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

IN THE MATTER OF THE CLAIM OF

MARGO SCHONEMAN
and
ISOLDE ARCIER

Claim No. PO-10884

Decision No. PO-1536

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

Counsel for Claimants: Paul Neuberger, Esq., and Samuel Herman, Esquire

AMENDED PROPOSED DECISION

This claim, as amended for $1,200,000.00, was originally filed in the name of the Estate of Oscar Rosenthal, Deceased, and is based upon the asserted ownership and loss of a weaving plant, a bleaching plant, dyeing plant and employees living quarters in Zatonie (formerly Seitendorf), county Zgorzelec, voivodeship Wroclaw and several retail stores in various Polish cities. Oscar Rosenthal had been a national of the United States since his naturalization on August 10, 1944. Evidence having been submitted that the sole survivors and only heirs of Oscar Rosenthal, who died December 11, 1961, are MARGO SCHONEMAN and ISOLDE ARCIER, nationals of the United States since their naturalization on February 7, 1945 and January 31, 1945, respectively, they have been substituted as party claimants.

Under the Polish Claims Agreement of 1960, claims by nationals of the United States for "(a) the nationalization or other taking of property by Poland 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 claim was denied for untimely filing by Proposed Decision dated September 4, 1963. However, the Proposed Decision was set aside by the Commission's Decision and Order of March 18, 1964 directing that the claim be determined on its merits.

The Commission now finds, on the basis of Polish documentation and other evidence of record, that Oscar Rosenthal was the owner of an enterprise located at Zatonie, Poland and that this enterprise and its real property, consisting of 11,520 square meters of land and eight buildings, was taken by the Government of Poland on April 29, 1949 by a decision of the Ministry of Light Industries pursuant to the Law of January 3, 1946 (Dz. U. 1946, No. 3, item 17).

In arriving at the value of the property taken, the Commission has considered claimants' description of the property, the affidavits submitted by claimants, the report from the Polish authorities dated May 20, 1965, and evidence available to the Commission as to the value of similar industrial properties in Poland. On the basis of the entire record, the Commission finds that, at the time of taking, the 11,520 square meters of land had a value of $6,520.00 and that the building had a value as follows:

(a) textile factory, usable space, 1,205m^2	$26,355.00
(b) brick workshop, 141.6m^2	$ 2,525.00
(c) production building, brick, 423m^2	$ 7,720.00
(d) administrative building, brick, 172.5m^2	$ 3,075.00
(e) warehouse, 27.7m^2	$ 495.00
(f) living quarters for employees, 321m^2	$ 9,540.00
(g) 1-wooden shed, 81m^2	$ 770.00
2-brick shed, 81m^2	$ 1,155.00
Total value of land and buildings:	$58,155.00

The Commission concludes that MARGO SCHONEMAN and ISOLDE ARCIER, as the only heirs of Oscar Rosenthal, are each entitled, under the Polish Claims Agreement of 1960, to an award in the amount of $29,077.50 for their respective interests in the claimed property.

The Regulations of the Commission provide:

> The claimant shall be the moving party and shall have the burden of proof on all issues involved in the determination of his claim. (FCSC Reg., 45 C.F.R. § 531.6(d) (1964))

Claim has also been made for retail stores assertedly located in Poland. However, claimants have not established the ownership and the taking thereof by the Government of Poland of any properties other than that for which award herein is made. The portion of the claim asserted for such other property must therefore be denied.

The Commission has decided that with respect to any claim which, at the time of award, is vested in persons other than the person by whom the loss was sustained, a consolidated award shall issue in favor of all then entitled to such an award. The respective interests of such claimants shall be indicated and they shall participate in payments in proportion to their indicated interests in all respects as if an award had been made in favor of a single person. (See the Claim of Helen Stadler, Michael Dziubak, Peter Juback, John Dzubak and Maryanna Dzuibak, Claim No. PO-6767, 19 FCSC Semiann. Rep. /July-Dec. 1963/ 27.)

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, 17 FCSC Semiann. Rep. /July-Dec. 1962/ 47.) Accordingly, the amount of the award will be increased to that extent.

Claimants herein also have filed a claim with this Commission under Title II of the War Claims Act of 1948 as amended by Public Law 87-846 (Claim No. W-1683), which will be processed in due course. A copy of the Proposed Decision on such claim will be served on the claimants, when issued.

