

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

IN THE MATTER OF THE CLAIM OF

CHARLES A. NOBLE
BEN B. THORSCH

Claim No. G-0314

Decision No. G-3163

Under the International Claims Settlement
Act of 1949, as amended

Counsel for Claimant:
BEN B. THORSCH

Gary C. Hufbauer, Esquire
W. Harrell Smith, Esquire
Sally Meese, Esquire

Oral Hearing held on April 21, 1981.

FINAL DECISION

This claim in the amount of \$15,453,740.00 against the Government of the German Democratic Republic, under Title VI of the International Claims Settlement Act of 1949, as amended by Public Law 94-542 (90 Stat. 2509), is based upon the loss of the business Kamera Werkstaetten in Dresden, a villa in Dresden, bank accounts, documents, a passport, health, and reputation.

By Proposed Decision dated February 11, 1981, the Commission found that claimant BEN B. THORSCH was entitled to an award for the loss of his beneficial interest in the camera business in the amount of \$200,000.00 and that claimant CHARLES A. NOBLE was entitled to an award for the loss of a manufacturing plant and a villa and furnishings in Dresden, in the amount of \$90,000.00. The Commission, in the Proposed Decision, denied the claim of CHARLES A. NOBLE for the loss of the camera business as well as for the loss of bank accounts, documents, a passport, health, and reputation.

By letter dated February 24, 1981, CHARLES A. NOBLE objected to the Proposed Decision, asserting that the Commission's decision was incorrect in including BEN B. THORSCH in the claim; in finding that the value CHARLES A. NOBLE paid to BEN B. THORSCH for the business was inadequate consideration; in finding that it was

likely that the German government had contributed funds and resources to the running of the camera business during World War II; in the value found for the manufacturing plant in Dresden; in finding that BEN B. THORSCH had a continued beneficial interest in the camera business; in the value found for the villa San Remo; and in denying the claim for the bank accounts, personal property stored in the villa, and a camera order placed by the Soviet forces. Claimant BEN B. THORSCH objected to the Proposed Decision on the grounds that his beneficial interest in the property was greater than that found by the Commission and, specifically, that the reichsmark value of his interest in 1937 should have been converted to dollars at the rate of 2.5 reichsmarks to one dollar rather than the figure used by the Commission of four reichsmarks to one dollar.

An oral hearing was held on this claim on April 21, 1981, at the Commission's offices in Washington, D.C. Appearing at the hearing to represent CHARLES A. NOBLE were his sons John and George Noble. Also appearing were claimant BEN B. THORSCH and his attorneys.

With respect to the objection concerning the inclusion by the Commission of BEN B. THORSCH in the claim, it is the Commission's practice in this program, as it has been in past programs, to join in a claim parties who have an interest in the subject property. In many cases this involves joining additional members of a family who had an inherited or other interest in property. In many instances, the interests of parties joined by the Commission are not adverse to the interest of the original claimant; in some instances they are, and the awards to one party precludes an award to another. In the instant case, since the evidence of record had indicated that BEN B. THORSCH was Jewish, and because the sale of the property occurred in 1937, the issue of a sale under duress under the Nazi regime was raised. The

Commission, in the Claim of MARTHA TACHAU, Claim No. G-0177, Decision No. G-1071, had held that a person who lost property as a result of the persecutory measures of the Nazi regime retained a beneficial interest in the subject property. Accordingly, since this issue was raised by the factual context of the claim, BEN B. THORSCH was joined as a proper party claimant.

With respect to the sale of the camera business, Kamera Werkstaetten, the evidence of record, including the testimony given at the oral hearing, affirms the Commission's previous finding that the price paid for the business was not commensurate with its value in 1937. The Commission reviewed the evidence of record pertaining to the property in Detroit transferred by CHARLES A. NOBLE to BEN B. THORSCH in 1937. Based upon the tax value and market value of the two pieces of improved real property in Detroit, the inventory and net profits of the Stutz Photo Service, and the cash delivered to BEN B. THORSCH, the Commission finds that the actual value received by BEN B. THORSCH was approximately \$30,000.00, far less than the value of the camera business. Accordingly, the Commission finds that, as this consideration was inadequate, and since BEN B. THORSCH sold the property because of the pressures put upon Jews by the Nazi regime, it concludes that the sale was a sale under duress and that BEN B. THORSCH retained a beneficial interest in the property.

