficial leasehold interest, it is evident from the record that the property at Leipziger Strasse 5 in Berlin was one of the most valuable properties in the city. Not only was it in a prestigious location, but according to claimant SIEGFRIED F. BIER's statement, the building on the property at the time of transfer of the leasehold

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interest in 1930 was of quite substantial dimensions. According to his statement, the building was of five stories and its horizontal dimensions were approximately 180 meters by 145 meters; thus, it covered an area of 26,100 square meters or approximately 281,000 square feet, and had a combined commercial and office floor area in the five stories of approximately 130,500 square meters or 1,405,000 square feet. The statement further indicates, however, that although it was intended, within the first 20 years of the leasehold term, to raze the existing building and erect a new building of a cost of some five million marks, no expenditures were made toward that end, or even to begin renovation of the existing building, during the five years leaving up to the wrongful termination of the leasehold by the Nazi regime in 1935. The only expenditure which is said to have been made was a payment of between 40,000 and 50,000 marks for the preparation of plans for remodeling all of the office space in the existing building and for conversion of the space on the street level to retail store space. Furthermore, claimants have stated that subsequent to the wrongful termination of the leasehold, the building was eventually razed and the multi-story Reich Air Ministry building was constructed on the property, which building survived World War II and today houses offices of the German Democratic Republic government.

Claimant SIEGFRIED F. BIER also states that, after the intended renovation of the existing building at Leipziger Strasse 5, the family company expected to realize an annual rental profit of 200,000 marks, and that after the eventual construction of a new building, an annual profit of 350,000 marks was expected to be realized. It is further stated that in 1951, rents in the new building would have amounted to approximately 10 marks per square meter per month. Once again, however, the company was precluded after 1935 from accomplishing either the renovation or the new construction. Therefore, the Commission must view these rent and profit estimates as speculative and conjectural--much the same as lost profits on a breached executory contract.

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If the leasehold agreement had merely required the lessee company to pay a specified rent, either at the outset or over the term of the leasehold, and then to return the property to the lessor at the end of the period, a reasoned valuation of the remaining leasehold term as of 1951 would be relatively simple. Likewise, if the renovation or new construction had already been accomplished and the anticipated new commercial and business tenants had already begun paying rent before the wrongful termination of the leasehold, it would not be overly difficult to arrive at a reasoned valuation of the loss sustained through the German Democratic Republic's subsequent failure to make restitution of the leasehold rights in 1951--or, in view of the fact that the property had by then been converted to public use, to pay compensation for its "condemnation."

Under the present facts, however, no significant portion of the consideration which claimants' family company was obligated under the leasehold agreement to pay to or expend for the benefit of the lessor, in exchange for the leasehold rights, had yet been paid or expended when the Nazi regime terminated the agreement in 1935. As a result, there existed a wide disparity between the consideration actually given and the market value which was apparently attributable to the property. The Commission therefore concludes that a valuation of the loss of the beneficially owned leasehold rights in 1951 in terms of such market value is not supportable, as it would result in a substantial windfall to the claimants. Instead, the Commission concludes that the only appropriate way of valuing the beneficially owned leasehold interest as of 1951 is to base it upon the amounts which had actually been paid or otherwise expended in the acquisition of the original interest and in performance of the leasehold contractual obligations during the period between 1930 and 1935. According

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to the record, these amounts consisted of annual payments of 2,500 marks for five years, for a total of 12,500.00 marks; a payment of approximately 11,765 marks for fees in connection with the execution of the leasehold agreement; and the previously mentioned expenditure of approximately 50,000 marks for preparation of plans for the renovation of the existing building on the property. This results in a grand total of 74,265 marks.

Based upon the foregoing, and having included a factor to take into account the general rise in real property values in Eastern Europe in the years following World War II, the Commission therefore now finds that the loss suffered by the claimants' family through the termination by the German Democratic Republic, on December 18, 1951, of their rights to be restored to their former position with respect to the subject leasehold interest, had a value of \$25,000.00. In conformity with the previous findings as to the division and descent of ownership interests in the other firms owned by the claimants' family in Berlin, claimant SIEGFRIED F. BIER is accordingly now entitled to a further award of 1/8 of \$25,000.00, or \$3,125.00, claimant JULES BIER is now entitled to a further award of 3/32 of \$25,000.00, or \$2,343.75, and claimants RITA KESTENBAUM and ELEONORE S. ROTHSCHILD are entitled to a further consolidated award of 1/4 of \$25,000.00, or \$6,250.00.

The Commission therefore withdraws the awards granted in the Proposed Decision, and grants increased awards as set forth below. In all other respects, the Commission affirms the findings of the Proposed Decision. This constitutes the Commission's final determination in these claims.

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A W A R D S

Claimant, JULES M. BIER, is therefore entitled to an award in the amount of Fifty Thousand Six Hundred Forty-Three Dollars and Seventy-Five Cents (\$50,643.75), 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.

