FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
WASHINGTON, D.C. 20579

IN THE MATTER OF THE CLAIM OF

OLGA LOEFFLER

Claim No. G-0056

Decision No. G-0221

Under the International Claims Settlement Act of 1949, as amended

PROPOSED DECISION

This claim in the asserted amount of $2,500.00 against the Government of the German Democratic Republic, under section 602, Title VI of the International Claims Settlement Act of 1949, as amended, is based upon the alleged loss of 1,845.83 Reichsmarks deposited in a savings account originally with the Sparkasse der Stadt Schwerin (Savings Bank of the City of Schwerin), and presently with the Schwerin branch office of the Deutsche Notenbank in the German Democratic Republic.

The claimant, OLGA LOEFFLER, acquired citizenship of the United States on September 4, 1936, by naturalization.

Under section 602, Title VI of the International Claims Settlement Act of 1949, as amended by Public Law 94-542 (90 Stat. 2509), the Commission is given jurisdiction as follows:

> "The Commission shall receive and determine in accordance with applicable substantive law, including international law, the validity and amounts of claims by nationals of the United States against the German Democratic Republic for losses arising as a result of the nationalization, expropriation, or other taking of (or special measures directed against) property, including any rights or interests therein, owned wholly or partially, directly or indirectly, at the time by nationals of the United States whether such losses occurred in the German Democratic Republic or in East Berlin. . ."

On the basis of original correspondence, issued by the Landeskreditbank Mecklenburg, Deutsche Notenbank Schwerin, and Amt fur den Rechtsschutz des Vermogens der Deutschen Demokratischen

Republik (Office for the Legal Protection of the Property of the German Democratic Republic), and the laws and statutes issued by the German Democratic Republic, the Commission finds as follows:

The claimant, OLGA LOEFFLER, had 1,845.83 Reichsmarks deposited in a savings account with the Sparkasse der Stadt Schwerin as of September 25, 1947, when the account was transferred at first to the Landeskreditbank Mecklenburg (State Credit Bank of Mecklenburg) and subsequently to the Schwerin branch office of the Deutsche Notenbank. On June 21, 1948, the Soviet Military Administration decreed a monetary reform for the area now comprising the German Democratic Republic. In the course of such monetary reform, among other things, savings accounts which originated prior to May 9, 1945, were converted into new Ost-Mark at the rate of one new Mark for 10 Reichsmarks (Section 7(f) of SMAD Order No. 111/1948, ZVOBl. p. 217; Directive of September 23, 1948, ZVOBl. p. 490). By virtue of such legal provisions, the balance of the claimant's savings account would have been converted from 1,845.83 Reichsmarks into 184.58 Ost-Marks.

Since the early 1930's the claimant's savings account had been subject to foreign exchange control which, among other things, prohibited the transfer of the Reichsmarks to the United States. However, in addition to the prohibitions contained in such foreign exchange control, the claimant's savings account was placed under "The administration and protection of foreign property in the German Democratic Republic" under conditions set forth in a decree dated September 6, 1951 (Gesetzblatt number 111/1951, p. 839). The fact that the account had been made subject to the decree of September 6, 1951, was acknowledged by letter dated June 24, 1971, from the Amt fur den Rechtsschutz des Vermogens der Deutchen Demokratischen Republik. By virtue of the conditions of the decree of September 6, 1951, the claimant was deprived of all right to dispose of or otherwise utilize her savings account. Section 4(1) of the decree specifically prohibits "any disposition of foreign property which is under

administration and protection." This has further been confirmed by correspondence of the Deutsche Notenbank of September 8, 1964, which in addition to stating that the right to dispose of the property has been "frozen", states further that "no information of any kind can be furnished concerning this property."

The decree of September 6, 1951, was first implemented by the "First regulations enforcing the decree on the administration and protection of foreign property in the German Democratic Republic" dated August 11, 1952. Section 4(1) of these regulations gave the following specific directions, "The administrative agency, competent according to section 2, has to procure, without delay, the exclusive disposition right over the asset transferred under its administration. It must secure that all portions of the asset are seized and the income from the asset is collected." (Emphasis added).

The Commission has held, in accord with well established principles of international law, that foreign exchange controls, one provision of which is a prohibition of transfer of funds outside the country but which allow certain prescribed uses of the account, are an exercise of sovereign authority which, though causing hardship to non-residents having currency on deposit within the country, is not considered a "taking" of such an account and for that reason does not give rise to a claim under international law. (See the Claim of MARTIN BENDRICK, Claim No. G-3285, Decision No. G-0220.)

