

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

IN THE MATTER OF THE CLAIM OF

RENEE HEYMANN
CLEMENS CLAUDE HEYMANN

Under the International Claims Settlement
Act of 1949, as amended

Claim No. G-0398

Decision No. G-3181

Counsel for Claimants:

Samuel Herman, Esquire

Oral Hearing held on April 7, 1981

FINAL DECISION

This claim in the amount of \$555,950.00 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 certain losses hereinafter individually discussed.

By Proposed Decision issued February 18, 1981, this claim was denied in its entirety for various reasons hereinafter also set forth.

Claimants, through counsel, filed timely objections and requested an oral hearing, which was held on April 7, 1981. Claimant and a witness, Clara Gordon, presented oral testimony at the hearing; additional documents were offered in evidence; and oral argument was made by counsel for claimant. The Commission having reviewed the entire record and considered the testimony, documents, legal memoranda, and oral argument, makes the following determinations as to each of the separate losses for which claim was made.

Real Property in Wiesbaden and Oberhausen

The Commission in the Proposed Decision denied a claim for the loss of this property located in the Federal Republic of Germany and assertedly owned before World War II by claimants' predecessors in interest, because the loss had not occurred in the German Democratic Republic or East Berlin as required by the Act for a claim to be compensable. At oral argument counsel for claimant withdrew the claim for this loss. The record further indicates that the ownership of claimants' predecessors was recognized in the Federal Republic after the war and the proceeds from its postwar sale were paid to claimants' predecessor.

Mortgages on Property at 8 Ryke Strasse and Scheibler Strasse

The Commission denied the claim for the loss of these mortgages on the ground that there was no evidence that they had survived World War II and were taken by the German Democratic Republic. No new evidence was presented pursuant to the objection raised by claimants. The Commission has reviewed the entire record. There appears to be no evidence of any probative value concerning any mortgage on property on Scheibler Strasse.

There is evidence that prior to 1940 a mortgage existed on property at Ryke Strasse in Berlin. The record indicates that the Commission requested information from appropriate authorities in the German Democratic Republic as to these mortgages. These authorities reported that a mortgage made out to claimants' predecessor in the amount of RM 11,000 had existed but that on December 1, 1941 RM 10,000 of this mortgage had been extinguished and that on June 20, 1942 the remaining RM 1,000 had been canceled so that the entire mortgage had ceased to exist as of that date. No evidence has been submitted as to what happened to the proceeds of that mortgage. There is no evidence that the proceeds went into any account which remained in identifiable form in the German Democratic Republic as of the end of World War II. Therefore, the Commission must affirm its original denial of this part

of the claim for the reason that there is no evidence of any mortgage or funds derived therefrom in existence which could be the subject of any action by the German Democratic Republic.

Bank Account

Claimants asserted the loss of a bank account. In the Proposed Decision the Commission denied this part of the claim on the ground that the only evidence submitted concerning an account consisted of a letter from the Dresdner Bank in Tegernsee which is presently located near Munich in the Federal Republic of Germany. The Commission held, therefore, that this account could not have been taken by the German Democratic Republic. At oral hearing counsel for claimants withdrew the claim for a bank account on the ground that, although they had obtained evidence indicating that a bank account may have existed in Berlin, they had no evidence to substantiate the amount of any such account.

Property at Reichenberger Strasse and Lange Strasse

Apparently these two pieces of property had been owned by Mogires Grundstuecksgesellschaft m.b.H. As to the property on Reichenberger Strasse, it appears there are two streets of the same name in Berlin, one presently in East Berlin and the other in West Berlin. The property is listed at number 72 and officials of the German Democratic Republic report that Reichenberger Strasse in East Berlin does not go to that high a number. This appears confirmed by consulting maps which show that Reichenberger Strasse in East Berlin is a small street only one block long whereas Reichenberger Strasse in West Berlin is a major street. The Commission, therefore, concludes that the property at Reichenberger Strasse 72 was located in West Berlin. There is no dispute that the premises were sold before World War II. Whether such sale was of a persecutory nature is irrelevant. Even if it were a sale as a result of racial and religious persecution, there would be no authority in the German Democratic Republic to grant restitution for property in West Berlin. Any restitution proceedings for property in West Berlin or the Federal Republic would have to be pursuant to the laws of those jurisdictions.