A W A R D S

A consolidated award is hereby made in the principal amount of Fifty-eight Thousand One Hundred Fifty-five Dollars ($58,155.00), with interest thereon at 6% per annum from April 29, 1949 to July 16, 1960, the date of the Polish Claims Agreement, in the sum of Thirty-nine Thousand Two Hundred Forty-four Dollars and Seventy-four Cents ($39,244.74), in which the interests of claimants are as follows:

	Principal	Interest
MARGO SCHONEMAN	$29,077.50	$19,622.37
ISOLDE ARCIER	$29,077.50	$19,622.37

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

FEB 2 1966

Edward D. Re, Chairman

Theodore Jaffe, Commissioner

LaVern R. Dilweg, Commissioner

NOTICE: Pursuant to the Regulations of the Commission, if no objections to this Amended 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-10884

FOREIGN CLAIMS SETTLEMENT COMMISSION
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IN THE MATTER OF THE CLAIM OF

ESTATE OF OSCAR ROSENTHAL

Claim No. PO-10884

Decision No. PO-1536

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

Counsel for Claimant: Paul Neuberger, Esq. and Samuel Herman, Esq.

Appeal and objections from Proposed Decision entered September 4, 1963; oral hearing requested.

Oral argument November 26, 1963 by Samuel Herman, Esq.

DECISION OF The COMMISSION AND ORDER

The Commission issued its Proposed Decision on this claim on September 4, 1963 denying it for the reason that it was not filed within the time limit prescribed for such filing by Commission regulations (as revised on July 15, 1963) § 531.1(c) and (f), which provided that claims under the Polish Claims Agreement of 1960 and Title I of the International Claims Settlement Act of 1949, as amended "shall be filed with the Commission on or before March 31, 1962."

Objections were filed to the decision and a hearing was held before the Commission, at which time Isolde Arcier and Margo Schoneman, daughters of the decedent testified and argument was presented by Samuel Herman, Esq., counsel for claimant.

Briefly, counsel urges that the Commission has jurisdiction under the statute and its inherent equitable power to grant an enlargement of the time limit within which claims may be accepted in claims programs governed by Title I of the Act. It is further argued that Section 4(b) of the Act requires the Commission to take two steps in order to establish an effective time limitation for filing claims governed by this title.

It is stated that the Commission is required by Congressional mandate in Section 4(b) of the Act to (1) give public notice of the time when and the limit of time within which, claims may be filed, which notice shall be published in the Federal Register; and (2) mail a similar notice to each person whose name appears in the appropriate records of the Department of State as having indicated an intention to file a claim with respect to a matter over which the Commission has jurisdiction under Title I of the Act. The contention is that the provisions in Section 4(b) concerning notice are equally mandatory upon the Commission and the failure to perform either of such steps renders ineffective the general time limitation as it applies to specific claims.

It is stated that the delay in filing this claim was unavoidable and therefore, excusable; and that the Commission should exercise its equitable jurisdiction to accept this claim as timely filed in accordance with 501.7(b) of its regulations which reads as follows:

> (b) Enlargement. When by the regulations in this chapter or by a notice given thereunder or by order of the Commission an act is required or allowed to be done at or within a specific time, the Commission for good cause shown may, at any time in its discretion (1) with or without motion or notice, previous order or (2) upon motion permit the act to be done after the expiration of the specified period.

In this connection, statements have been presented and testimony adduced to the effect that Oscar Rosenthal died on December 11, 1961; that prior to his death, from December 1959, he was neither physically nor mentally able to attend to his affairs; that at no time was there brought to his attention, either the existence of the Polish Claims Agreement or the claim filing periods published in the Federal Register; that he asserted claims for loss of property with the Department of State in 1948 and as late as 1949 communicated with the Department on the matters; and finally, that the decedent's daughters, who appeared at the hearing, were not advised of his efforts regarding the property in Poland until they checked through his various papers sometime after his death.