However, the action taken by the Government of the German Democratic Republic relating to claimant's bank account was not done in the course of the sovereign exercise of foreign exchange control as such control already existed over the claimant's savings account. Rather, as directed by section 4(1) of the implementing regulations, the account was "seized" and the claimant was deprived of any and all rights to use this account in any manner. The Commission has previously held in the Claim of George L. Rosenblatt, Claim No. G-0030, Decision No. G-0100 (1978), that placing property

under government administration and protection pursuant to the provisions of the decree of September 6, 1951, constitutes a taking of the claimant's property within the meaning of section 602, Title VI of the International Claims Settlement Act of 1949, as amended. While the Rosenblatt claim involved real property, the rationale of that decision is equally applicable here. Where property, whether tangible or intangible, has been seized and placed under government administration and protection for over a quarter of a century during which time the owner's right to utilize his property is nonexistent, such property has been, in fact, taken from the claimant by the government within the meaning of section 602 of the Act, supra. As the first implementation of the action was pursuant to the regulation of August 11, 1952, which ordered the seizure "without delay", the Commission finds that claimant's savings account in the amount of 184.58 East German Deutschmarks was taken as of August 11, 1952.

The remaining question for determination by the Commission is the amount of an award to which claimant is entitled as a result of the bank account having been taken in 1952.

In 1948, pursuant to a currency reform, claimant's account of 1,845.83 Reichsmarks would have been converted at a rate of ten Reichsmarks to one Deutschmark into an account of 184.58 Deutschmarks. This currency reform was an attempt to stabilize and revalue the Eastern Zone currency which had depreciated in the period following World War II.

The Commission has consistently held, in accord with principles of international law, that the mere depreciation in value of currency does not in and of itself give rise to a valid claim against the country issuing said currency. Therefore, the depreciation of the Reichsmark ultimately resulting in the currency reform of 1948, which converted Reichsmarks in savings accounts to Deutschmarks at a ten to one ratio, does not give rise to a claim under international law. (See Claim of Anton Tabar, et al., Claim No. Y-580, Decision No. Y-55).

The Commission is left therefore to determine a fair dollar award to compensate claimant for the loss of 184.58 East German Deutschmarks in 1952.

In that year, the West German Deutschmark, following a 1948 currency reform in the Western Sector, had a value of 4.2 Deutschmarks to the U.S. dollar. It has always been the position of the German Democratic Republic, continuing to the present time, that the East German Deutschmark should be equated on a one to one basis with the West German Deutschmark. This having been the consistent position of the German Democratic Republic, it would not appear unfair to accept such a rationale for the purpose of determining a fair and equitable award against the German Democratic Republic for the seizure of claimant's property.

In 1952 there was no official exchange rate between the East German mark and the dollar, nor was there any published par value of the East German Deutschmark. In fact, there was essentially no trade or commerce between the GDR and Western nations from which an actual value of the East German Deutschmark against Western commodities could be extrapolated. There was, during 1952, a substantial trade in East German Deutschmarks on the black market. During 1952 the price fluctuated between 18 and 26 East German marks which could be purchased for the dollar. However, these purchase rates were based totally upon speculation and thus do not provide a basis to determine a true value of the East mark. Such black market speculation took into account the continuing risk of a currency note exchange such as, in fact, occurred in 1957 when the GDR called in for exchange all existing East German marks which act alone made valueless some 20 million East German marks held by West German speculators.

In 1953, the GDR tied the East mark to the Soviet ruble for the purpose of accounting for commerce between the GDR and the Soviet Union. The GDR published in that year a par value of 2.22 East marks to the dollar based upon the dollar value of the amount of gold to which supposedly the East German Deutschmark was pegged.

However, this par value did not establish an exchange rate and the fact that the East German mark never did have an actual value equal to the par value was clearly recognised by the GDR in 1958 when, although the par value remained unchanged, for the first time a legal exchange rate was established by the GDR of 4.2 Deutschmarks to the dollar for tourist exchange and for exchange of any dollars sent into the German Democratic Republic. This being the first official exchange rate established after 1952 and as this rate equated with the exchange rate of the West German mark both in 1958 and as it had been in 1952, the Commission determines that it is an appropriate exchange rate to be used by the Commission in determining fair and equitable damages for the loss of a Deutschmark account in 1952. Therefore, the Commission determines that the value of claimant's property at the time of its loss was $43.95.

The Commission has concluded that in granting awards on claims under section 602 of Title VI of the Act, for the nationalization or other taking of property or interests therein, interest shall be allowed at the rate of 6% per annum from the date of loss to the date of settlement. (See Claim of George L. Rosenblatt, Claim No. G-0030, Decision No. G-0100 (1978)).

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Claimant, OLGA LOEFFLER, is therefore entitled to an award in the amount of $43.95 (Forty three dollars and ninety five cents), plus interest at the rate of 6% simple interest per annum from August 11, 1952, until the date of the conclusion of an agreement for payment of such claims by the German Democratic Republic.

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

30 AUG 1978

Wilfred J. Smith, Commissioner

Robert E. Lee, Commissioner

This is a true and correct copy of the decision of the Commission which was entered as the final decision on 16 OCT 1978

Executive Director

NOTICE: Pursuant to the Regulations of the Commission, if no objections are filed within 15 days after service or receipt of notice of this Proposed Decision, the decison will be entered as the Final Decision of the Commission upon the expiration of 30 days after such service or receipt of notice, unless the Commission otherwise orders. (FCSC Reg., 45 C.F.R. 513.5 (e) and (g), as amended.)