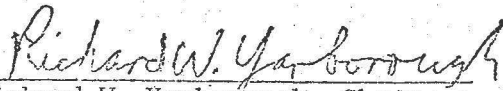
Claimant, SIEGFRIED F. BIER, is therefore entitled to an award in the amount of One Hundred Thirteen Thousand One Hundred Twenty-Five Dollars (\$113,125.00), plus interest at the rate of 6% simple interest per annum from December 18, 1951 until the date of the conclusion of an agreement for payment of such claims by the German Democratic Republic.

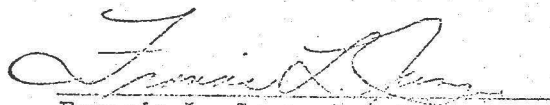
A consolidated award is made in the amount of One Hundred Eighty Thousand Six Hundred Fifty Dollars (\$180,650.00), plus interest at the rate of 6% simple interest per annum from December 18, 1951 until the date of the conclusion of an agreement for payment of such claims by the German Democratic Republic, as follows:


RITA KESTENBAUM	(1/2)	\$90,325.00
ELEONORE S. ROTHSCHILD	(1/2)	\$90,325.00

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

MAY 15 1981


Richard W. Yarborough, Chairman


Francis L. Jung, Commissioner


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 15 1981


Executive Director

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

IN THE MATTER OF THE CLAIM OF

RITA KESTENBAUM
ELEONORE S. ROTHSCHILD
JULES M. BIER
SIEGFRIED F. BIER

Under the International Claims Settlement
Act of 1949, as amended

Claim No. G-3220
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G-3282

Decision No. G-3270

PROPOSED DECISION

These claims in the aggregate amount of \$1,631,250.00 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), are based upon the loss of a leasehold on property in East Berlin, business assets, an art collection, two pieces of real property in Leipzig and five pieces of real property in East and West Berlin.

The evidence of record indicates that claimants RITA KESTENBAUM, ELEONORE S. ROTHSCHILD, JULES M. BIER and SIEGFRIED F. BIER became citizens of the United States on May 2, 1950, April 21, 1947, March 1, 1949, and November 27, 1950, respectively.

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 these claims establishes that four members of the Bier family, Ludwig Bier, Guido Bier, Gottlieb Bier, and Julius Bier had owned equal interests in various firms in prewar Germany through which they owned parcels of real estate.

The claims herein involve the loss of the properties at ~~Leipziger~~ Leipzigerstrasse 31/32, Alexanderstrasse 9, Schiffbauerdamm 9, and Mohrenstrasse 19, all in East Berlin.

With respect to the property at Leipzigerstrasse 31/32, the evidence of record indicates that Ludwig Bier, who became a United States citizen on March 18, 1947, had owned a 22/56 interest in the subject property. Julius Bier had owned a 1/4 interest in the property. With respect to the other three buildings in East Berlin, Ludwig and Julius Bier had each owned 1/4 interests.

Julius Bier died in 1927, leaving 1/2 of his estate to his sons Norbert Bier and claimant SIEGFRIED F. BIER. Upon Norbert Bier's death in 1943, his son JULES M. BIER inherited 3/4 of his estate, or a 3/32 interest in the subject properties. Ludwig Bier died in 1948, leaving his entire estate to his wife, Cacilie Bier, a United States citizen from December 17, 1946.

The record in these claims 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.

The Commission has also 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. The Commission therefore finds that the beneficial interests in the subject properties in East Berlin were taken by the German Democratic Republic on December 18, 1951.

At the time of the cut off of the right of restitution, ~~the~~ Cacilie Bier held a 22/56 interest in the property at Leipzigerstrasse 31/32, and a 1/4 interest in the properties at Alexanderstrasse 9, Schiffbauerdamm 9 and Mohrenstrasse 19. Upon Cacilie Bier's death in 1967, her daughters, claimants RITA KESTENBAUM and ELEONORE S. ROTHSCHILD, each inherited 1/2 of her estate.

The evidence of record in these claims includes the tax assessed values, descriptions of the properties, and the general increase in land values in Europe. The evidence of record indicates that the improvements on the property at Leipzigerstrasse 31/32 in East Berlin were totally destroyed during World War II. War damage is not compensable under the Act; the Commission is authorized to grant awards only for that property surviving World War II and actually taken by the German Democratic Republic. Accordingly, the Commission finds that the remaining land at Leipzigerstrasse 31/32 had a value of \$319,200.00. RITA KESTENBAUM and ELEONORE S. ROTHSCHILD, with 11/56 interests each in the property, are entitled to awards of \$62,700.00 for the loss of this property. JULES M. BIER, with a 3/32 interest, is entitled to an award of \$29,925.00. SIEGFRIED F. BIER, with a 15/56 interest, is entitled to an award of \$85,500.00 for the loss of this property.

