

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

IN THE MATTER OF THE CLAIM OF

GERTA HOLMAN

Under the International Claims Settlement
Act of 1949, as amended

Claim No. G-1582

Decision No. G-1001

PROPOSED DECISION

This claim in the amount of \$78,000 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 asserted loss of an interest in real property consisting of an apartment house in Zeitz and several lots in Aue, Massnitz and Unterschwoeditz.

The record indicates that claimant became a United States citizen on April 27, 1956.

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."

The record in this claim indicates that the claimant inherited a one-half interest in certain real and personal property upon the death of Marie Rost on July 31, 1967. The evidence further indicates that on April 6, 1978 claimant was advised by a Hermann Ott of Zeitz that the estate of Mrs. Rost consisted of rental property at Wilhelm-Kulz-Platz 19 in Zeitz and land in Aue, Massnitz and Unterschwoeditz; that the tax assested value of the rental property was 26,700 ostmarks; that the land was being used by a collective farm; that there was a mortgage on the rental property for improvements of 23,500 ostmarks; that he, Hermann Ott, was administering the other one-half interest in the property because the co-heir had not been heard from in several years; and, that claimant's one-half share in the estate totalled 7,200 ostmarks.

Claimant asserts that, although she has received no official notification from the German Democratic Republic that her property has been taken, the imposition of the mortgage for repairs or improvements, without her consent, is in fact a taking of the property.

The Commission has considered this argument but concludes that in the normal course of events, improvements or repairs to real property, whether financed by a mortgage or otherwise, go to increasing the value of the real property and that it can not be assumed, absent evidence of an intent to deprive claimant of her property interest, that such mortgage is not primarily for the purpose of maintaining and improving the value of the property of the claimant.

It is of course possible that some future action by the German Democratic Republic would act to take claimants interest. If evidence of such action were submitted and, if inadequate compensation were provided by the government, this claim may be reconsidered, assuming the evidence of a taking was received by the Commisssion at least 60 days prior to the statutory deadline of May 16, 1981, for completion of the claims program under Public 94-542.


With respect to the unimproved land in Aue, Massnitz and Unterschwoeditz, the Commission finds that there is no evidence to establish that the use of this land by the State Collective Farm constitutes a taking of the claimant's interest in the properties or that such taking occurred on or after July 31, 1967, the date the property interest became owned by a United States national.

Therefore, based upon the foregoing, the Commission finds that the evidence of record is not sufficient to establish that the claimant owned an interest in properties which were nationalized or otherwise taken by the German Democratic Republic at a time when such interest was owned by a United States national as required under Public Law 94-542.

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

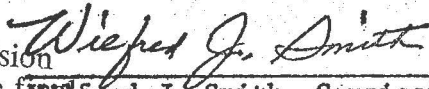
The Commission finds it unnecessary to make determinations with respect to other elements of this claim.


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


Richard W. Yarborough, Chairman

JUL 19 1979

This is a true and correct copy of the decision
of the Commission which was entered as the final
decision on AUG 22 1979


Wilfred J. Smith, Commissioner


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).

At any time after 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).