The property at Lange Strasse 17 is located in East Berlin. There is agreement that the property was sold before World War II. Claimants submitted to the Commission in the General War Claims Program a copy of a letter from Alfred Gaul who had been inserted by claimants' predecessor to operate the Herman Heymann Bank. According to this letter the property was sold to Sirius Versuchsgesellschaft for RM 112,500 or RM 115,000 which, the letter asserts, was the valid sales price and was a commercial sale not caused by racial or religious persecution.

Claimants, at the oral hearing, submitted a copy of another letter written by Alfred Gaul, asserting that the property had a fair market value of RM 110,000. In addition, claimants submit a copy of what purports to be a supplement to a tax declaration of 1935, which, although unsigned, is asserted to be a statement filed by Mrs. Anna Kann who, in all probability, was the actual owner of one-third of Mogires Company. The entry which is cryptically written indicates that for the property at Lange Strasse 17 there had been no income in 1935 and that it was sold "for RM 7,000." Claimant translates the remainder of the entry as "received nothing buyer tries to get mortgage." Neither this translation nor the Commission's study of the German language makes the phrase totally clear. While it appears clear that the statement says that as of that time nothing had been received, the implication is that the buyer is attempting to obtain money to make payment.

Claimants submit that this document contradicts the letter previously referred to from Mr. Gaul and indicates that the sale was a persecutory sale.

The Commission does not necessarily find contradiction between these two documents. The Herman Heymann Banking Company and Mogires Company at this time were being operated by Aryans as ostensible owners. According to evidence submitted by claimants, the banking firm prospered under such ownership. Under these circumstances, property owned by the bank or Mogires would not

necessarily appear to be Jewish owned and therefore subject to sales under duress. According to a letter previously submitted by claimants from Herman Heymann and Company dated June 24, 1936, the property at Lange Strasse 17 was subject to a mortgage of RM 95,000 owed to Friedrich Wilhelm A.G. Therefore, if the property were sold as stated by Alfred Gaul for an amount of RM 115,000, the amount of the payment for the equity to Anna Kann would approximate the RM 7,000 referred to in the tax declaration and the fact that she had not yet received that amount would not necessarily mean the amount was not subsequently received. The Commission notes that in the sale of another such subsidiary, Borrina Grundstuecksgesellschaft m.b.H., the sales price of some RM 47,000 was paid to Mrs. Anna Kann.

Authorities in the German Democratic Republic independently verified the transfer of the premises to Sirius Versuchsgellschaft m.b.H. tending to confirm the statements in Alfred Gaul's letter.

Based upon this state of the record, the Commission finds that claimants have not established that legal title to the premises at Lange Strasse 17 was lost as a result of racial and religious persecution and, therefore, as claimants' predecessor no longer had any interest in the property, it could not be the subject of a compensable loss after World War II by the German Democratic Republic.

Claim for 3,000 Books

Claimants originally claimed for the loss of some 3,000 books, assertedly stored in Leipzig. This part of the claim was denied in the Proposed Decision for lack of evidence and the claim was withdrawn at the oral hearing by counsel for claimants.

Loss of Personal Property in Storage at Dorotheen Strasse 79.

Claimants asserted a loss for undescribed "physical assets in East Berlin directly owned by Herman Heymann and Company (including personal property)." This claim was denied in the Proposed Decision on the ground that it was not clear of what this property consisted or the circumstances of the loss and held there was no evidence that personal property survived World War II and was taken by the German Democratic Republic.

In support of the objection to this part of the claim, claimants rely upon a document which lists certain personal property and which claimants assert is a "vault receipt." Claimants assert that the items on the list were placed in a vault at the premises of Herman Heymann and Company located on Dorotheen Strasse in East Berlin. Clara Gordon testified that at some time after World War II on a visit to Germany she had met with Mr. Alfred Gaul who had stated there were seven vaults at the bank and stated that the bank was only partially destroyed. Claimants, therefore, argue that this personal property survived World War II and was subsequently taken by East Berlin authorities.

