

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

IN THE MATTER OF THE CLAIM OF

ELIZABETH von FURSTENBERG

Under the International Claims Settlement
Act of 1949, as amended

Claim No. G-0443

Decision No. G-2932

Counsel for Claimant:

Alan Gelb, Esquire

Hearing on the Record held on **MAY 15 1981**

FINAL DECISION

This claim in the amount of 500,000 marks 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 an apartment house in East Berlin.

By Proposed Decision dated January 14, 1981, the Commission denied this claim because the claimant had not submitted evidence establishing her clear title to the subject property. By letter dated January 29, 1981, claimant, through her attorney, objected to the Proposed Decision and requested an oral hearing. The objection concerned the finding of the Commission that, since the subject property had been purchased in 1938 from former owners who appeared to have been Jewish, a presumption was raised of a forced sale, and therefore the burden shifted to the claimant to establish that adequate consideration had been paid in a freely disposable form to the prior owners. Claimant's objection states that there is no basis in fact or in law warranting the raising of such a presumption and that there was no evidentiary or legal basis for the Proposed Decision.

An oral hearing was scheduled, after several continuances, for April 14, 1981 at 2:00 p.m. at the Commission's offices in Washington, DC. Neither claimant nor her attorney appeared and neither one notified the Commission that they would not be appearing.

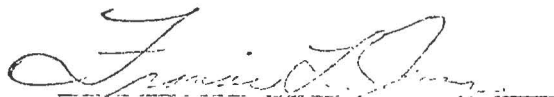
The Commission, in a long list of precedents throughout many of its programs, has relied upon the presumption of a forced sale when the facts of a claim indicate that the prior owner had been Jewish and that the sale took place in the mid or late 1930's under the Nazi regime. However, when the Commission says that a sale took place under duress, it is not necessarily referring to the acts of a particular buyer. What the Commission is referring to is that there was a general climate of persecution in Germany at that time so that any sale of Jewish-owned property was, in effect, made under less than fair free market conditions. It therefore would have to be proved to the Commission that, where Jewish-owned property was involved, the sale was a normal arms-length transaction.


Because of the situation concerning the purchase of this property, claimant had been asked to provide the Commission with any information she had concerning the purchase. No information, however, was ever submitted. Accordingly, based upon the evidence of record, the Commission finds that there is no evidence warranting a change in the Proposed Decision, and it is affirmed as the Final Decision of the Commission on this claim.

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

MAY 15 1981


Richard W. Yarborough, Chairman


Francis L. Jung, Member


Ralph W. Linton, Commissioner

This 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

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WASHINGTON, D.C. 20579

IN THE MATTER OF THE CLAIM OF

ELIZABETH von FURSTENBERG

Under the International Claims Settlement
Act of 1949, as amended

Claim No. G-0443

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PROPOSED DECISION

This claim in the amount of 500,000 marks 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 an apartment house in East Berlin.

The record indicates that claimant became a United States citizen on September 5, 1946.

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 . . ."

At the time of filing claimant stated that she was the owner of an apartment house at Esmarkstrasse 3 in East Berlin. Documentation submitted by the claimant provides some evidence that claimant had owned the property since 1938. A report from the Commission's West German field office, however, states that in 1934 the property has been owned by an M. Korn and a Ch. Liède, while in 1943 the owner of the property was listed in the Berlin city directory as "unknown."

By letter dated May 27, 1980, the Commission wrote to the claimant and suggested that she provide evidence to establish from whom and under what circumstances she had acquired the subject real property in East Berlin. The Commission, in the Claim of MARTHA TACHAU, Claim No. G-0177, Decision No. G-1071, held that the loss of property under the Nazi regime, as a result of racial and religious persecution, will not be considered by the Commission to have cut off all rights of the original owners or their heirs. The Commission further held in the same claim that the persecuted owners retained a beneficial interest in the property lost under the Nazi regime. Because the subject property was assertedly bought by the claimant in 1938, the Commission requested that she submit evidence to establish her clear title to the property. No response was received to this letter.

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) (1977)).

Therefore, based upon the above, the Commission finds that the claimant ELIZABETH von FURSTENBERG has failed to meet the burden of proof in that she has not submitted evidence to establish that she had clear title to property taken by the German Democratic Republic, as required for compensation under section 602 of the Act.

For the above cited reasons, the 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 14 1981

Richard W. Yarborough
Richard W. Yarborough, Chairman

Francis L. Jung
Francis L. Jung, 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.)