

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

IN THE MATTER OF THE CLAIM OF

EVELIN B. MOORE

Under the International Claims Settlement
Act of 1949, as amended

Claim No. G-0659

Reason No. G-2974

Counsel for Claimant:

Stephen Lang, Esquire
Lang, Cross, Ladon,
Boldrick & Green

Oral Hearing held on March 24, 1981.

FINAL DECISION

This claim in the amount of \$207,992.72 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 furniture store at Burgstrasse 47, later known as Strasse der Republic 40 in Bitterfeld, an apartment house at Damm 1a and an apartment house with stores and workshops at Steinweg 86/87, both in Quedlinburg, and bank accounts in Bitterfeld and Quedlinburg.

The record indicates that claimant became a United States citizen on August 12, 1958.

In its Proposed Decision dated January 21, 1981, the Commission denied this claim for the reason that the record did not establish that the property on which this claim is based had been nationalized or otherwise taken by the German Democratic Republic when the property was owned by a United States citizen as required for compensation under the Act.

Claimant objected to the Proposed Decision, through counsel, and personally presented her objections to the Commission at the oral hearing held on March 24, 1981. Claimant also submitted additional evidence in support of her objections.

Having considered the claimant's objections and the new evidence, the Commission now finds that claimant inherited certain real property located at Strasse der Republic 40 in Bitterfeld upon the death of her grandmother, Helene Krakau, in 1974 and that the property was taken by the German Democratic Republic on or about September 1, 1975, after claimant refused, in writing, to sell the property to the State.

The Commission further finds, based upon the evidence of record, that the improvements to the property, before being razed by the government for a reconstruction project, consisted of a large commercial and residential building complex which had a 1942 tax assessed value of 81,800 reichsmarks and which had been purchased in 1939 by claimant's predecessor in interest for 66,000 reichsmarks. Considering the foregoing and the plan of the building submitted, the Commission concludes that the total property lost had a value of \$90,000 and that EVELIN B. MOORE is entitled to compensation in such amount under section 602 of the Act.

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)).

With respect to the improved real property in Quedlinburg, the Commission finds that the evidence of record establishes that this property is being managed on the claimant's behalf by a private administrator and that, accordingly, there has been no nationalization or other taking of this property by the German Democratic Republic as required for compensation under the Act.

And, with respect to a bank account in Bitterfeld assertedly owned by Helene Krakau prior to her death, the Commission finds that the record in this claim is devoid of evidence to establish the existence of such account, that the account was taken by the German Democratic Republic or the amount in the account at the time of loss. Accordingly, this portion of the claim must be and it is hereby denied.

Based upon the above, it is ordered that the denial of that portion of this claim based upon real property in Bitterfeld be vacated and an award be granted to the claimant as set forth below; that the Proposed Decision be affirmed in all other respects; and that the foregoing be entered as the Commission's final determination on this matter.


A W A R D


Claimant, EVELIN B. MOORE, is therefore entitled to an award in the amount of Ninty Thousand Dollars (\$90,000.00), plus interest at the rate of 6% simple interest per annum from September 1, 1975 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.

APR 15 1981


Richard W. Yarborough, Chairman


Francis L. Johnson, Secretary


Ralph W. Emerson, Commissioner

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


Executive Director

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Counsel for Claimant:

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PROPOSED DECISION

This claim in the amount of \$207,992.72 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 furniture store at Burgstrasse 47, later known as Strasse der Republic 40, in Bitterfeld, an apartment house at Damm la and an apartment house with stores and workshops at Steinweg 86/87, both in Quedlinburg, and bank accounts in Bitterfeld and Quedlinburg.

The record indicates that claimant became a United States citizen on August 12, 1958.

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."

Based upon the evidence of record the Commission finds the subject properties were owned by Helene Krakau until her death on November 6, 1974 at which time claimant acquired her interest therein.

With respect to that portion of this claim based upon real property located at Strasse der Republic 40 in Bitterfeld, the Commission finds that the record indicates as follows.

First, according to a letter to the claimant from an attorney in the German Democratic Republic dated March 3, 1979, the real property at Strasse der Republic 40 in Bitterfeld was taken by the German Democratic Republic on August 17, 1972, the date of entry of the transfer of the property in the "Register for Reconstruction Areas" pursuant to section 14 of the Reconstruction Act of September 6, 1950. Since the property was owned on this date by Helene Krakau, who was not a United States national, the Commission would have no authority to grant an award based upon the loss of this property on August 17, 1972 for the reason set forth in section 603 of the Act, above.

Second, in a letter to the claimant dated July 7, 1975, a notary in the German Democratic Republic asked for a power of attorney from her in order for a sale of property at Strasse der Republic 42 [sic] to be effected. This letter indicates that claimant was considered the owner of the property in 1975, three years after the date of taking indicated above, and that the taking had not, in fact, occurred. However, the Commission notes, based upon evidence obtained by the Commission's field office in West Germany, that claimant's predecessor in interest, Helene Krakau, acquired the subject property on January 1, 1939 by sale in Nazi Germany; that she left the German Democratic Republic in 1956 and appointed a private administrator for the property; that the building was razed in 1973 pursuant to reconstruction laws; and that presumably some compensation was paid. From the foregoing, there again appears to be no basis for granting an award based upon the property at Strasse der Republic 40, should the Commission deem the sale of the property a taking by the German Democratic Republic, since claimant, or her predecessor in interest, appear to have received compensation for the loss.

Finally, if the sale contemplated in the letter of July 7, 1975 was not, in fact, concluded or was an arms length transaction between the claimant and the German Democratic Republic, there would be no showing of a taking by the German Democratic Republic as required for compensation under the Act.

Based upon the foregoing, the Commission concludes that the evidence of record does not provide a basis for finding that the real property at Strasse der Republic 40 in Bitterfeld was taken by the German Democratic Republic at a time when it was owned by a national of the United States as required for compensation under the Act.

With respect to the properties at Damm la and Steinweg 86/87 in Quedlinburg, the Commission finds, based upon the record, including evidence obtained by the Commission's field office in West Germany, that Helene Krakau was the owner of these parcels of land and that she acquired the properties sometime after 1939; that the parcels, as of June 25, 1979, were being administered by a private administrator, Karl Hoffmann; that income from the properties has been placed in a blocked account; and that the record contains no evidence that these properties were in fact taken by the German Democratic Republic when owned by a United States national as required for compensation under section 602 of the Act. Accordingly, this portion of the claim based upon real property at Damm la and Steinweg 86/87 in Quedlinburg must be and it is hereby denied.

With respect to the blocked account related to income from the properties in Quedlinburg, and the other blocked accounts claimed, the Commission notes that currency regulations in the German Democratic Republic, as in many other countries, place limitations upon the free use of bank accounts, allowing withdrawal within the German Democratic Republic in certain amounts for certain specified purposes, but prohibiting the conversion of the funds to foreign currency. An account subject to such regulations is termed 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 nonresidents 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.

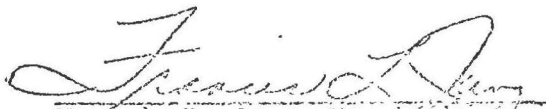
Based upon the foregoing, the Commission finds that this claim must be and it is hereby denied in its entirety.

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 21 1981


Richard W. Yazborough, Chairman


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.)