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

IN THE MATTER OF THE CLAIM OF

ELFRIEDE RAUPACH ULLRICH
and
WALTER R. ULLRICH

Claim No. PO-3648

Decision No. PO- 1614

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

Counsel for Claimants: H. Otto Giese, Esq.

PROPOSED DECISION

The claim of ELFRIEDE RAUPACH ULLRICH, a national of the United States since her naturalization on October 4, 1940, in the amount of $14,000.00, is based upon asserted ownership and loss of houses Nos. 80 and 81 in Miedzianka, Jelenia Gora, Wroclaw, Poland, including the equipment of a butcher shop, apparently fixtures to house No. 80. WALTER R. ULLRICH, a national of the United States since October 4, 1940, bases his claim upon a mortgage of 7,000 reichsmarks, secured by houses Nos. 80 and 81.

Under Section 4(a) of the International Claims Settlement Act of 1949, as amended, (64 Stat. 13 (1950), 22 U.S.C. § 1623(a) (1958)), the Commission is given jurisdiction over claims of nationals of the United States included within the terms of the Polish Claims Agreement of 1960 (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)). That Agreement provides as follows:

> Claims to which reference is made in Article 1 and which are settled and discharged by this Agreement are claims of nationals of the United States for
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> (a) the nationalization or other taking by Poland of property and of rights and interests in and with respect to property;
>
> (b) the appropriation or the loss of use or enjoyment of property under Polish laws, decrees or other measures limiting or restricting rights and interests in and with respect to property . . .; and
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> (c) debts owed by enterprises which have been nationalized or taken by Poland and debts which were a charge upon property which has been nationalized, appropriated or otherwise taken by Poland. (Polish Claims Agreement of 1960, supra, Article 2).

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 (January - June 1961))

The Commission finds, on the basis of official documentation, that claimant, ELFRIEDE RAUPACH ULLRICH, was the owner of the improved real property known as houses Nos. 80 and 81 in Miedzianka, including the equipment of a butcher shop, and that this property was within the purview of Article 2 of the Decree of March 8, 1946 (Dz. U. 1946, No. 13, it. 87). That Article, effective April 19, 1946, provided for the taking of property considered formerly German-owned. In the absence of evidence to the contrary, the Commission finds that the property in question was taken on April 19, 1946.

On the basis of evidence of record, namely a tax assessment and description and photographs of the property, the Commission further finds that at the time of the loss the value of the property

taken including the equipment of the butcher shop amounted to $14,000.00.

Evidence of record reveals that on April 1, 1927 a mortgage of 7,000 reichsmarks was placed upon houses Nos. 80 and 81 in favor of claimant WALTER R. ULLRICH.

A mortgage, on one hand, reduces the owner's equity in the property and results in a decreased award. On the other hand, a mortgage secured by property which was nationalized or otherwise taken by the Government of Poland at a time when the mortgagee was a United States national gives rise to a compensable claim under Article 2 (c) of the Agreement. The amount of an award to the mortgagee will depend upon the monetary value of the mortgage on the date when the security was taken, which amount is the measure of the creditor's loss by reason of such taking, and is also the amount which must be deducted from the total value of the property in determining the amount of the mortgagor's loss.

In the area of Poland where Miedzianka is situated, the reichsmark ceased to be legal tender on November 27, 1945, and the rate of conversion into zlotys was established as two reichsmarks for one zloty. (Decree of November 13, 1945 (Dz. U. No. 51, item 295) extending the operative area of Decrees of February 5, 1945 (Dz. U. No. 5, item 17) and of February 28, 1945 (Dz. U. No. 11, item 61)). Beginning with that date, the mortgage became payable in the amount of 3,500 zlotys rather than 7,000 reichsmarks.

Since the security was taken by the Government of Poland on April 19, 1946, there remains for determination the question of the dollar value of 3,500 zlotys on that date.

