

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

IN THE MATTER OF THE CLAIM OF

NORMAN S. MULLER
MORTON S. MULLER

Under the International Claims Settlement
Act of 1949, as amended

Claim No. G-3541

Decision No. G-2685

Counsel for Claimants:

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

Oral Hearing held on February 10, 1981.

FINAL DECISION

This claim in the amount of \$6,500,000.00 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 asserted loss of a farm known as Schlossgut Neuendorf, improvements on the land, personal property, and subterranean rights for exploration of soft coal.

By Proposed Decision dated October 20, 1980 the Commission granted awards to claimants NORMAN S. MULLER and MORTON S. MULLER based on a valuation by the Commission of \$340,000.00 for the loss of Schlossgut Neuendorf and improvements thereon. The Commission denied the portions of the claim based upon the loss of personal property and on coal mining rights.

Claimants objected to the Proposed Decision on the ground that the Commission's valuation of Schlossgut Neuendorf is inadequate, that the Commission's calculation of the value of the life estate of claimant's mother, Mable S. Muller, was incorrect, and that an award should have made for the loss of the coal mining rights.

Claimants subsequently withdrew two of their objections to the Proposed Decision and limited their objection at the oral hearing, at which claimants were represented by their attorney, Horace W.K. Borchardt, to the issue of the value of the coal mining rights. In support of their objection, claimants submitted an affidavit, an expert's appraisal of the fair market value of the coal in the ground, and offered extensive explanation through testimony at the oral hearing.

The Commission has examined the evidence submitted in connection with the objection and has thoroughly reconsidered all of the evidence of record. The Commission notes that although claimants have submitted some evidence of the value of the coal in the ground, the actual loss suffered by claimants for which the Commission could grant an award would be represented by the value of the coal in the ground less the costs of extraction. The Commission notes that one of the costs of extraction would include the diminution in value of the surface land due to the impairment of the use of that land because of mining operations, and that in reaching its original valuations of \$340,000.00 for the loss of Schlossgut Neuendorf the Commission took into consideration the use of the surface land herein involved as agricultural or forested property.

Based upon all the evidence, however, the Commission feels justified in increasing its original determination by \$14,000.00 to account for the loss of coal reserves and the right to mine them. Therefore, the total value of the life estate of claimants mother and the remainder interests of claimants in the real property on the date of taking was \$354,000.00. The Commission withdraws its awards as set out in the Proposed Decision and substitutes in lieu there of the following awards.

A W A R D

Claimant, NORMAN S. MULLER, is therefore entitled to an award in the amount of One Hundred Thirty Thousand Six Hundred Seventeen Dollars (\$130,617.00), plus interest at the rate of 6% simple interest per annum from September 11, 1945 until the date of the conclusion of an agreement for payment of such claims by the German Democratic Republic;

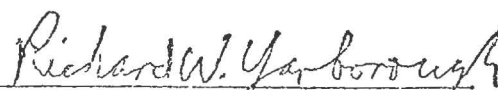
Claimant, MORTON S. MULLER, is therefore entitled to an award in the amount of One Hundred Thirty Thousand Six Hundred Seventeen Dollars (\$130,617.00), plus interest at the rate of 6% simple interest per annum from September 11, 1945 until the date of the conclusion of an agreement for payment of such claims by the German Democratic Republic; and,

A consolidated award is made in the amount of Ninety-Two Thousand Seven Hundred Sixty-Six Dollars (\$92,766.00), plus interest at the rate of 6% simple interest per annum from September 11, 1945, until the date of the conclusion of an agreement for payment of such claims by the German Democratic Republic for payment of such claims by the German Democratic Republic, as follows:


NORMAN S. MULLER	(1/2)	\$46,383.00
MORTON S. MULLER	(1/2)	\$46,383.00


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


MAY 6 1981


Richard W. Yarborough, Chairman

is a true and correct copy of the decision
of the Commission which was entered as the final
decision on MAY 6 1981


Francis L. Jung, Commissioner


Executive Director


Ralph W. Emerson, Commissioner

G-3541

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Claim No. G-3541

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Counsel for Claimants:

Horace W.K. Borchardt, Esquire

PROPOSED DECISION

This claim in the amount of \$6,500.000.00 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 asserted loss of a farm known as Schlossgut Neuendorf, improvements on the land, personal property, and subterranean rights for exploration of soft coal.

The record indicates that claimants, NORMAN S. MULLER and MORTON S. MULLER, became United States citizens on December 15, 1930 and September 25, 1931, 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 . . ."

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."

Based upon all the evidence of the entire record including a report from the Commission's field office, the Commission finds that the subject property located in Neuendorf was originally owned by claimants' parents, Hermann and Mabel S. Muller. Hermann Muller died on January 26, 1927 and Mable S. Muller, a United States citizen from birth, died on July 6, 1962. Pursuant to a will left by Hermann Muller, Mable S. Muller acquired a life estate in the subject property, and claimants became remaindermen. Upon Mable S. Muller's death in 1962, each claimant acquired the right to claim for the loss of a one-half interest in the life estate.