When the Commission refers to a sale under duress, it is not necessarily making a finding as to the acts of any particular buyer. What the Commission is referring to is that there was a general climate of persecution in Germany during the years preceeding World War II, so that any sale of Jewish-owned property was, in fact, made under less than fair free market conditions. The climate of persecution in Nazi Germany started in 1933, heightened with the passage of the Nuremberg laws in 1935, and became increasingly stringent in the years 1937 and later. The Commission, following the precedents established in earlier claims programs

and reaffirmed in the current program, finds that the sale of Kamera Werkstaetten is to be considered a sale under duress and that CHARLES A. NOBLE accordingly did not receive valid title to the subject property.

With respect to the value of the Kamera Werkstaetten remaining after the award of BEN B. THORSCH's beneficial interest, the Commission had denied this portion of the claim in the Proposed Decision because the evidence of record had included CHARLES A. NOBLE's statement that, after the outbreak of war between the United States and Germany, he had been interned in a form of house arrest in Dresden and no longer had control over the business. The Commission accordingly had denied the portion of the claim pertaining to the increase in the value of the business because it found that the evidence of record had not established that the value of the business in 1945 was due to the resources or efforts of CHARLES A. NOBLE. On objection, claimant CHARLES A. NOBLE stated that he had invested heavily in the business in the years 1938, 1939, and 1940 and had developed an entirely new concept of cameras and camera production.

The Commission has considered the evidence of record and the testimony given at the oral hearing. It finds that, inasmuch as the expansion of Kamera Werkstaetten was based upon the ongoing business purchased in 1937, any increase in the value of the business was tainted by the circumstances by which the property was acquired.

It has long been the practice of the Commission to find that the acquisition of title as a result of the persecutory measures of the Nazi regime is invalid for the purpose of claiming compensation for the subsequent loss of that property. (Claim of F.W. WOOLWORTH COMPANY, Claim Nos. W-7115-W-7122, Dec. Nos. W-18763, W-18764). The Commission now finds, in deciding the issue of whether an acquirer is entitled to compensation for the loss of

improvements to the subject property, that it would be inconsistent with the decisions of this Commission and of past Commissions to grant an award for the loss of the increase in the value of property which had originally been purchased under the Nazi regime to the detriment of a persecutee. The Commission further finds that, even if the improvements were not considered tainted, to the extent that control over the business and its production was in the hands of the German government from December 1941 to the end of the war, it would be impossible to determine what portion of the business' value was attributable to the earlier investments of CHARLES A. NOBLE and what was attributable to the later management of the government during the war. For both these reasons, the portion of the claim pertaining to CHARLES A. NOBLE's interest in the camera business and the portion of the claim pertaining to the Soviet camera order must be and hereby are denied.

With respect to the bank accounts owned by CHARLES A. NOBLE, the Commission had previously denied this portion of the claim because the evidence of record did not establish exactly what the balance would have been at the time the account was taken by the East German authorities. CHARLES A. NOBLE, on objection, has asserted that he was not allowed to withdraw funds from the bank account because it was under the control of the Gestapo. However, even in this situation, the Commission is not able to presume that those in control of the bank account did not withdraw funds for their own use at the end of the war before the account was frozen by the East German authorities. Accordingly, since the evidence does not establish what was in existence at the time the account was frozen, the portion of the Proposed Decision denying the claim for the bank accounts must be affirmed.

With respect to CHARLES A. NOBLE's statement that the Commission would have to prove his statements wrong in order to deny portions of his claim, the regulations of the Commission provide that the burden of establishing a compensable loss rests with the claimant.