For several years immediately preceding World War II, the official rate of exchange was 5.3 zlotys per dollar. During the war and the period immediately thereafter, there was a great inflation of Polish currency and prices in Poland rose to a level many times higher than prewar. The official rate of exchange was kept at 5.3 zlotys per U. S. dollar until April 1946 when it was changed to 100 zlotys per U. S. dollar; but the official rate of exchange did not, in fact, prevail. The true value of 3,500 zlotys on April 19, 1946 is more accurately determined by a comparison of the relative purchasing power of the zloty and the dollar in 1946. For this purpose a comparison of the relative cost-of-living indices for each of the two countries between 1937 and 1946 would be a proper basis. In Poland the cost-of-living index rose from 100 in 1937 to 10,900 in 1946 (International Monetary Fund, I International Financial Statistics, No. 6 at 104 (1948)). In the United States, the cost-of-living index rose in the same period of time from 100 to 136 (ibid. at 124). Since the dollar was worth 5.3 zlotys in 1937, the dollar in 1946 (as measured by relative changes in purchasing power between 1937 and 1946) was the equivalent of 424.779 zlotys. Accordingly, the Commission finds that WALTER R. ULLRICH's loss, sustained by the loss of 3,500 zlotys, amounted to $8.24 (3,500 divided by 424.779); and concludes that he is entitled to compensation under the Polish Claims Agreement of 1960 in that amount.

Undoubtedly, claimant WALTER R. ULLRICH sustained a greater loss in connection with the mortgage; but only that portion of the loss which resulted from the taking of the security by the Polish Government is compensable under the Agreement, and the measure of that loss is the value of the mortgage at the time of taking of the security.

The greater portion of the loss of claimant's investment occurred prior to the taking of the security, and was the result of depreciation of the currency.

A state is not liable under international law for fluctuations in the value of its currency, or for losses stemming therefrom. (See Scott and Bowne, Inc., General Docket No. 2378, Decision No. 1-B, American-Mexican Claims Commission; Borden Covel, Administrator, Estate of Leo Sigmund Kuhn, Deceased, General Docket No. 2775, Decision No. 25-B, American-Mexican Claims Commission; Hackworth, Digest of International Law, Vol. V, p. 633; Mann, The Legal Aspect of Money, pp. 419-420; and decisions of the Foreign Claims Settlement Commission in the Claim of Joseph Winkler, Docket No. Y-1465, Decision No. 1134; the Claim of Karolin Furst, Claim No. CZ-1381; and the Claim of Herbert S. Hale, Claim No. PO-1011.) The loss suffered by WALTER R. ULLRICH in excess of $8.24 was caused by the drastic depreciation of the value of the Polish zloty. It was not due to any action of the Government of Poland constituting a nationalization, appropriation or other taking of property within the meaning of the Polish Claims Agreement of July 16, 1960.

In view of the foregoing, the Commission finds that the mortgagor, ELFRIEDE RAUPACH ULLRICH, is entitled under the Agreement to an award in the amount of $13,991.76, the value of her property less the amount by which it was encumbered; and the mortgagee, WALTER R. ULLRICH, is entitled to an award in the amount of $8.24.

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 amounts of the awards will be increased to that extent.

## A W A R D S

An award is hereby made to ELFRIEDE RAUPACH ULLRICH in the principal amount of Thirteen Thousand Nine Hundred Ninety-one Dollars and Seventy-six Cents($13,991.76), with interest thereon at 6% per annum from April 19, 1946 to July 16, 1960, the date of the Polish Claims Agreement, in the sum of Eleven Thousand Nine Hundred Fifty-five Dollars and Ninety-six Cents ($11,955.96); and

an award is made to WALTER R. ULLRICH in the principal amount of Eight Dollars and Twenty-four Cents($8.24) with interest thereon at 6% per annum from April 19, 1946 to July 16, 1960, the date of the Polish Claims Agreement, in the sum of Seven Dollars and Four Cents ($7.04).

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

25 SEP 1963

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)).