With respect to the property at Alexanderstrasse 9, the evidence of record indicates that the building at this address was also destroyed during World War II. The Commission finds that the value of the remaining land was \$40,000.00 on the date of taking. Accordingly, RITA KESTENBAUM and ELEONORE S. ROTHSCHILD are entitled to awards of \$5,000.00 each for the loss of their interests in the property. JULES M. BIER is entitled to an award of \$3,750.00 and SIEGFRIED F. BIER to an award of \$5,000.00 for the loss of their respective interests in the property. With respect to the building and land at Schiffbauerdamm 9 in East Berlin, this building apparently was not destroyed during World War II. The Commission finds that the property had a value of \$140,000.00 on December 18, 1951. Accordingly RITA KESTENBAUM

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and ELEONORE S. ROTHSCHILD are each entitled to an award of \$17,500.00; JULES M. BIER is entitled to an award of \$13,125.00; and SIEGFRIED F. BIER is entitled to an award of \$17,500.00 for the loss of their respective interests in this property. The evidence of record indicates that the building at Mohrenstrasse 19 was destroyed during World War II. Accordingly, the Commission finds that the value of the remaining land at that address was \$16,000.00 on December 18, 1951. RITA KESTENBAUM and ELEONORE S. ROTHSCHILD are entitled to awards of \$2,000.00 each; JULES M. BIER is entitled to an award of \$1,500.00; and SIEGFRIED F. BIER is entitled to an award of \$2,000.00 for the loss of their respective interests in this property.

Accordingly, for the loss of their interests in East Berlin, RITA KESTENBAUM and ELEONORE S. ROTHSCHILD are entitled to awards in the total amount of \$87,200.00 each; JULES M. BIER is entitled to an award in the total amount of \$48,300.00; and SIEGFRIED F. BIER is entitled to an award in the total amount of \$110,000.00 under section 602 of the Act.

Claimants also asserted the loss of a building and land at Kommandantenstrasse 58 in Berlin. As this property is located in what is now West Berlin, it could not have been the subject of any taking by the government of the German Democratic Republic, as required for compensation under section 602 of the Act. Accordingly, this portion of the claim must be and hereby is denied.

Claimants also asserted the loss of a leasehold interest in property at Leipzigerstrasse 5 in East Berlin. The Commission finds that there is no evidence of a taking of such interest by the government of the German Democratic Republic, after the close of World War II, as is required for compensation under the Act. Accordingly, this portion of the claim must be and hereby is denied.

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Claimants asserted the loss of an art collection containing 76 paintings, which had been held in the Julius M. Bier gallery. The Commission finds that the evidence of record is not sufficient to establish that the paintings survived World War II and were taken by the government of the German Democratic Republic. Accordingly, this portion of the claim must also be denied.

Claimants further asserted the loss of the assets of the Julius M. Bier A.G. realty firm in Berlin. The evidence of record does not establish whether this business survived World War II, or, if so, what its value might have been at the end of the war. Accordingly, as there is no evidence of the assets in existence at the end of the war which could have been taken by the German Democratic Republic, this portion of the claim must also be denied.

Claimants asserted the loss of two pieces of improved real property in Leipzig, at Keilstrasse 3 and Keilstrasse 5. As the Commission finds that the evidence of record is not sufficient to establish claimants' ownership interest in these properties, this portion of the claim must be and hereby is denied.

Since claimants RITA KESTENBAUM and ELEONORE S. ROTHSCHILD inherited their right to claim for the subject properties from their mother Cacilie Bier, they will share a consolidated award under section 606 of the Act.

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 payments that may be made under this title in all respects as if the award had been in favor of a single person."

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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A W A R D S

Claimant, JULES M. BIER, is therefore entitled to an award in the amount of Forty-Eight Thousand Three Hundred Dollars (\$48,300.00), 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.

Claimant, SIEGFRIED F. BIER, is therefore entitled to an award in the amount of One Hundred Ten Thousand Dollars (\$110,000.00), 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.

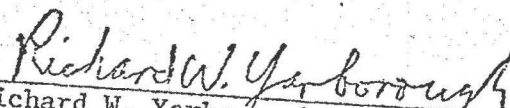
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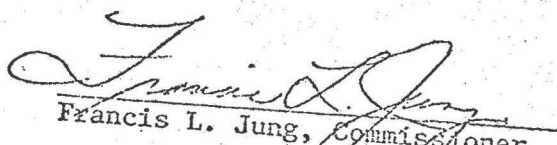
A consolidated award is made in the amount of One Hundred Seventy-Four Thousand Four Hundred Dollars (\$174,400.00) plus interest at the rate of 6% simple interest per annum from December 18, 1951 until the date of the conclusion of an agreement for payment of such claims by the German Democratic Republic, as follows:

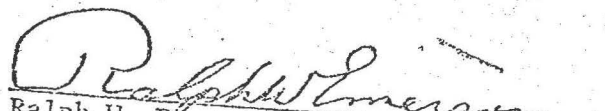
RITA KESTENBAUM	(1/2)	\$87,200.00
ELEONORE S. ROTHSCHILD	(1/2)	\$87,200.00

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


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.)

At any time after a 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).

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