Accordingly, with respect to the existence of the balance in the bank account and the personal property in his home, the Commission finds that, since the evidence of record does not sufficiently establish the value of those assets, those portions of the claim must be denied.

With respect to the villa San Remo in Dresden, the Commission has reviewed the evidence of record pertaining to the value of the real property and the furnishings inside. It finds that, based upon photographs, an inventory, construction costs, and values found by the Commission for comparable properties, the house and land had a value of \$60,000.00 on the date of loss and the furnishings inside had a value of \$30,000.00. Accordingly, CHARLES A. NOBLE is entitled to an award of \$90,000.00 for the loss of this property.

With respect to the manufacturing plant that CHARLES A. NOBLE purchased to house the camera business, the Commission had found in the Proposed Decision that it had a value of \$30,000.00 on the date of loss. CHARLES A. NOBLE has asserted that the Commission did not allow costs of remodeling and improvement for this property. However, the Commission had relied on CHARLES A. NOBLE's own statements that he had paid 50,000 reichsmarks for the building; that he had put in improvements at a cost of 100,000 reichsmarks; and that there was an encumbrance of 25,000 reichsmarks on the property. Accordingly, he had an equity of 125,000 reichsmarks in the property. The Commission, after converting reichsmarks to dollars at the applicable exchange rate in 1945 of four reichsmarks to one dollar, awarded CHARLES A. NOBLE the value of \$30,000.00 for the loss of this property. As no evidence has been submitted to warrant a change in this figure, this portion of the Proposed Decision is affirmed. In light of the above, CHARLES A. NOBLE is entitled to an award in the total amount of \$120,000 for the loss of property in Dresden.

With respect to the beneficial interest in the camera business retained by BEN B. THORSCH, the Commission found, in the Proposed Decision, that it had a value of \$200,000.00 on July 1, 1945. Claimant, through his attorneys, asserted that the 1937 value in reichsmarks of the camera business was 1.12 million reichsmarks. Subsequently, based upon alternative methods of valuing the property, the figure was modified to 1.2 million reichsmarks and then 1.4 million reichsmarks. BEN B. THORSCH, in briefs submitted by his attorneys, asserted that the reichsmark value found for his business in 1937 should be converted to dollars at the official exchange rate prevailing in 1937 of 2.5 reichsmarks to one dollar. The arguments for this are twofold: that BEN B. THORSCH's interest is in the nature of quasi-debt, frozen as of 1937, or, alternatively, that BEN B. THORSCH's interest is a quasi-equity interest which should be adjusted to reflect wartime inflation.

In response to the first argument, the Commission points out that the beneficial interest retained in the camera business by BEN B. THORSCH was not a debt owed by CHARLES A. NOBLE or by the business. It was an interest in property taken by the East German authorities after the close of the war. International law and the Commission's practice in the current program do not hold the Soviet authorities or the German Democratic Republic responsible for values or losses occurring before World War II. The German Democratic Republic is responsible only for the value of property it has taken, property which must be valued at the time of the taking, in this case, July 1, 1945.

During and after World War II the reichsmark, for all practical purposes, had no value until the currency revaluation in 1948. The Commission, in the War Claims program, had nonetheless been faced with the issue of determining the value of property lost during those years. Rather than arrive at the unacceptable conclusion that awards could not be granted because a true reichsmark-dollar exchange rate could not be established, it

adopted the market-basket theory of comparable purchasing power, thereby arriving at the exchange rate of 4-1. This rate was found to be the realistic exchange rate for the war years, in spite of the official rate of 2.5-1. Accordingly, for losses occurring in 1945, this Commission affirms the War Claims usage of an exchange rate of 4-1, as the only appropriate rate in force in 1945.