The document upon which claimants rely appears to be signed by Anna Kann and lists certain personal property, including a diamond necklace with earrings, a pearl necklace, certain other jewelry and silverware, cutlery, paintings, which are listed as having been "handed over" on February 9, 1939 to Mr. Alfred Gaul. In the General War Claims Program claimants' predecessor, Ernest Heymann, who claimant has testified had more intimate knowledge of the facts, stated that property consisting of cash, a diamond necklace with earrings, and one pearl necklace were deposited in a safe in the banking firm of Herman Heymann and Company on Dorotheen Strasse 79 in Berlin. Other property, including silverware, cutlery set and certain paintings which appear to be included on the list relied on by claimants, were put in storage at Tiergarten Strasse 8 in West Berlin when they were destroyed by bombing during World War II. Claimant, RENEE HEYMAN, by letter dated November 23, 1966, supplied a list of silver cutlery, paintings, silver set, etc., which were stored at Tiergarten Strasse 8 and were destroyed during the war and that personal property belonging to Anna Kann, consisting of cash, a diamond necklace and earrings, and a pearl necklace, were placed in a safe at Dorotheen Strasse and that these were lost due to war damages and bombings. Therefore, it appears that only part of the personal property on the list relied upon by claimant was

stored at Dorotheen Strasse and that other personal property was stored at Tiergarten Strasse. Statements by Alfred Gaul submitted by claimant in the General War Claims Program verify that this personal property was turned over to him and was destroyed by bombing during World War II. An excerpt from a letter by Alfred Gaul dated May 28, 1958, submitted by claimants, states, in relevant part, "your trunks with all of the nice china and silver and I believe you also had the beautiful and very expensive crystalware stored there was all annihilated as were many other possessions of yours. . . .

"Ann's money (47,000 RM) which she gave me to be hidden in the safe of the Herman Heymann firm, was lost on account of war damage, destruction and vandalism. This money was partially her share from the 'Borinna's.' You can be sure that I would have given you and Anna the money had I found it at Dorotheen Strasse after the war. Also the necklace and other jewelry which we kept in the safe was lost. Even the portrait of your father that hung in the chef's room and which I cherished all these years was destroyed."

A letter submitted by claimants in the General War Claims Program from a Mrs. Robert Serebrenik states, in relevant part, "As to Dorotheen Strasse 79, we were told that besides the bombings at the end of 1944 and beginning of 1945, the Russians threw grenades and torches into the buildings. With tanks they destroyed the district in spring 1945. I am a witness to this information."

A verified statement of Mr. Fred Alexander was submitted by claimants in the War Claims Program which states, in relevant part,

"Furthermore I can testify that I knew Mr. Alfred Gaul in person. He told me that he put valuable jewelry and money of Mr. Heymann's sister in a vault of the banking firm Herman Heymann and Company Dorotheen Strasse 79 in Berlin. Mr. Alfred Gaul also confirmed that Mr. Ernest Heymann stored several wooden cases at Tiergarten Strasse 8.

I visited Germany in 1957 and was asked by Mr. Heymann to inquire about the progress of his claims. In the course of a meeting with Mr. Alfred Gaul in Berlin I was told about the destruction and ultimate loss of Mr. Heymann's belongings, due to the allied bombings during the final months of the war. I therefore learned that the wooden cases at the Tiergarten Strasse 8 and that the vault in the bank with Mr. Heymann's contents as well was completely destroyed.

While I was in Berlin I made for Mr. Heymann my own investigations and found that the destruction of the above mentioned belongings was due to the allied bombings in the first few months of 1945.

I also verified through Mr. Maetchke, a former employee of Mr. Heymann the correctness of the above statement."

Another excerpt of a letter from Mr. Alfred Gaul dated October 27, 1955 was submitted by claimant in the General War Claims Program. The letter states that Mrs. Kann,

"stored a portion of her jewelry in the safe of the firm of Herman Heymann Dorotheen Strasse. . . . I put the jewelry and money in the safe myself. The jewelry consisted of a diamond necklace with earrings as well as other valuable jewelry. . . .

