

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

IN THE MATTER OF THE CLAIM OF

WERNER HAPPE

Under the International Claims Settlement  
Act of 1949, as amended

Claim No. G-0400

Decision No. G-2876

Counsel for Claimant:

Charles E. Soffar, Esquire  
Soffar and Levit

PROPOSED DECISION

This claim in an unstated amount 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 a mortgage on an apartment house in East Berlin.

The record indicates that claimant became a United States citizen on September 10, 1934.

Claimant asserts a claim for the loss of a 37,500 mark mortgage. Evidence has been submitted by claimant which establishes that in 1932 claimant's father, Friedrich Happe, and his mother, Helene Happe, made a loan of 37,500 goldmarks to Hugo Benckert and as security therefore placed a mortgage on property located at #9 Allensteiner Strasse in East Berlin. The loan required the payment of 6% interest and apparently, as far as is shown by the record, interest payments were duly made until the end of World War II. Helene Happe died in 1942 and pursuant to joint wills of she and her husband, her interest in the mortgage passed to Friedrich Happe. After World War II, Friedrich Happe became a resident of West Germany where he died on August 5, 1956, and pursuant to his will all interest in the mortgage passed to claimant WERNER HAPPE. It appears from the record that Friedrich Happe never acquired United States citizenship.

Upon the death of Hugo Benckert, his estate was inherited by Ulrich Benckert and his sister and brother. After World War II, Ulrich Benckert also became a resident of West Germany. Claimant has submitted several letters from Ulrich Benckert in support of his claim. Neither claimant nor his father have in fact received any interest payment on this mortgage since the end of World War II.

Claimant has submitted a document issued by the Greater Berlin, Council of the City Central District, Department for Internal Affairs dated June 9, 1960 which recognizes the inheritance of WERNER HAPPE of the 37,500 mark mortgage. Letters from Ulrich Benckert in 1965 and 1978 assert that the apartment house on Allensteiner Strasse has not come under public administration but is being administered on behalf of Ulrich Benckert and his brother and sister by an administrator. From these letters it appears that any excess rents over expenses are placed in an account with apparently some limited use in East Berlin allowed for Mr. Benckert and his brother and sister.

These letters also assert that every quarter 375 marks of interest on the mortgage are paid into a special account in the state bank of the German Democratic Republic. The account number given is 6651-45-4032. The account into which the interest payments are made is referred to by Mr. Benckert as a "closed account." In response to an inquiry by claimant's attorney to the state bank concerning this account, a letter dated March 12, 1979 states, "in reference to your inquiry we wish to inform you that a disposal of the above mentioned account is not possible."

On the basis of this record set forth above, the Commission must determine whether claimant has a compensable claim under Title VI of the International Claims Settlement Act of 1949.

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. . ."

Section 603 of Title VI of the Act limits the Commission's jurisdiction as follows:

"A claim shall not be favorably considered under section 602 of this title unless the property right on which it is based was owned, wholly or partially, directly or indirectly, by a national of the United States on the date of loss, and if favorably considered, the claim shall be considered only if it has been held by one or more nationals of the United States continuously from the date that the loss occurred until the date of filing with the Commission."

To decide whether claimant has a compensable claim under the Act, the Commission must determine the answers to two questions:

(1) Does the action of East Berlin authorities constitute a "taking" of property as that term is used in Public Law 94-542 despite their apparent recognition of claimant's inheritance of the mortgage?

(2) If the governmental actions do constitute a "taking" did this occur after August 5, 1956 which would be the first date the mortgage could be considered as being owned by a United States national?

The answer to the first question is not completely free from doubt. Currency regulations applicable to all foreign owned bank accounts prohibit the transfer of such an account outside the German Democratic Republic and prohibit a conversion of such account into foreign currency. These foreign currency restrictions additionally limit the use of such accounts in the German Democratic Republic although some uses are allowed. Such an account is referred to as a "blocked" account.

The Commission has held that it is a well established principle of international law that such blocking of a bank account is an exercise of sovereign authority which does not give rise to a compensable claim (Claim of MARTIN BENDRICK, Claim No. G-3285, Decision No. G-0220).

While the fact of the blocking of an account may cause non-residents of the German Democratic Republic some hardship, the Commission concludes that such action does not constitute a nationalization, expropriation or other taking as required for compensation under section 602 of the Act.

The letter of March 12, 1979 from the state bank states that "a disposal of the above mentioned account is not possible." It is possible that this reference merely indicates that the account may not be disposed of outside the German Democratic Republic in which case a "taking" under Commission precedents would not have occurred. However, it appears to the Commission that the letter indicates that this account is under public administration and that no use is allowed to the claimant. In Claim of GEORGE L. ROSENBLATT, Claim No. G-0030, Decision No. G-0100 the Commission has held that placing property under public administration and thus depriving the owner of the property of all indicia of ownership constitutes a taking as that term is used in Public Law 94-542, despite the fact that record "ownership" may still be listed in the rightful owner. It therefore appears to the Commission that this mortgage has been placed under public administration and thus has been "taken."

The Commission now must determine whether this mortgage was put under public administration prior to the death of claimant's father, at which time the mortgage was not owned by a United States national as required by section 603 of the Act for a claim to be found compensable. Pursuant to a decree of July 23, 1952, affecting property owned by residents of the Federal Republic of Germany, the mortgage of claimant's father should have been placed under public administration in late 1952 or early 1953. Claimant states that his father apparently received no benefit from this mortgage after World War II. Absent specific evidence of the contrary, it appears to the Commission that the mortgage in question was taken under public administration prior to 1956 and therefore at a time when it was not owned by a United States citizen. To state the conclusion in another way, there appears

to be no evidence of any acts done by the German Democratic Republic or any change in the situation concerning this mortgage occurring on or after August 5, 1956 which could be considered by the Commission as action constituting a taking of this mortgage after it was owned by a United States national.

For the above cited reasons, the Commission concludes that there is no basis in the record for it to find that property owned by a United States citizen at the time has been taken by the German Democratic Republic. Therefore, this claim 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.

JAN 7 1981

*Richard W. Yarborough*  
Richard W. Yarborough, Chairman

*Francis L. Jung*  
Francis L. Jung, Commissioner

This is a true and correct copy of the decision  
of the Commission which was entered as the final  
decision on FEB 25 1981

*Francis T. Masterson*  
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 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.)