With respect to the second argument, that BEN B. THORSCH's interest was a quasi-equity interest which must be adjusted for inflation, the Commission has consistently held that the depreciation of the value of currency does not give rise to a valid claim against the country issuing the currency (Claim of OLGA LOEFFLER, Claim No. G-0056, Decision No. G-0221; Claim of ANTON TABAR, Claim No. Y-580, Decision No. Y-055; Claim of ELFRIEDE RAUBACH ULLRICH, Claim No. PO-3648, Decision No. PO-1614 (in which a mortgage held on real property was greatly devalued because it was payable in Polish zlotys rather than in reichsmarks)).

The Commission has considered the fact that BEN B. THORSCH's interest in the factory was valued, in 1937, in reichsmarks; that the business was conducted in that currency, and that he had paid taxes on the business in that currency. The only point at which the exchange rate to dollars is relevant to the value of BEN B. THORSCH's interest is on the date of taking of July 1, 1945. Accordingly, the Commission finds that the exchange rate which had been used consistently by the Commission for losses in 1945, 4 reichsmarks to one dollar, is the appropriate rate to be used. Based upon the evidence of record, the Commission finds that the value of BEN B. THORSCH's business in 1937 was 1.12 million reichsmarks, or \$280,000.00. As the Commission found above that the value of the property received from CHARLES A. NOBLE was \$30,000.00, it concludes that BEN B. THORSCH is entitled to an award for the loss of his beneficial interest in the subject property of \$250,000.00.

Accordingly, the Commission finds that, having reconsidered this entire claim, CHARLES A. NOBLE is entitled to an award in the amount of \$120,000.00, BEN B. THORSCH is entitled to an award in the amount of \$250,000.00, and the other portions of the Proposed Decision are affirmed, as the Commission's final determination on this claim.

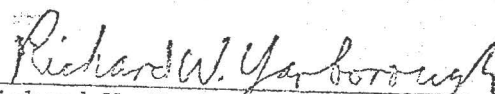
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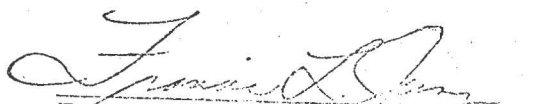
Claimant, CHARLES A. NOBLE, is therefore entitled to an award in the amount of One Hundred Twenty Thousand Dollars (\$120,000.00), plus interest at the rate of 6% simple interest per annum from July 1, 1945 until the date of the conclusion of an agreement for payment of such claims by the German Democratic Republic.

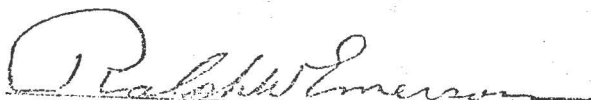
Claimant, BEN B. THORSCH, is therefore entitled to an award in the amount of Two Hundred Fifty Thousand Dollars (\$250,000.00), plus interest at the rate of 6% simple interest per annum from July 1, 1945 until the date of the conclusion of an agreement for payment of such claims by the German Democratic Republic.

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

MAY 15 1981


Richard W. Yarborough, Chairman


Francis L. Jung, Commissioner


Ralph W. Emerson, Commissioner

is is a true and correct copy of the decision
of the Commission which was entered as the final
decision on MAY 15 1981


Executive Director

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

IN THE MATTER OF THE CLAIM OF

CHARLES A. NOBLE
BEN B. THORSCH

Under the International Claims Settlement
Act of 1949, as amended

Claim No. G-0314

Decision No. G-3163

PROPOSED DECISION

This claim in the amount of \$15,453,740.00 against the Government of the German Democratic Republic, under Title VI of the International Claims Settlement Act of 1949, as amended by Public Law 94-542 (90 Stat. 2509), is based upon the loss of the business Kamera Werkstaetten in Dresden, a villa in Dresden, bank accounts, documents, a passport, health, and reputation.

The Commission notes that CHARLES A. NOBLE was the original claimant herein. BEN B. THORSCH was joined by the Commission after the filing of the claim.

The evidence of record indicates that claimants CHARLES A. NOBLE and BEN B. THORSCH became citizens of the United States on January 12, 1931 and December 7, 1944, respectively.

Under section 602, Title VI of the Act 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. . ."