With regard to the claim for the loss of subterranean rights for the exploration of coal, the Commission requested in its letter dated March 8, 1979 that claimants submit evidence to show that the land contained reserves and to show the value of these reserves. Claimants were unable to do so, but did inform the Commission of evidence indicating that mining concessions had in fact been sold in 1941. Based upon the evidence of the entire record, the Commission has no basis to conclude that there were any remaining reserves in the claimed coal mines, which were owned by claimants' predecessors, nor does the Commission have any basis to ascertain the value of such reserves. Further, there is no evidence upon which the Commission can conclude that the coal mines were in fact taken by the German Democratic Republic as required under section 602 of the Act. For these reasons, this portion of the claim must be and hereby is denied. With regard

to the loss of personal property claimed by claimants, the evidence of record does not establish that the items of personal property which are the subject of this claim survived World War II. The premises were used during World War II by the German military which, according to an affidavit of claimant NORMAN MULLER, left the building in a condition of "total neglect." The Commission can not overlook the strong possibilities of loss of personal property before September 1945 from misuse, theft or removal. Therefore, there is no basis for the Commission to conclude that there was any such property in existence which was the subject of a loss "arising as a result of the nationalization, expropriation of other taking" by the German Democratic Republic, as required by section 602 of Title VI of the Act.

Based on the Commission's study of postwar decrees in the territory of the German Democratic Republic, the Commission finds that the subject farm known as Schlossgut Neuendorf and improvements would have come under the purview of the "Decree on Land Reform in the Province of Mark Brandenburg" of September 11, 1945. This Decree provided for the confiscation of all farms greater than 100 hectares in area. The record reflects that the subject farm herein had a size of 366 hectares. The Commission finds, therefore, that the subject farm would have come under the above decree and was therefore taken by the East German authorities as of September 11, 1945.

In determining the value of the subject property, the Commission has considered such evidence as a report from its field office in West Germany and the claimants' description of the property including photographs. The evidence indicates that the farm was improved by a manor house with at least four other buildings, and had a size of 366 hectares. There is no indication of damage to the subject property during World War II. Based upon the entire record including the above evidence, the Commission finds that the entire estate involved herein had a value of \$340,000.00 at the time it was taken in 1945.

The Commission has adopted as a basis for valuation of life and remainder interests the Makehamized Mortality Table, appearing as table 34 of United States Life Tables and Actuarial Tables 1939-1941, and 3 1/2% interest rate, compounded annually as prescribed by United States Treasury Department regulations of June 3, and 4, 1952 for the collection of gift and estate taxes, respectively. Therefore, using this table as its reference, the Commission finds that claimants' one-half remainder interests in the subject property had a value of \$125,451.50 each on the date of loss. Claimants also acquired the right to claim for a one-half interest in their mother's life estate and would therefore be entitled to a consolidated award in the amount of \$89,097.00 in which they would share equally.

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)).

A W A R D S

Claimant, NORMAN S. MULLER, is therefore entitled to an award in the amount of One Hundred Twenty-Five Thousand Four Hundre Fifty-One Dollars and Fifty Cents (\$125,451.50), plus interest at the rate of 6% simple interest per annum from September 11, 1945 until the date of the conclusion of an agreement for payment of such claims by the German Democratic Republic;

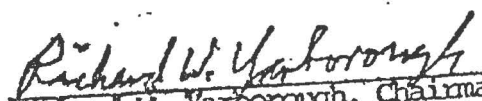
Claimant, MORTON S. MULLER, is therefore entitled to an award in the amount of One Hundred Twenty-Five Thousand Four Hundred Fifty-One Dollars and Fifty Cents (\$125,451.50), plus interest at the rate of 6% simple interest per annum from September 11, 1945 until the date of the conclusion of an agreement for payment of such claims by the German Democratic Republic; and,

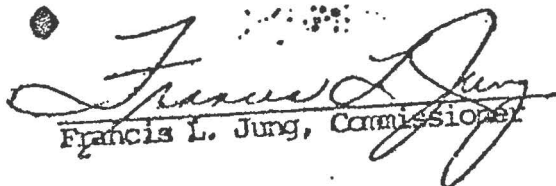
A consolidated award is made in the amount of Eighty-Nine Thousand Ninety-Seven Dollars (\$89,097.00), plus interest at the rate of 6% simple interest per annum from September 11, 1945, until the date of the conclusion of an agreement for payment of such claims by the German Democratic Republic, as follows:

NORMAN S. MULLER	(1/2)	\$44,548.50
MORTON S. MULLER	(1/2)	\$44.548.50

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

OCT 20 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.)