Perhaps you can claim the 47,000 RM and the jewelry if Ernest didn't tell you about it before. Just before the end of the war, in the year 1945, the bank was damaged in a night bombing raid. After the fire everything was ruined."

Based upon this and similar evidence, the Commission found in the General War Claims Program that the money and jewelry located at Dorotheen Strasse 79 was destroyed as a result of hostilities. No evidence has been submitted to refute these facts. At most, claimants provide hearsay evidence that there may have been more than one vault and request the Commission to speculate that the jewelry may not have been destroyed. This is totally unfounded speculation. Counsel suggests that, as it was in claimants' interest in the General War Claims Program to demonstrate that the jewelry had been destroyed, evidence submitted by claimants to establish that fact should not be considered reliable in the present claim where it is in claimants' interest to establish that the jewelry was not destroyed. The Commission

does not accept such a theory in evaluating evidence, which theory would require the Commission to assume that previously the claimants and their present counsel deliberately submitted false evidence in an attempt to mislead the Commission.

The Commission, therefore, finds no basis to change its conclusion in the General War Claims Program that the jewelry and other personal property was destroyed as a result of hostilities and therefore is not compensable in the present program.

Claimants further assert that there was office furniture and equipment owned by the bank in the premises at Dorotheen Strasse. No evidence of probative value has been submitted to establish of what this property consisted or its value. The evidence is clear that the premises at Dorotheen Strasse were, if not totally destroyed, severely damaged as a result of bombing and the ensuing fire. There is no basis in the present record for the Commission to find what, if any, office furniture and equipment survived World War II and was taken by the German Democratic Republic and, therefore, there is no basis to make an award for such loss.

Real Property Owned by Germania

Claimants assert a claim for the loss of certain real property in West Berlin which had been owned by a company known as Germania. Claimants assert that this property was owned by Herman Heymann Banking Company and that the bank was nationalized by the German Democratic Republic after World War II. Claimants assert that, therefore, title to the property came into the hands of the German Democratic Republic and that compensation should be paid under international law by the German Democratic Republic for this loss of property in West Berlin.

Whatever may be the validity of an argument as to the extraterritorial affect of the nationalization of a business under other circumstances, the argument has no validity on the facts presented in this claim. Germania, according to the evidence secured by the Commission's field office in Munich and a letter supplied by claimants, was ostensibly owned by four individuals,

Robert Sauer, Herbert Kellner, Paul Maetschke and Walter Schulz. A letter submitted by claimants from Alfred Gaul asserts that these record owners were in effect "straw" men and that the actual silent owners were Anna Kann, Oscar Heymann and Ernest Heymann.

There is no evidence that Germania was ever nationalized by the German Democratic Republic, and, in fact, the evidence indicates it was dissolved at the beginning of World War II. The property in West Berlin for which claim is made appears to have come into possession of an agency of the City of Berlin in a mortgage foreclosure. It may well be that the circumstances surrounding this foreclosure would indicate that such loss of title to the City of Berlin was of the nature of a persecutory loss because of the racial and religious persecution at that time. If this were true and if, indeed, the three individuals who are asserted to be the real owners of the property were, in fact, such owners, there may well have been a basis for them to seek restitution under the restitution laws of the Federal Republic of Germany. There is no evidence that the German Democratic Republic prevented them from seeking such restitution for the loss in West Berlin, nor is there any evidence whatsoever of any action taken by Soviet military authorities or the German Democratic Republic which in any way affected this property in West Berlin. Therefore, there is no basis for the Commission to find this part of the claim compensable.