The evidence of record in this claim establishes that, prior to 1938, BEN B. THORSCH had been the owner of the Kamera Werkstaetten Guthe & Thorsch in Dresden.

Claimants have provided information and documentation indicating that, in 1937-38, CHARLES A. NOBLE and BEN B. THORSCH carried out negotiations for the sale of the property to CHARLES A. NOBLE. The negotiations were carried out in Czechoslovakia in order to evade the Nazi government because BEN B. THORSCH was Jewish. In exchange for the property, CHARLES A. NOBLE transferred property he owned in Detroit and Dearborn, Michigan to BEN B. THORSCH. CHARLES A. NOBLE asserts that the value of the property he transferred to THORSCH was \$236,500.00. The Commission notes that, in correspondence with the State Department in the 1950's, CHARLES A. NOBLE had asserted that the value of the property transferred to BEN B. THORSCH was \$60,000.00. Based upon its own investigation and statements by BEN B. THORSCH, the Commission finds that the value of the property in the United States transferred to BEN B. THORSCH was far below even the asserted value of \$60,000.00. Accordingly, because BEN B. THORSCH was Jewish and was selling his business because of persecution of the Nazi regime, and because the consideration received from the sale was far below the business' worth, the Commission finds that the sale of the camera business by BEN B. THORSCH to CHARLES A. NOBLE constituted a sale under duress. The Commission, in past claims programs, has held that, where property is sold under duress, pursuant to persecutory measures of the Nazi regime, the passage of title is considered void. In the current program, the Commission has held in the Claim of MARTHA TACHAU, Claim No. G-0177, Decision No. G-1071, that such persecutory losses will not be considered by the Commission to have cut off all rights of the original owners or their heirs, and that the persecuted owners have retained a beneficial interest in the property. Accordingly, the Commission finds that BEN B. THORSCH has retained a beneficial interest in the camera business sold to CHARLES A. NOBLE.

The evidence of record in this claim establishes that, on July 1, 1945, the Kamera Werstaetten was taken over by the Soviet occupation forces in Dresden. As such takings by the Soviet forces were later ratified by the Government of the German Democratic Republic, the Commission finds that such taking of property in 1945 constitutes a taking as that term is used under

the Act. As BEN B. THORSCH retained a beneficial interest in the subject business, the Commission finds that he is entitled to an award for the value of that interest taken on July 1, 1945, under section 602 of the Act.

The Commission, in previous claims programs, has held that title passing to a purchaser pursuant to a sale under duress is void. The issue arising therefore is whether any profits accruing to the purchaser of such property are valid profits for whose loss he is entitled to compensation. However, the Commission finds that it is not necessary to determine whether CHARLES A. NOBLE is entitled to the difference in the value of the camera business between 1938 and 1945 because, according to his own statement in a letter to the Department of State, dated February 20, 1953, CHARLES A. NOBLE stated that, as of the outbreak of the war (presumably between the United States and Germany), the German government took possession of the business and he was no longer in control of it. The Commission is aware that the then German government, when taking over businesses during the war, often poured large sums of money and resources into the business in order to produce items considered useful to the economy. Since Kamera Werkstaetten was assertedly under the possession and control of the German government for the last 3 1/2 years of the war, the Commission finds that the condition and worth of the company was due to the efforts of the German government, rather than to CHARLES A. NOBLE. Accordingly, the Commission finds that the claim of CHARLES A. NOBLE for the value of the business at the end of the war must be and hereby is denied.

Documentation in the file, however, also establishes that, after the purchase of the business from BEN B. THORSCH, CHARLES A. NOBLE purchased a manufacturing plant in order to relocate the business. As there is no evidence that this purchase involved a

persecutory loss, the Commission finds that CHARLES A. NOBLE is entitled to an award for the loss of the building.

Based upon CHARLES A. NOBLE's statements in the early 1950's to the State Department, including an assertion as to the purchase price and the value of the improvements put into the building, as well as a statement about a mortgage encumbering the building, the Commission finds that CHARLES A. NOBLE's equity in the building as of July 1, 1945, had a value of \$30,000.00. Accordingly, he is entitled to an award in this amount under the Act.

