

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

IN THE MATTER OF THE CLAIM OF

ILSE GARFUNKEL

Under the International Claims Settlement
Act of 1949, as amended

Claim No. G-0815

Decision No. G-1474

Counsel for claimant:

Robert Salomon, Esquire
Herzfeld & Rubin, P.C.

Hearing on the Record held on **MAY 13 1981**

FINAL DECISION

This claim in the amount of \$16,762.50 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 improved real property at Dr. Wilhelm-Kuelz-Platz 7 in Hohenstein-Ernstthal.

In its Proposed Decision, issued on October 31, 1979, the Commission denied this claim on the ground that the record failed to establish that the subject property had been the subject of a "nationalization, expropriation or other taking" by the German Democratic Republic, as required for compensation under section 602 of the Act. The Commission found that claimant had neglected to comply with the inheritance regulations of the German Democratic Republic to establish her ownership rights in the property as a successor in interest to her uncle, Erich Berndt, a citizen of the German Democratic Republic who died in 1970.

Claimant has objected to the Proposed Decision on the grounds that (1) her ownership rights in the subject property vested as a matter of law in the German Democratic Republic upon the death of her uncle in 1970 and (2) the lack of response from the State

Notary Office in Hohenstein-Ernstthal to requests for advice on how to satisfy the inheritance regulations of the German Democratic Republic indicates that the property has been taken within the meaning of the Act.

The record includes copies of two letters from the State Notary Office in Hohenstein-Ernstthal in 1971 acknowledging that the claimant had a right of inheritance in the subject property. As claimant's counsel has pointed out, moreover, this right would be deemed to have arisen upon the death of Erich Berndt in 1970 even though claimant was not designated in his will as the beneficiary of his estate, since the intended beneficiary--the Jewish Community of Karl-Marx-Stadt--was not allowed to inherit real property under the laws of the German Democratic Republic.

In order to effect the transfer of legal title to the claimant, the State Notary Office advised claimant through counsel to submit a certificate of inheritance verifying that she was the sole heir of Erich Berndt, appoint a private administrator for the property, and indicate whether she had lived in the German Democratic Republic since 1945. Claimant's counsel has submitted a copy of a letter to the State Notary Office, dated December 3, 1973, in which he indicated that the claimant had not resided in the German Democratic Republic since 1945 and requesting advice on how to secure a certificate of inheritance and appoint a private administrator for the property. Claimant's counsel indicates that no reply was received to this letter or to follow-up letters that were sent to the State Notary Office in 1974, 1978, and 1979. The foregoing evidence, however, still does not establish that the property at Dr. Wilhelm-Kuelz-Platz 7 in Hohenstein-Ernstthal has been taken by the German Democratic Republic within the meaning of the Act.

One of the letters from the State Notary Office to the claimant's attorneys, dated May 5, 1971, indicated that a curator had been appointed for the estate of Erich Berndt to administer the subject real property. The name and address of this curator were furnished in the letter. There is no evidence in the record

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to indicate that this administrative arrangement had changed by the time of the enactment of Public Law 94-542 on October 18, 1976. There is no basis for the Commission to find that the appointment of a curator to administer the real property pending the establishment of inheritance rights constitutes a taking of such property and there is no evidence that the claimant has attempted to correspond with the curator to determine the status of the property since 1971.

Based upon the entire record, the Commission concludes that the evidence is insufficient to find that the property at Dr. Wilhelm-Kuelz-Platz in Hohenstein-Ernstthal was the subject of a "nationalization, expropriation, or other taking" by October 18, 1976, as required for compensation in the current German Democratic Republic Claims Program.

The Commission notes that in the event a second claims program is administered in the future to adjudicate claims arising after October 18, 1976, the claimant would have the right to file another claim and attempt to establish that the subject property has been taken by the German Democratic Republic since October 18, 1976.

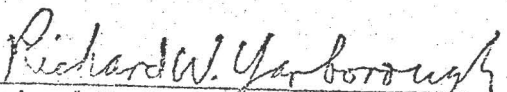
Full consideration having been given to all of the evidence, including the claimant's Objection, the Commission finds that the record does not warrant a change of the Proposed Decision.

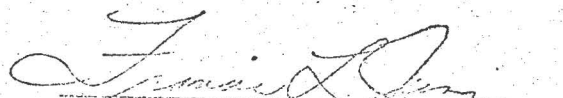
Accordingly, it is

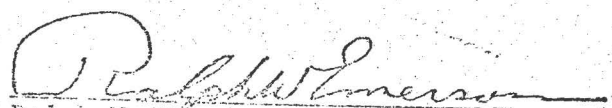
ORDERED that the Proposed Decision be and it hereby is affirmed as the Commission's final determination of this claim.

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. Emerson, Commissioner

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


Francis T. Masterson
Executive Director

G-0815

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Counsel for Claimant:

Robert Salomon, Esquire
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PROPOSED DECISION

This claim in the amount of \$16,762.50 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 improved real property in Hohenstein-Ernstthal.

The record indicates that claimant became a United States citizen on November 11, 1954.

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 record establishes that claimant's uncle, Erich Berndt, was the owner of a mixed use building of apartments and stores located at Dr. Wilhelm-Kuetz-Platz 7, in Hohenstein-Ernstthal. Erich Berndt, who was a citizen of the German Democratic Republic, died on October 22, 1970. His will, drawn up in 1965, designated the "Juedische Gemeinde (Jewish Community of) Karl-Marx-Stadt" as his successor in interest.

In letters from the State Notary Office dated March 2, 1971 and May 5, 1971, however, claimant was informed that the "Real Property Transaction Decree" forbade the conveyance of the subject property to the designated beneficiary. Claimant was also advised that, as the niece of Erich Berndt, it appeared she would have an inheritance right in the property. Claimant was advised that a curator had been appointed by the State Notary Office to administer the real property pending claimant's submission of official proof of her right of inheritance and the designation by her of an acceptable private administrator. Claimant was also requested to inform the State Notary Office as to whether there were any additional nieces and nephews of Erich Berndt, how long the claimant had been living in the United States, and whether she at any time after 1945 lived within the territory of the German Democratic Republic.

The record indicates that claimant did not submit proof of her right of inheritance, appoint a private administrator, or otherwise furnish the State Notary Office in Hohenstein-Ernstthal with the information it requested in 1971. A subsequent letter from the State Notary Office, dated November 6, 1973, advised the claimant that no further information would be forthcoming until the claimant had submitted proof of her right of inheritance and information as to whether and where she might have lived in the German Democratic Republic after 1945.

Based upon all the evidence, the Commission finds that claimant neglected to comply with the inheritance regulations of the German Democratic Republic and thereby failed to establish her ownership interest in the improved real property involved herein. Therefore, the Commission concludes that the property at Dr. Wilhelm-Kuetz-Platz 7, in Hohenstein-Ernstthal, was not the subject of a loss "arising as a result of the nationalization, expropriation or other taking" by the German Democratic Republic, as required for a claim to be found compensable under section 602 of Title VI of the Act.

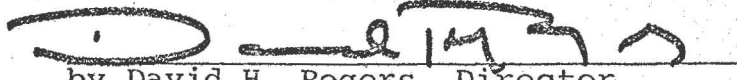
For the above cited reasons, the claim must be and hereby is denied.

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.

OCT 31 1979

For Presentation to the Commission



by David H. Rogers, Director
German Democratic Republic Claims
Division

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, a Final Decision based upon the Proposed Decision will be issued upon approval by the Commission any time after the expiration of the 30 day period following such service or receipt of notice. (FCSC Reg., 45 C.F.R. 531.5(e) and (g), as amended.)