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

IN THE MATTER OF THE CLAIM OF

ERNEST H. WEISMANN
and
SUSAN WEISMANN

Claim No. PO-7203

Decision No. PO-2120

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

Appeal and objections from an Amended Proposed Decision entered April 8, 1964; no oral hearing requested.

Hearing on the record held August 5, 1964.

FINAL DECISION

The Commission issued its Amended Proposed Decision in this claim on April 8, 1964, granting claimant Ernest H. Weismann an award in the principal amount of $1,100.00 plus $299.75 interest, and claimant Susan Weismann an award in the principal amount of $7,700.00 plus $2,098.25 interest, for the loss of their respective 1/20 and 7/20 interests in a building site situated in Wroclaw.

Full consideration having been given to Susan Weismann's objections to the Amended Proposed Decision, and to the new evidence submitted with respect to her inheritance rights derived under the Last Will and Testament of Carl Leipziger, deceased, the Commission now finds that her share in the property amounted to a 9/20 interest and that the value of such interest, at the time of taking, was $9,900.00.

In view of the foregoing, it is

ORDERED that the Amended Proposed Decision of April 8, 1964 be and the same is hereby further amended by increasing the award to the claimant Susan Weismann from the principal amount of $7,700.00 to $9,900.00, plus appropriate interest, and that in all other respects the Amended Proposed Decision be affirmed; and it is further

ORDERED that the awards as restated below be certified to the Secretary of the Treasury.

A W A R D S

An award is hereby made to ERNEST H. WEISMANN in the principal amount of One Thousand One Hundred Dollars ($1,100.00), with interest thereon at 6% per annum from January 1, 1956, the date of the loss, to July 16, 1960, the date of the Polish Claims Agreement, in the sum of Two Hundred Ninety-nine Dollars and Seventy-five Cents ($299.75); and

an award is made to SUSAN WEISMANN in the principal amount of Nine Thousand Nine Hundred Dollars ($9,900.00), with interest thereon at 6% per annum from January 1, 1956, to July 16, 1960, in the sum of Two Thousand Six Hundred Ninety-seven Dollars and Seventy-five Cents ($2,697.75).

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

AUG 19 1964

Edward D. Re, Chairman

Theodore Jaffe, Commissioner

LaVern R. Dilweg, Commissioner

PO-7203

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

AMENDED PROPOSED DECISION

The Commission denied this claim by Proposed Decision dated December 4, 1963, for the reason that the property upon which the claim is based was not owned by nationals of the United States on the date of the loss. The Proposed Decision contains a finding that the property had been taken on April 19, 1946, pursuant to Article 2 of the Polish Decree of March 8, 1946, at which time the claimants were not United States nationals. That Decree relates to the taking of property which was German-owned or which was abandoned after World War II.

Claimant ERNEST H. WEISMAN filed objections and requested an oral hearing which was held on February 18, 1964. Full consideration having been given to the objections and claimant's argument at the hearing, it is

ORDERED that the Proposed Decision be amended as follows:

This claim, for $35,000.00, is based upon the asserted ownership and loss of claimants' interests in improved real property situated in Wroclaw (Breslau). Claimants, ERNEST H. WEISMAN and SUSAN WEISMAN, have been nationals of the United States since their naturalization on July 24, 1947.

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 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 (Jan.-June 1961)

The Commission finds, on the basis of the evidence submitted by the claimants and as a result of its independent investigation in Poland including a report from the Polish authorities, that prior to World War II Vally Brasch, mother of claimant Susan Weisman, was the record owner of a 7/20th interest in real property located at No. 11 Legnicka Street in Wroclaw, registered under Vol. 20, card 745 of the land records of Wroclaw, described as lot No. 694/84, with improvements thereon; that Gertrud Weisman, mother of claimant Ernest H. Weisman, was the record owner of a 2/20th interest in the same property; that Gertrud Weisman and Vally Brasch died during World War II; and that Ernest H. Weisman inherited a one-half interest in his mother's share of the property and that Susan Weisman inherited her mother's 7/20th share in the property.

Claimant Susan Weisman asserts that she also inherited a 2/20th additional interest in the property under the terms of the Last Will

and Testament of one Carl Leipziger, who died in 1931, but she did not submit documentary evidence in support thereof.

The Commission further finds that in 1939 because this property was Jewish-owned it became the subject of confiscatory measures imposed by the German Government. The Commission holds that these anti-Jewish discriminatory German measures were invalid and ineffective to transfer or divest claimants' predecessors of their interests in the property. (See Claim of Herbert Brower, Claim No. PO-1246.) The Commission, therefore, concludes that after World War II claimants were the owners of their respective inherited interests in the property.

