

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

IN THE MATTER OF THE CLAIM OF

ESTATE OF ANNA BERLINER, FIRST
NATIONAL BANK OF OREGON, EXECUTOR

Claim No. G-3661

Decision No. G-3168

Under the International Claims Settlement
Act of 1949, as amended

Counsel for Claimant:

James W. Young, Esquire

Hearing on the Record held on **APR 29 1981**

FINAL DECISION

This claim in the amount of 240,000 reichsmarks 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 two pieces of improved real property in Leipzig.

By Proposed Decision dated February 18, 1981, the Commission granted an award for the loss of the subject property in Leipzig. The Commission found, however, that as only one-half of the beneficiaries under the will of Anna Berliner were United States citizens, it could only award 1/2 the value of the property taken, or \$7,000.00.

Claimant has objected to the Proposed Decision and, by letter dated March 31, 1981, it asserts that, since Anna Berliner had the right as a United States citizen to receive the entire amount owing as compensation for the loss of the subject property, the First National Bank of Oregon, as the executor of Anna Berliner's estate, acquired the same right undiminished by the nature of the beneficiaries of Anna Berliner's estate.

It has been the practice of the Commission, in the current program, in past programs, and in accord with the established rules of international law, to look to the citizenship of the

real or equitable owner of the claim, as distinguished from the nominal or ostensible owner. The Commission looks beyond an estate to determine who is the person beneficially entitled to the claim or any part thereof. (Claim of National Bank of Westchester, White Plains, as Administrator With the Will Annexed, Estate of Meta Blum, Deceased, Claim No. CZ-1872, Decision No. CZ-3312; Claim of Paraskevi Peters, Executrix of the Estate of Nick Peters, Deceased, Claim No. W-2875, Decision No. D-12346. See also Borchard, The Diplomatic Protection of Citizens Abroad 642-43 (1928).)

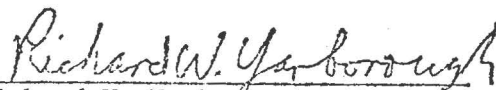
In the instant claim, a stipulation submitted by the claimant states that the University of Goettingen in West Germany is entitled to 1/2 the proceeds from the Estate of Anna Berliner, and the contestants to her will, who are United States citizens, are entitled to the other half. Therefore, as only one-half of the beneficiaries to the estate of Anna Berliner are United States citizens, the Commission concludes that only one-half the value of the property taken by the German Democratic Republic can be awarded to the claimant. Accordingly, it is ordered that the Proposed Decision be affirmed as the Commission's final determination on this claim.

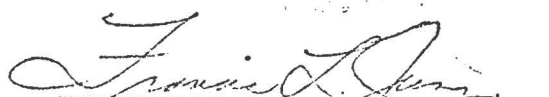
A W A R D

Claimant, ESTATE OF ANNA BERLINER, FIRST NATIONAL BANK OF OREGON, EXECUTOR, is therefore entitled to an award in the amount of Seven Thousand Dollars (\$7,000.00), plus interest at the rate of 6% simple interest per annum from December 1, 1951 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 Final
Decision of the Commission.

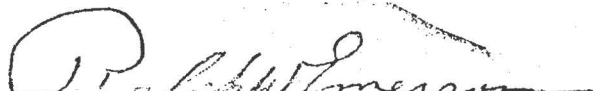
APR 29 1981


Richard W. Yarborough, Chairman


Francis L. Jung, Commissioner

This is a true and correct copy of the decision of the Commission which was entered as the final decision on APR 29 1981


Francis T. Weston
Executive Director


Ralph W. Emerson, Commissioner

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Act of 1949, as amended

Claim No. G-3661

Decision No. G-3168

Counsel for Claimant:

James W. Young, Esquire

PROPOSED DECISION

This claim in the amount of 240,000 reichsmarks 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 two pieces of improved real property in Leipzig.

The evidence of record indicates that Anna Berliner became a United States citizen on March 13, 1945.

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."