Real Property at Dorotheen Strasse 79

Claimants filed no claim for the loss of real estate at Dorotheen Strasse 79 where Herman Heymann and Company operated. By letter dated November 7, 1980, the staff of the Commission informed claimants' counsel that no such claim had been filed and suggested that, if claimants' predecessor had, in fact, owned these premises, a claim might be compensable. The letter requested a response from claimants' counsel, if he cared to make one, within 30 days. No response having been received for over three

months, a Proposed Decision was issued. As part of claimants' objection claimants now request permission to amend the claim to assert the loss of the premises at Dorotheen Strasse. The Commission notes that claimants have waited over three and a half years since filing the claim to make this request, despite having the matter brought to counsel's attention some five months ago. Such a request coming but five weeks before the end of the program places an imposition upon the Commission to verify ownership of the premises.

The only evidence submitted by claimants to establish ownership of these premises is a letter dated November 11, 1977 written by a Horst M. Wetzell. The letter contains the statement, "In 1924/25 the bank acquired a building at Dorotheen Strasse. The number was an odd one 79 or 43 or something close."

The letter concludes with the statement, "This is now about 50 years gone by and the best I can remember." There is no question but that Herman Heymann and Company operated at the address of Dorotheen Strasse 79, however, it is not established whether it owned the premises or was a tenant therein. The use of the general term "acquired" in the statement of Mr. Wetzell's recollections in 1977 of events which occurred over half a century before does not appear to establish that the banking firm acquired title rather than acquiring a leasehold interest.

The Commission notes that claimants' immediate predecessor in interest, Ernest Heymann, who claimant states was much more knowledgeable of the facts, filed a claim in the General War Claims Program, and asserted losses for the destruction of property in Havel, Tiergarten Strasse and certain other locations in West Germany and claim was made for personal property located at Dorotheen Strasse 79. Amendments were made to the claim and, although it is apparent that Ernest Heymann was aware that Dorotheen Strasse 79 had suffered bombing damage, no claim was ever asserted for this loss. It appears only reasonable to assume that, if, in fact, the bank had owned the premises at

Dorotheen Strasse 79, claim would have been made for war damage suffered thereto.

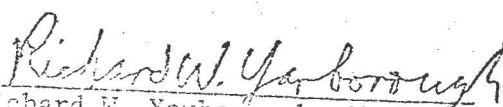
Based on this record, the Commission finds that the evidence is insufficient to establish that Herman Heymann and Company owned the premises at Dorotheen Strasse 79.

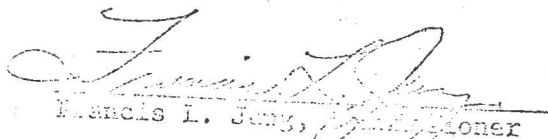
Even at this late date, the Commission has undertaken an investigation of records in the Federal Republic of Germany to see if it could establish requisite ownership of these premises. Whether this information can be determined within the extremely limited time available due to claimants' last minute request to amend the claim is problematic. The Commission, therefore, denies this part of the claim, at this time, however, in the event that the Commission should obtain evidence through its own investigation establishing the ownership of the premises by Herman Heymann and Company in sufficient time to allow the reopening of this claim, the Commission will reopen it on its own motion.

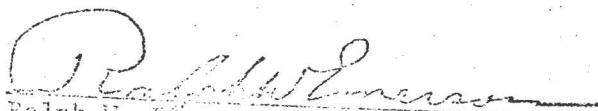
The Commission, therefore, affirms its original denial of this claim in its entirety as its final determination of this claim.

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

MAY 13 1981


Richard W. Yarborough, Chairman


Francis L. Jung, Commissioner


Ralph W. Larson, Commissioner

This is a true and correct copy of the decision
the Commission which was entered as the final
decision on MAY 13 1981


Executive Director

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

IN THE MATTER OF THE CLAIM OF

RENEE HEYMANN
CLEMENS CLAUDE HEYMANN

Under the International Claims Settlement
Act of 1949, as amended

Claim No. G-0398

Decision No. G-3181

Counsel for Claimants:

Samuel Herman, Esquire

PROPOSED DECISION

This claim in the amount of \$555,950.00 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 certain assets of Herman Heymann & Company and for the loss of a bank account and certain books owned by Anna Kann.

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. . ."

