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

IN THE MATTER OF THE CLAIM OF

RICHARD O. GRAW, Executor of the Estate of OSCAR MEYER, Deceased

Claim No. PO-7595

Decision No. PO- 8583

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

Counsel for Claimant: Richard O. Graw, Esquire

PROPOSED DECISION

This claim, for $200,000.00, filed on September 29, 1961, is based upon the asserted ownership and loss of certain real property in the City of Wroclaw, Poland. OSCAR MEYER, decedent, became a national of the United States on April 4, 1947 and died on January 1, 1961.

The International Claims Settlement Act of 1949, as amended, provides in Section 4(a), Title I, as follows:

> The Commission shall have jurisdiction to receive, examine, adjudicate and render final decisions with respect to claims of the Government of the United States and of nationals of the United States . . . included within the terms of any claims agreement hereinafter concluded between the Government of the United States and a foreign government . . . . arising out of the nationalization or other taking of property . . . . In the decision of claims under this title, the Commission shall apply the following in the following order: (1) the provisions of the applicable claims agreement as provided in this subsection; and (2) the applicable principles of international law, justice and equity.

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 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 Commission finds on the basis of official Polish documentation and other evidence of record, that the decedent, OSCAR MEYER, owned a four story apartment building, with an attic, on a lot of 1,335 square meters at 37 Swidnicka Street (formerly Schweidnitzer Street) and a building lot of 171 square meters at No. 6 Sadowa Street (formerly Hummerai Street), both in the City of Wroclaw, Poland. The evidence before the Commission indicates that the subject property had been subjected by the Nazi Government of Germany to anti-Jewish laws and transferred to third persons. In such cases the Commission has held that such transfers were ineffective to divest a claimant, or his predecessor in interest, of his title. (See the Claim of Herbert Brower, Claim No. PO-1246.) The Commission accordingly concludes that after World War II, OSCAR MEYER (now deceased) was in fact the owner of subject property.

The Commission further finds that both properties were taken by the Government of Poland on January 1, 1956 pursuant to the provisions of Article 34 of the Polish Decree of March 8, 1946 (Dz. U. 1946, No. 13, item 87), (See the Claim of Ernest H. Weisman and Susan Weisman, Claim No. PO-7203.)

The Commission, in arriving at the value of these properties, has considered a statement concerning the rental income, description of the property and its assessed value, which was submitted by the Executor

herein. In addition the Commission has conducted its own independent investigation into the value of the subject property. The report of its Warsaw Field Office includes a photograph of the apartment house. On the basis of the record, including information available to the Commission as to the value of similar properties in the City of Wroclaw, Poland, the Commission finds that at the time of taking the apartment house had a value of $86,450.00 and the lot a value of $3,200.00.

Evidence of record discloses that OSCAR MEYER died testate in California on January 1, 1961 and that this claim against the Government of Poland passed under the residual clause of his will to his three children, Hermann Meyer-Lindenberg, a German national, Brigette Bermann, a British subject and Susanne Lehmann, a national of the United States since her naturalization on August 12, 1946. International law requires that a claim, to be compensable, must have been continuously owned by a United States national (or nationals) at all times between the time the claim arose and its presentation to the adjudicating body, which in this case is the Foreign Claims Settlement Commission of the United States. Accordingly, if, subsequent to the loss, the claim originally accruing to a United States national (or any part of such claim) became vested in a non-United States national, the claim, or such portion thereof so vested would not be compensable under Title I of the Act.

This Commission has consistently held that the continuity of nationality principle must be applied to the claims before it under the International Claims Settlement Act. (See In the Matter of the Claim of the Hanover Bank, et al, FCSC Claim No. BUL-1181.)

In enacting Title IV of the Act, providing for the determination of claims against the Government of Czechoslovokia, in accordance with applicable substantive law, including international law, Congress specifically provided, in Section 405 of the Act, that:

> A claim under Section 404 of this title shall not be allowed unless the property upon which the claim is based was owned by a national of the United States on

> the date of nationalization or other taking thereof and unless the claim has been held by a national of the United States continuously thereafter until the date of filing with this Commission.

It follows that claims within the purview of the Polish Claims Agreement of 1960, determined by this Commission, in accordance with applicable principles of international law as provided by Section 4, Title I of the International Claims Settlement Act of 1949, as amended, must have been owned by United States nationals on the date of inception and continuously to the date of filing with this Commission.

Moreover, it has been held by this Commission, in other claims programs, that the national character of a claim must be tested by the nationality of the individuals holding a beneficial interest therein rather than by the nationality of the nominal or record holder of the claim. (See, In the Matter of the Claim of the Hanover Bank et al, (supra); In the Matter of the Claim of American Security and Trust Company, FCSC Claim No. HUNG-20, 540; Claim of Edwin A. Binder, Docket No. Y-1036 (Decision No. 1535) (1954); Claim of Maria K. Bauer, Administratrix of the Estate of Lilli Kahler, Deceased, Claim No. CZ-1079.)

Thus, so much of the claim which had been owned by OSCAR MEYER, now deceased, which passed to Herman Mayer-Lindenberg and Brigette Bermann, non-nationals of the United States, must be and is hereby denied.

Accordingly, RICHARD O. GRAW, Executor of the Estate of OSCAR MEYER, Deceased, is entitled to an award in the amount of $29,883.33, for the use and benefit of Susanne Lehmann.

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.

AWARD

An award is hereby made to RICHARD O. GRAW, Executor of the Estate of OSCAR MEYER, Deceased, in the principal amount of Twenty-Nine Thousand Eight Hundred Eighty-Three Dollars and Thirty-Three Cents ($29,883.33) 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 Eight Thousand One Hundred Forty-Three Dollars and Twenty-One Cents ($8,143.21).

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

AUG 25 1965

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 30 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) (1964)).

PO-7595