The evidence of record in this claim establishes that Sigfrid Berliner, a United States citizen from July 10, 1945, had been the owner of two apartment buildings at Ernst-Thaelmann-Strasse 26 and Konstantinstrasse 31 in Leipzig, Germany. Although Sigfrid Berliner lost his properties under the Nazi regime, they were returned to him after World War II. Documentation submitted by the claimant establishes that on September 1, 1949 Sigfrid Berliner executed an agreement with a trusteeship company in Saxony in order for the latter to administer his property.

Claimant has also submitted a letter dated August 7, 1951 from the council of the city of Leipzig to the trusteeship company in which the company was requested to surrender the files pertaining to Sigfrid Berliner's property because those properties were foreign owned assets. In a letter written by the trusteeship company to Sigfrid Berliner, it indicated that, by the end of November, it would comply with the request of the Leipzig council. Accordingly, the Commission finds that claimant's property was taken by the German Democratic Republic as of December 1, 1951.

Sigfrid Berliner died in 1961, leaving his entire estate to his wife, Anna Berliner. Anna Berliner died in 1977, leaving her estate to the University of Goettingen, located in West Germany. Her will, however, was contested, and according to a stipulation submitted by the claimant, both the contestants and the University of Goettingen are entitled to 50% of her estate. The actual division of the estate would take place according to the terms of the stipulation.

Section 603 of the Act provides that an award can be authorized by the Commission only when the claim "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." Under the will of Anna Berliner, the beneficiary of her estate was the University of Goettingen, which is not an entity established under United States law. The contestants, however, are United States citizens. Accordingly, the Commission finds that only 50% of the beneficiaries of Anna Berliner's estate are United States

citizens. The Commission therefore concludes that the ESTATE OF ANNA BERLINER, FIRST NATIONAL BANK OF OREGON, EXECUTOR, is entitled to an award for 1/2 the value of the subject property taken by the German Democratic Republic.

Considering all the evidence of record, including descriptions of the property, postwar rental income, prewar market value, information of mortgages encumbering both properties, and the general increase in land values in Europe, the Commission finds that the equity in the property at Ernst-Thaelmann-Strasse 26 in Leipzig had a value of \$11,000.00 on December 1, 1951. The Commission further finds that the equity in the property at Konstantinstrasse 31 in Leipzig had a value of \$3,000.00 on the date of taking. Accordingly, the value of the properties taken by the German Democratic Republic was \$14,000.00. The Commission finds that, as only the contestants to the will of Anna Berliner are entitled to receive the benefit of an award by the Commission, the ESTATE OF ANNA BERLINER, FIRST NATIONAL BANK OF OREGON, EXECUTOR, will receive an award of \$7,000.00 under section 602 of the Act.

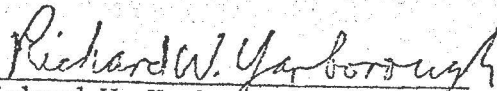
The Commission has concluded that in granting awards on claims under section 602 of Title VI of the Act, for the nationalization or other taking of property or interests therein, interest shall be allowed at the rate of 6% per annum from the date of loss to the date of settlement. (Claim of GEORGE L. ROSENBLATT, Claim No. G-0030, Decision No. G-0100 (1978)).

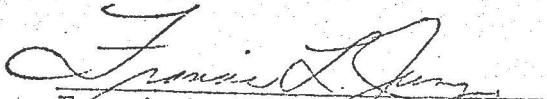
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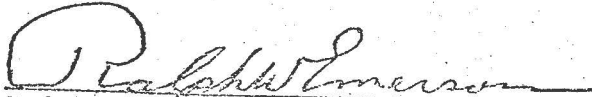
Claimant, ESTATE OF ANNA BERLINER, FIRST NATIONAL BANK OF OREGON, EXECUTOR, is therefore entitled to an award in the amount of Seven Thousand Dollars (\$7,000.00), plus interest at the rate of 6% simple interest per annum from December 1, 1951 until the date of the conclusion of an agreement for payment 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

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.)