It is noted that Section 4(b) of Title I of the International Claims Settlement Act of 1949, as amended, which governs the filing of claims under the Polish Claims Agreement, is unlike Section 306 of Title III and Section 411 of

of Title IV of the Act, in that in the latter two provisions the Congress authorized the Commission to fix the period of time within which claims could be filed, however, in each there was an outside limitation on the period beyond which the Commission could not go. In Title I, no such outside limitation appears. Moreover, under Articles 1 and 4 of the Polish Claims Agreement, the Government of the United States agreed to accept the sum of $40 million in full settlement and discharge of all claims of its nationals against the Government of Poland and that there would be no further espousal of claims which were covered by the Agreement.

Thus, in the absence of a statutory deadline for the filing of claims under Title I of the International Claims Settlement Act of 1949, as amended and considering the finality of espousal of claims as provided for in the Polish Claims Agreement, it is concluded that the Commission has the authority as a matter of law and in accordance with principles of equity, to accept, where the situation warrants, claims under the Polish Claims Agreement which have been received subsequent to the deadline fixed by regulation published in the Federal Register.

The Commission feels compelled to reply to claimant's argument that it is under Congressional mandate to perform two separate acts before an effective limitation can be effected.

The Commission does not dispute that it is required to give public notice by publication in the Federal Register of the time when and the period of time within which, claims may be filed. Such notice was published in accordance with the statute. The Commission, however, must reject the argument that under Section 4(b) of the Act in order to effect a terminal date for filing it must give individual notice to persons whose names appear in the records of the Department of State as having indicated an intention of filing a claim with respect to a matter on which it has jurisdiction under Title I. This matter has been considered by the Commission in claims under Titles III and IV and it has consistently held that the failure of a potential claimant to receive a notice as provided for in Section 4(b) of the Act does not render his claim timely. (See Claim of Miloye M. Sokitch, Claim No. IT-10,957; Claims of Edward George Trousil and Barbara Wilhelmina Trousil, Claim Nos. CZ-5004 and CZ-5005, respectively). In the case now before us, the Commission finds no basis for a departure from these decisions.

The sole question presented therefore is whether the circumstances in this case justify the Commission to invoke its inherent equitable jurisdiction under Title I of the Act and accept this claim as timely filed.

In view of the particular circumstances present in this claim, the Commission, in applying the principles of equity and justice as provided for in Section 4(a) of the Act, decides that good cause has been shown for the acceptance of this claim at this time. Accordingly, it is hereby

ORDERED that the Proposed Decision heretofore issued be and it is hereby set aside and that the claim be determined on the merits.

Dated at Washington, D. C.

MAR 18 1964

Edward J. Ke, Chairman

Theodore Jaffe, Commissioner

LaVern R. Dilweg, Commissioner

PO-10884

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Counsel for Claimant: Paul Neuberger, Esq.

PROPOSED DECISION

This claim was filed under the provisions of the Polish Claims Agreement (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)) and the International Claims Settlement Act of 1949, as amended, (64 Stat. 12 (1950), 22 U.S.C. § 1621-1642 (1958)).

Section 4(b) of the aforesaid Act provides that the Commission "shall give public notice of the time when, and the limit of time within which, claims may be filed, which notice shall be published in the Federal Register." (64 Stat. 13 (1950), 22 U.S.C. § 1623(b) (1958)).

Pursuant to the Congressional mandate, the Commission published in the Federal Register of August 16, 1960 public notice that claims against the Government of Poland under Title I of the Act shall be filed with the Commission on or before September 30, 1961 (25 Fed. Reg. 7794 (1960)). Subsequently, the Commission extended the time for filing claims against the Government of Poland under Title I of the Act by publishing notice in the Federal Register of September 30, 1961 that claims shall be filed with the Commission on or before March 31, 1962 (26 Fed. Reg. 9226 (1961)). The filing period expired on that date with the possibility of a later timely submission of completed claim forms permitted only under Section

531.2(f) of the Regulations of the Commission which provides:

> Any initial written indication of an intention to file a claim received within 30 days prior to the expiration of the filing period therefor shall be considered as a timely filing of a claim if formalized within 30 days after the expiration of the filing period. (FCSC Reg., 45 C.F.R. § 531.2(f) (1961)).

The record in this claim discloses that the claim was filed and received by the Commission on July 11, 1963.

Accordingly, the Commission finds that this claim was not filed within the time prescribed for such filing and it is, therefore, denied. The Commission finds it unnecessary to make determinations with respect to other elements of this claim.

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

SEP 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. § 531.5(e) and (g) (1961)).