

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

IN THE MATTER OF THE CLAIM OF

THE EQUITABLE LIFE ASSURANCE
SOCIETY OF THE UNITED STATES

Under the International Claims Settlement
Act of 1949, as amended

Claim No. G-3589

Decision No. G-3231

Counsel for Claimant:

Lance H. Wilson, Esquire

PROPOSED DECISION

This claim in the original asserted amount of \$369,368.98 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 improved real property at the corner of Leipzigerstrasse 101/102 and Friedrichstrasse 59/60 and land at Kronenstrasse 16 in East Berlin, in addition to improved real property in Vienna, Austria.

The record in this claim indicates that claimant, THE EQUITABLE LIFE ASSURANCE SOCIETY OF THE UNITED STATES, was incorporated under the laws of the State of New York on July 25, 1859. An official of the claimant corporation has provided evidence from which the Commission concludes that more than 50% of the ownership in the claimant has been vested from the date of incorporation to the date of filing this claim directly or indirectly in United States nationals. Accordingly, the Commission finds that claimant is a national of the United States within the meaning of section 601(b) of the Act.

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. . ."

Based upon all the evidence of record, including the record in Claim No. W-10731 filed in the General War Claims Program under Public Law 87-876, the Commission finds that claimant owned real property located at the corner of Leipzigerstrasse 101/102 and Friedrichstrasse 59/60 and at Kronenstrasse 16 in East Berlin. The improvements thereon were destroyed during World War II. Such damage is not compensable under Public Law 94-542.

Claimant has submitted no evidence to establish the date on which the remaining land was taken by the German Democratic Republic. Whether the property was sequestered under Decree No. 124 of the Soviet Military Administration issued October 30, 1945, or confiscated pursuant to Decree No. 126 issued by the same authority on October 31, 1945, or came under administration as foreign owned property pursuant to a decree of December 18, 1951, is not established. It is established that claimant lost control over its property during World War II as "enemy" property and never gained effective control thereof. The Commission finds, therefore, that the property has been taken, as that term is used in section 602 of Public Law 94-542 and finds that this occurred on or about January 1, 1946.

Based upon the entire record, the Commission finds that the remaining land had a value of \$694,400.00.

Section 605 of the Act provides:

"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."

The Commission finds, based upon the record, that claimant received a proportional payment of \$480,820.09 for the loss of the land at Leipzigerstrasse 101/102, Friedrichstrasse 59/60 and at Kronenstrasse 16 in East Berlin under section 202(a) of the War Claims Act of 1948, as amended, and accordingly, the award herein granted must be reduced by such amount. The Commission concludes, therefore, that claimant, THE EQUITABLE LIFE ASSURANCE SOCIETY OF THE UNITED STATES, is entitled to compensation in the total amount of \$213,597.91 under section 602 of the Act.

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 Commission also note that claimant urges the Commission to reconsider the value of the building in East Berlin as determined by the Commission in its Final Decision dated May 10, 1967 under Public Law 87-876, which added Title II of the War Claims Act of 1948. The Commission finds, however, that the authority granted

by Congress to adjudicate claims and grant awards under Public Law 87-876 expired by law on May 17, 1967. Moreover, the Commission notes that section 615 of the International Claims Settlement Act of 1949 provides for the filing of protests relating to awards made by the Commission under the War Claims Act of 1948, as amended, where such awards were rendered during the ten calendar days immediately preceding the expiration of the Commission's mandate, which was May 17, 1967. The Commission finds that the award granted in Claim No. W-10731 would have been eligible for reconsideration under section 615, had it been timely filed by February 7, 1977, the statutory deadline, but was not so filed. Therefore, based upon the foregoing, the Commission concludes that the request by claimant for reconsideration of the calculation of the award must be and hereby is denied.

A portion of this claim is based upon the loss of improved real property in Vienna, Austria.

To be compensable under the Act, certain conditions must be met. The statute requires that the loss must have occurred in the German Democratic Republic or in East Berlin. Additionally, the loss must be the responsibility of the German Democratic Republic. The loss for which this portion of the claim is made herein occurred in Austria.

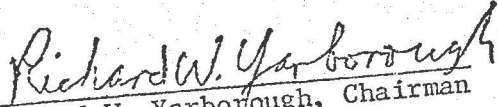
Therefore, the property not being located in the German Democratic Republic or in East Berlin and the loss thereof not being the responsibility of that government, this portion of the claim under the present Act must be and hereby is denied.

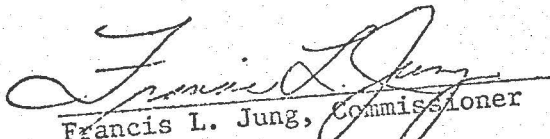
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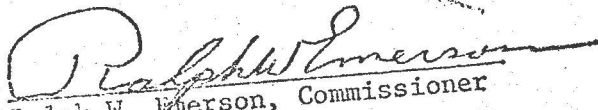
Claimant, THE EQUITABLE LIFE ASSURANCE SOCIETY OF THE UNITED STATES, is therefore entitled to an award in the amount of Two Hundred Thirteen Thousand Five Hundred Ninety-Seven Dollars and Ninety-One Cents (\$213,597.91), plus interest at the rate of 6% simple interest per annum from January 1, 1946 until 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 18 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 MAR 25 1981


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.)