With respect to the beneficial interest in Kamera Werkstaetten retained by BEN B. THORSCH, the Commission finds that, based upon information obtained from the Commission's West German field office a statement by a former associate of CHARLES A. NOBLE; statements as to the size and reputation of Kamera Werkstaetten Guthe & Thorsch; statements of BEN B. THORSCH and CHARLES A. NOBLE as to the worth of the company and the net profits; information pertaining to the number of cameras manufactured by the business before the sale; and information and documentation pertaining to the assets transferred by CHARLES A. NOBLE and BEN B. THORSCH in the United States, the Commission finds that the beneficial interest in the business retained by BEN B. THORSCH, for which he was not compensated by the purchaser, totals \$200,000.00. Accordingly BEN B. THORSCH is entitled to an award in that amount under section 602 of the Act.

CHARLES A. NOBLE also asserts the loss of a villa in Dresden. Based upon photographs of the villa, statements as to its worth, a 1938 letter describing the property, and values found by the Commission for similar properties in the German Democratic Republic, the Commission finds that the villa had a value of \$50,000.00 on January 11, 1946, the date it was confiscated by the occupation forces. As the villa was taken over completely furnished, CHARLES A. NOBLE has also asserted the loss of the furnishings inside. Based upon pictures of the interior of the villa, the Commission finds that furnishings had a value of \$10,000.00 on

the date of loss. Accordingly, CHARLES A. NOBLE is entitled to an award of \$60,000.00 for the loss of the villa and furnishings.

CHARLES A. NOBLE also asserts the loss of bank accounts taken by the Soviet forces. A 1944 bank statement indicates that one of his bank accounts held approximately 75,000 reichsmarks. However, as CHARLES A. NOBLE had access to the accounts in the year before the end of the war; and as members of his family continued to live in the villa up through and even after its seizure by the occupation forces, the Commission finds that the 1944 balance sheets are not sufficient to indicate what was actually in the accounts at the time of their loss. Accordingly this portion of the claim must be and hereby is denied.

CHARLES A. NOBLE also asserts the loss of documents, a passport, and health and reputation. As it is not possible to place a value upon the loss of the documents and the passport, and since the loss of health and reputation is not a loss which is compensable under the Act, this portion of the claim must be and hereby is denied.

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. (Claim of GEORGE L. ROSENBLATT, Claim No. G-0030, Decision No. G-0100 (1978)).

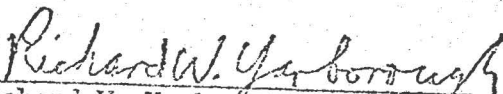
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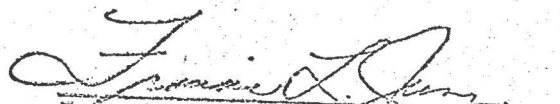
Claimant, CHARLES A. NOBLE, is therefore entitled to an award in the amount of Ninety Thousand Dollars (\$90,000.00) with interest on \$60,000.00 from January 11, 1946 and interest on \$30,000.00 from July 1, 1945 until the date of the conclusion of an agreement for payment of such claims by the German Democratic Republic.

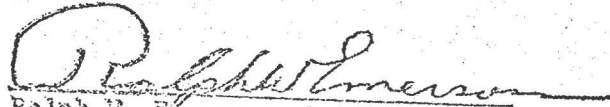
Claimant, BEN B. THORSCH, is therefore entitled to an award in the amount of Two Hundred Thousand Dollars (\$200,000.00) plus interest at the rate of 6% simple interest per annum from July 1, 1945 until the date of the conclusion of an agreement for payment of such claims by the German Democratic Republic.

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

FEB 11 1981


Richard W. Yarborough, Chairman


Francis L. Jung, Commissioner


Ralph W. Merson, Commissioner

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 decision 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. 531.5 (e) and (g), as amended.)

G-0314