

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

IN THE MATTER OF THE CLAIM OF

HEINZ E. GERSTLE

Under the International Claims Settlement  
Act of 1949, as amended

Claim No. G-2050

Decision No. G-1278

Counsel for Claimant:

Herz and Noa

By: Heinz Herz, Esquire

PROPOSED DECISION

This claim in the amount of \$100,000.00 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), is based upon the loss of real property at Lindenstrasse No. 1 in Chemnitz.

The record indicates that claimant became a United States citizen on December 22, 1952.

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 legal title to the subject property was originally lost during the Nazi regime as a result of racial and religious persecution. The Commission has held in the Claim of MARTHA TACHAU, Claim No. G-0177, Decision No. G-1071, that such persecutory losses will not be considered by the Commission to have cut off all rights of the original owners or their heirs, and that the persecuted owners retained a beneficial interest in the property.

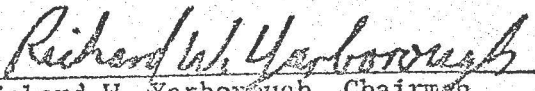
The Commission has also held in the Claim of MARK PRICEMAN, Claim No. G-2116, Decision No. G-1073, that decrees of September 6, 1951, effective in the German Democratic Republic, and December 18, 1951, effective in Berlin, which provided for taking over the administration of foreign owned property, and the decree of July 17, 1952, confiscating or taking under administration property of former residents of the GDR, constituted a governmental program which terminated all rights of restitution of former persecutees or their heirs. The Commission found such a termination of rights to be a taking of the property interests of such persons; and, where the property interests were owned by United States nationals at the time of loss, the termination of rights would form the basis of a compensable claim.

The beneficial ownership interest involved herein, however, was not owned by a United States national at the time of the termination of the right of restitution on September 6, 1951 by the German Democratic Republic and the Commission concludes, therefore, that the loss of this property occurred on a date when claimant's interest therein was not owned by a national of the United States as required by section 603 of the Act. See Claim of ARTHUR SIMON, Claim No. G-0479, Decision No. G-1072.

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

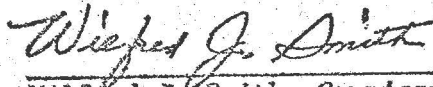
The Commission finds it unnecessary to make determinations with respect to other elements of this claim.

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

  
Richard W. Yarborough, Chairman

SEP 12 1979

This is a true and correct copy of the decision  
of the Commission which was entered as the final  
decision on OCT 17 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).