The record discloses that the property was taken by the Government of Poland purportedly pursuant to Article 2 of the Decree of March 8, 1946 (Dz. U. 1946, No. 13, it. 51), effective April 19, 1946, as having been German owned. However, the Commission finds that Article 2 of the Decree did not encompass property which, as in this case, had unlawfully been taken by the Nazi Government. This finding conforms with the view of the Polish Courts in such cases. In the Decision by the local Polish Court at Strzelce Opolkie, Sign. Akt. 1 Co. 78/48 it was held that:

> the applicant (the petitioner in the proceedings under consideration by that Court) is of Jewish nationality, at present an American citizen. From the above-mentioned confirmations, it is evident that the estate of the applicant cannot be considered as post-German and that the estate was not transferred according to Article 2 of the Decree of 8 March 1946 concerning abandoned and German properties (D.U.R.P 1946, Nr. 13, pos. 87) by the law itself to the ownership of the State because had the applicant at the moment of losing her property been a German citizen, she belonged to the Jewish nationality persecuted by the Germans. The estate of the applicant is, therefore, in the meaning of Article 1 of the above-mentioned Decree, an abandoned estate and according to Article 15, part 1 of the Decree, the applicant is entitled to demand the restoration of the possession of her own property. (Emphasis was supplied by the Court.)

Accordingly, the Commission concludes that the subject property was not taken under Article 2 of the Polish Decree cited above, but

that it was, in fact, and in law, taken under Article 34 of that Decree. Article 34 provides, in substance, for the taking by the Polish Government, as of January 1, 1956, of real property which had been abandoned by its owners after the war.

The building which had been erected on the subject property was destroyed during World War II. The Polish Claims Agreement of 1960 provides for the payment of compensation for property which was nationalized, appropriated, or otherwise taken by the Government of Poland. It does not settle or discharge claims based upon damage or destruction of property during World War II, or the taking of property by forces occupying Poland during the war. (See the Claim of Dominick W. Przybylinski, Claim No. PO-1358.) Therefore, the claim for the building is denied.

This leaves for consideration the valuation of the land (building site). The Commission finds that such land was worth $22,000 on the date of taking -- that is, on January 1, 1956. In arriving at this value, the Commission considered the area -- 1,100 square meters; the location which is approximately six blocks from the main business section of Wroclaw; and the values of similar building sites in that city based upon on-the-spot investigations, reports and appraisals of its Warsaw field office.

Accordingly, the Commission finds that Ernest H. Weisman is entitled to an award in the principal amount of $1,100.00 for his 1/20th interest and that Susan Weisman is entitled to an award in the principal amount of $7,700.00 for her 7/20th interest.

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 awards will be increased to that extent.

AWARDS

An award is hereby made to ERNEST H. WEISMAN in the principal amount of One Thousand and One Hundred Dollars ($1,100.00) with interest thereon at 6% per annum from January 1, 1956, the date of the loss, to July 16, 1960, the date of the Polish Claims Agreement, in the sum of Two Hundred Ninety-nine Dollars and Seventy-five Cents ($299.75); and

an award is made to SUSAN WEISMAN in the principal amount of Seven Thousand Seven Hundred Dollars ($7,700.00) 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 Two Thousand Ninety-eight Dollars and Twenty-five Cents ($2,098.25).

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

APR 8 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))

PO-7203

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ERNEST H. WEISMANN
and
SUSAN WEISMANN

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

Claim No. PO-7203

Decision No. 2120

PROPOSED DECISION

This claim, for $35,000, is based upon the asserted ownership and loss of a one-half interest in the improved real property at 11 Legnicka Street (formerly Wachtplatz 4) in Wroclaw, Poland. Claimants, ERNEST H. WEISMANN and SUSAN WEISMANN, have been nationals of the United States since their naturalization on July 24, 1947.

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
>
> (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

(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 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))

Thus where property was owned by a natural person at the time of its nationalization, appropriation, or other taking, a claim based upon such loss of property is not compensable under the Agreement unless such person was a national of the United States at the time of such nationalization, appropriation, or other taking, and also unless the claim was owned continuously thereafter until July 16, 1960, by a national or nationals of the United States.

The Commission finds, on the basis of official Polish documentation, that the property upon which the claim is based 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 claimants' asserted ownership interest in the property in question was taken on April 19, 1946, a date when claimants, as asserted owners of interests in such property, were not nationals of the United States.

Consequently, it is clear that the asserted ownership interests in the property upon which this claim is based were not owned by

nationals of the United States on April 19, 1946, the date of loss, as is required for compensation under the provisions of the Agreement discussed above.

Inasmuch as the claimants' rights and interests with respect to the property upon which the claim is based have not been owned continuously by a national or nationals of the United States from the date of loss of the property to July 16, 1960, the claim is not a claim of nationals of the United States as defined in Annex A to the Polish Claims Agreement of 1960, and is accordingly denied.

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

DEC 4 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. s 531.5(e) and (g) (1961))