FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
WASHINGTON 25, D. C.

IN THE MATTER OF THE CLAIM OF

RUTH PARISER

Claim No. PO-3166

Decision No. PO-3378

Under the Polish Claims Agreement of 1960 and the International Claims Settlement Act of 1949, as amended

Counsel for claimant: Irwin Heimowitz, Esq.

PROPOSED DECISION

This claim, for $22,000, is based upon the asserted ownership and loss by the claimant, RUTH PARISER, of improved real property in Mikolow, Tychy, Katowice, Poland. Claimant has been a national of the United States since her naturalization on August 29, 1946.

Under the Polish Claims Agreement of 1960, claims by nationals of the United States for "(a) the nationalization or other taking by Poland of property and of rights and interests in and with respect to property . . ." are settled and discharged. (Agreement with the Government of the Polish People's Republic Regarding Claims of Nationals of the United States, July 16, 1960, 11 U.S.T. & O.I.A. 1953, T.I.A.S. No. 4545 (1960), Article II)

The Agreement further defines "claims of nationals of the United States" as including

> rights and interests in and with respect to property nationalized, appropriated or otherwise taken by Poland which, from the date of such nationalization, appropriation or other taking to . . . [July 16, 1960], have been continuously owned . . . (a) directly by natural persons who were nationals of the United States . . . . (Polish Claims Agreement of 1960, supra, at Annex, Paragraph A. See also 14 FCSC Semiann. Rep. 186 (Jan. - June 1961))

Claimant asserts ownership by inheritance from her first cousin, Heinrich Toepfer, the only issue of Selma Staub Toepfer (paternal aunt of claimant) and her husband Herman Toepfer. Selma Toepfer died in

1932, survived by her said husband and son. A Presidium letter of September 9, 1957, confirms that ownership of the subject property was recorded in the name of Herman Toepfer.

Herman Toepfer died during World War II, as did his second wife, and the son of his first marriage, Heinrich Toepfer. Herman Toepfer died without issue of his second marriage. Heinrich Toepfer was unmarried. The dates of their deaths are unknown. Claimant asserts that where proof of time of death is unascertainable, there is a presumption under Polish Law that a child survives his parent and a younger person survives an older one. Therefore, it is alleged that Heinrich Toepfer survived his father and inherited his father's interest in the property and that claimant, as first cousin, in turn inherited the property from Heinrich. No authority has been cited in support of this position. To the contrary, the Decree of the Polish People's Republic of August 29, 1945 (Dz. U. 1945, No. 40, it. 223), relating to the procedure to establish dates of death of missing and lost persons, provides as follows in Article 21:

> In case of doubt which of several deceased persons, or persons declared to be deceased, predeceased the others, there is a presumption that all died at the same time.

However, historical records (including testimony taken at the Nurnberg trials) disclose that the German practice was to designate older people arriving at concentration camps to be put to death immediately, whereas younger, able-bodied men were saved temporarily for work details. (Testimony of Mme. Vaillant-Couturier, International Military Tribunal, Proceedings, Volume VI, page 214; Testimony of Severina Shmaglevskaya, Ibid, Volume VIII, page 320; Excerpt from a document, testimony of Von Steengracht, Ibid, Volume X, page 132; Affidavit and testimony of Hoess, Ibid, Volume XI, page 417.) The Commission therefore finds that, in fact, Heinrich Toepfer outlived his father, and inherited the subject property; that upon his death the property passed in one-half part to claimant and in one-half part to the issue of claimant's sister Margot Jacoby, who died in 1925; and that the property was taken by the Government of Poland on January 1, 1956, pursuant to the provisions of Article 34 of the Decree of

March 8, 1946 (Dz. U. 1946, No. 13, it. 87).

In arriving at the value of this property, the Commission has considered claimant's asserted value of $22,000 based upon a value of 91,000 zlotys, and her statement through counsel at a conference in New York City on April 19, 1963, that she did not know the rate of exchange applicable to the 91,000 zlotys; her description of the property, when filing the claim, of a 2-story, 2-family dwelling with two stores on the ground floor; her further description, given at the above-mentioned conference, that the 2-story building was of brick, with 2 stores downstairs with two rooms in the rear, with a 6-room apartment upstairs, and maybe 1 or 2 or 3 other apartments upstairs in the rear. The Commission has also considered a letter from the Presidium in Tychy, Katowice, dated January 4, 1958, (submitted by claimant at the conference) giving an opinion of estimated value of the property as about 91,000 zlotys; as well as evidence of record with the Commission as to the values of similar properties in Katowice. On the basis of the entire record the Commission finds that the value of the subject property was $5,200 and concludes that claimant is entitled under the Polish Claims Agreement of 1960, to an award in the amount of $2,600 for her one-half interest therein.

The Commission has decided that in granting awards on claims under the Polish Claims Agreement of 1960, interest shall be allowed at the rate of 6% per annum from the date of loss to July 16, 1960, the effective date of the Agreement. (See the Claim of John Hedio Proach, Claim No. PO-3197.) Accordingly, the amount of the award will be increased to that extent.

A W A R D

An award is hereby made to RUTH PARISER in the principal amount of Two Thousand Six Hundred Dollars ($2,600), with interest thereon at 6%

per annum from January 1, 1956 to July 16, 1960, the date of the Polish Claims Agreement, in the sum of Seven Hundred Eight Dollars and Fifty Cents ($708.50).

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

MAY 13 1964

Edward D. Re, Chairman

Theodore Jaffe, Commissioner

LaVern R. Dilweg, Commissioner

NOTICE: Pursuant to the Regulations of the Commission, if no objections to this Proposed Decision are filed within 20 days of service thereof, the decision will, upon the expiration of 60 days after such service or receipt of notice, be entered as the Final Decision of the Commission unless the Commission otherwise orders. (FCSC Reg., 45 C.F.R. § 531.5(e) and (g) (1961))