

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

IN THE MATTER OF THE CLAIM OF

HUNTINGTON BANK AND TRUST COMPANY,  
TRUSTEE UNDER THE WILL OF  
BERTIL G.F. SIMA

Claim No. G-2232

Decision No. G-1870

Under the International Claims Settlement  
Act of 1949, as amended

Counsel for Claimant:

Harry G. Roebke, Esquire  
Middleton & Roebke

PROPOSED DECISION

This claim in the amount of \$114,600.00 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 and lost rents from real property in Markklelberg at Mittelstrasse 4.

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 evidence of record indicates that Bertil G.F. Sima, a citizen of the United States since his naturalization on April 13, 1937, owned real property in Markklelberg at Mittelstrasse 4 which was taken by the German Democratic Republic. The record further indicates that Bertil G.F. Sima died on September 5, 1976 leaving any right he may have to claim for the property in trust to the claimant.

The trust instrument submitted by claimant indicates that the beneficiaries of the trust include the decedent's surviving spouse, Bernice C. Sima, for life, with various other beneficiaries to take upon the death of Bernice C. Sima.

The Commission has held on numerous occasions that the national character of a claim for purposes of the continuity of United States ownership requirement of section 603 of the Act is to be determined on the basis of the nationality of the beneficial owners of the property. (See, e.g., Claim of ELLIN VEIT BONSPEYER, Claim No. BUL-01179, Decision No. BUL-0106, "The national character of the claim must be tested by the nationality of the individuals holding a beneficial interest therein rather than by the nationality of the nominal or record holder of the claim.")

By letters dated November 7, 1978, December 11, 1978, and November 14, 1979, claimant was requested to submit evidence of the nationality of the beneficiaries of the trust. Claimant has responded by asserting that the proper party for determination of the national character of the claim is trustee, and has not submitted evidence of the nationality of the beneficiaries.

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)).

Therefore, the Commission concludes that the claimant has failed to meet the burden of proving that the claim "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" as required for compensation under section 603 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.

FEB 13 1980

For Presentation to the Commission



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

This is a true and correct copy of the decision  
of the Commission which was entered as the final  
decision on SEP 10 1980

  
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, 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.)

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.)