Herman Heymann & Company was, prior to World War II, a banking firm located in East Berlin. The firm was wholly owned during his lifetime, by Herman Heymann. At the death of Herman Heymann, it is asserted that his estate was inherited by three children, Oscar Heymann, Ernest Heymann, and Anna Kann. It is further asserted that Oscar Heymann died on May 13, 1940 and that

Ernest Heymann was his sole heir. It is asserted that Anna Kann died on December 31, 1942 and that Ernest was the sole heir of Anna. It is likewise asserted that Ernest Heymann died on February 20, 1965 leaving as his heirs claimant RENEE HEYMANN, his wife; and claimant, CLEMENS CLAUDE HEYMANN, his son.

Claimants claim for assets of Weisbadener Immobilien und Erwerbsegesellschaft G.m.b.H., Oberhausner G.m.b.H., Borrina Hausverwaltung G.m.b.H., and Germania Gemeinnutzige Siedlungsgesellschaft G.m.b.H., which companies in turn it is asserted were owned by Herman Heymann & Company. As far as the record shows all assets of these four companies were located in what is presently the Federal Republic of Germany or West Berlin. Compensable losses under Public Law 94-542 are limited to losses of property in the German Democratic Republic or East Berlin. Therefore that part of claimants' claim for the loss of property outside the German Democratic Republic or East Berlin must be and hereby is denied.

Claimants claim for the loss of property located at Reichenberger Strasse 72 and Lange Strasse 17 in East Berlin. It appears that both these properties may have been owned at one time by Herman Heymann & Company, however, they were sold in the early 1930's in a commercial sale for fair value and therefore Herman Heymann & Company was not the owner of these premises after the end of World War II at which time they could have been taken by the German Democratic Republic. Therefore, this part of claimants' claim must be and hereby is denied.

Part of claimants' claim is for three mortgages on property at Ryke Strasse 8, Berlin; Scheibler Strasse, Berlin; and undescribed property in Leipzig. The record does indicate evidence that mortgages existed on the property at 8 Ryke Strasse and Scheibler Strasse at the beginning of World War II. However there is no evidence that either of these mortgages were in existence at the end of World War II. There is evidence submitted by claimants and as supplied by the German Democratic Republic which indicates

that these mortgages may have been paid off and cancelled before the end of World War II. No evidence has been submitted to establish the existence of a mortgage in Leipzig.

Based upon this state of the record, the Commission has no alternative but to hold that claimants have not established the existence of mortgages which were nationalized, confiscated or otherwise taken by the German Democratic Republic and therefore this part of claimants' claim must be and hereby is denied.

Part of claimants claim is based upon the loss of a bank deposit of Anna Kann in the Dresdner Bank. The only evidence in the record concerning such a bank account indicates that it was deposited in the Dresdner Bank in Munich and therefore would not have been subject to nationalization, expropriation or other taking by the German Democratic Republic and therefore this part of claimants' claim is denied.

Claim is made for certain personal property in Berlin, however, is it not clear of what this property consisted or the circumstances of the loss. In the General War Claims program, claim was asserted for what appears to be the same personal property which was claimed to have been destroyed by hostilities during World War II. Therefore the Commission holds that there is no evidence that such personal property survived World War II and was taken by the German Democratic Republic. Therefore this part of claimants' claim must be and hereby is denied.

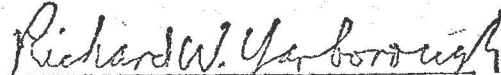
Finally claim is made for 3,000 books assertedly in storage in Leipzig. No evidence has been provided that these books survived World War II or were confiscated or otherwise taken by the German Democratic Republic. Therefore, this part of claimants' claim must be and hereby is denied.


For the foregoing reasons, claimants claim in its entirety must be and hereby is 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.

FEB 18 1981


Richard W. Yarborough, Chairman


Francis L. Jung, Commissioner


Ralph W. Emerson, 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.)

At any time after a Final Decision has been issued on a claim, or a Proposed Decision has become the Final Decision on a claim, but not later than 60 days before the completion date of the Commission's affairs in connection with this program, a petition to reopen on the ground of newly discovered evidence may be filed. (FCSC Reg., 45 C.F.R. 531.5 (1), as amended).