

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

IN THE MATTER OF THE CLAIM OF

DIETER NEUMANN
MARGRIT ANNI IVES

Under the International Claims Settlement
Act of 1949, as amended

Claim No. G-1891
G-1892

Decision No. G-3028

PROPOSED DECISION

These claims in the amount of \$51,250.00 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), are based upon the loss of an apartment building complex at Prenzlauer Strasse 48 in East Berlin and a savings account in the Staedtische Sparkasse in Werder an der Havel, near Berlin.

The record indicates that claimants became United States citizens on July 30, 1955 and November 1, 1957, respectively.

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 . . ."

With respect to the property in East Berlin for which claims have been asserted, claimants stated at the time of filing that the property was purchased by their grandfather, Friedrich Neumann, in March 1942. In addition, they have submitted a copy of Friedrich Neumann's will which indicates that he died in West Berlin during the year 1950.

In his will, which was placed into effect on December 22, 1950, Friedrich Neumann named his wife, Anna Neumann, as the sole beneficiary of his entire estate. The claimants were also named in Friedrich Neumann's will, but only as Nacherben, or "after-heirs," and their rights of succession to ownership of their grandfather's estate were limited in the will only to such part of the estate as might still be in existence upon the death or remarriage of the sole beneficiary, their grandmother, Anna Neumann. Having examined the text of the will, the Commission concludes that under its terms, the will vested in the claimants no present interest in any part of their grandfather's estate, including his real property in East Berlin, upon his death in 1950. Rather, their interest amounted at best to a right analogous to a contingent remainder in the estate, which, if it vested at all, would vest in them only if their grandmother remarried or when she eventually died.

Claimants state further that their grandmother, Anna Neumann, later died in West Berlin on December 8, 1963, and, in agreement with the conclusion reached above, they assert that they only succeeded to an interest relating to the claimed real property following their grandmother's death. They have also stated, however, that the property was taken by the German Democratic Republic authorities "before 1963," that the German Democratic Republic government has constructed a "large police department complex" on the property, and that their grandmother was a German citizen at the time of her death.

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."

In addition, section 601 of the Act provides the following definition:

- (1) the term 'national of the United States' means--
 - (a) a natural person who is a citizen of the United States . . ."

The Commission must therefore conclude that the claimants have not established the elements of a compensable claim under the Act, inasmuch as it appears from the record that the real property for which they have claimed was nationalized or otherwise taken by the German Democratic Republic before the property, or any interest therein, was owned by a United States national, as must be established in order for a claim to be compensable under sections 602 and 603 of the statute. Accordingly, this portion of the claimants' claims must be and it is hereby denied.

With respect to the bank account for which claims have been asserted, claimants stated at the time of filing that the amount on deposit in the account was approximately 2,500 marks. However, they were unable to provide the number of the account or any other pertinent information. It must be noted in particular that information regarding the ownership of the account or indicating whether it has been nationalized or otherwise taken by the German Democratic Republic is lacking in the record.

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The Regulations of the Commission provide:

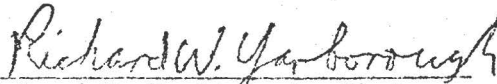
The claimant shall be the moving party and shall have the burden of proof on all issues involved in the determination of his claim.
(FCSC Reg., 45 C.F.R. § 531.6 (d) (1977)).

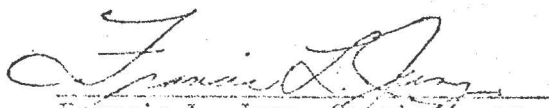
Based upon the foregoing, the Commission must conclude that claimants have not met the burden of proof with respect to this portion of their claims, in that the record fails to establish the existence or ownership of the bank account for which they have claimed or its loss through nationalization or other taking by the German Democratic Republic. As such, the Commission is without authority to find their claims for the loss of the account to be compensable. This portion of the claims therefore must also be and it is hereby denied.

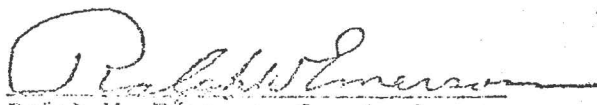
The Commission finds it unnecessary to make determinations with respect to other elements of these claims.

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

FEB 4 1981


Richard W. Yarborough, Chairman


Francis L. Jung, Commissioner


Ralph W. Emerson, 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.)

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.)

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