

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

IN THE MATTER OF THE CLAIM OF

JOHN K. WERTHEIM

Under the International Claims Settlement
Act of 1949, as amended

Claim No. G-2243

Decision No. G-2023

Hearing on the Record held on **MAY 15 1981**

FINAL DECISION

The claim in the amount of \$3,350,000.00 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 a block of commercial and residential property at Schiffbauerdamm 4a, 5, 6, and 7, in East Berlin; a lakefront house and lot at Am Seeblick 3 in Gross-Glienicke, near Berlin; and a one-half interest in a "hunting estate" at Gross Schulzendorf ueber Zossen.

The record indicates that claimant became a United States citizen on November 14, 1952.

By Proposed Decision dated March 19, 1980, the Commission denied this claim, for the reason that the record failed to establish that claimant's interests in the above-described real property were taken by the German Democratic Republic at a time when they were owned by a national of the United States, as must be established in order for a claim to be found compensable under the Act.

Claimant has objected to the Proposed Decision. As the basis for his objection, he disputes the Commission's presumption that his properties in East Berlin and Gross-Glienicke were taken by the German Democratic Republic no later than October 23, 1952, and August 11, 1952, respectively, pursuant to the "Decree on the Administration and Protection of Foreign-Owned property in Berlin" of December 18, 1951, and the "Decree on the Administration and Protection of Foreign-Owned Property in the German Democratic Republic" of September 6, 1951. In support of his objection, claimant has submitted a copy of a lengthy decision rendered by the "Administrative Court of [West] Berlin" in January 1980 on a claim filed under West German law by three American citizens for loss of certain real property in the territory of the present-day German Democratic as a result of Nazi religious persecution during World War II. The arguments advanced in his objection are set forth and discussed below.

Claimant first contends that his properties would not have been subjected to the above-cited decrees and regulations, and thus taken by the German Democratic Republic, until after he became a United States citizen and the German Democratic Republic became aware of his new citizenship. However, he has submitted no evidence upon which the Commission could reach a finding as to a specific or even approximate later date upon which a taking of his property was actually effected. Under claimant's reasoning, it would be equally valid to conclude that his property was never subjected to taking, but rather that it has been managed for his benefit by a person or entity within the German Democratic Republic, under an arrangement whereby any profits realized from rental of the property are accumulated in a bank account in his name and are available to him for certain uses within the country. In the case the property in Gross-Glienicke, this seems even more likely to be the case, since claimant has stated that as late as 1967, he was requested by authorities in Gross-Glienicke to permit them

to make a change of tenants in his property, thereby indicating that the property was still being overseen for his benefit. While the Commission is aware that in such instances, absentee owners are not presently permitted to transfer out of the German Democratic Republic the monies realized from rental of their property, and must comply with restrictions in use of the monies within the country, such limitations and restrictions are considered legitimate exercises of a sovereign government in the control of its currency and thus do not amount to a taking of property under international law. See e.g., Claim of MARTIN BENDRICK, Claim No. G-3285, Decision No. G-0220.

Claimant next contends that the decrees previously referred to had to await validation by a subsequent constitutional enactment in the German Democratic Republic, and that because the decrees were not "self-operating," they were not brought to bear on individual properties until several years after their dates of issuance. Here again, however, he has referred the Commission to no legal authority and submitted no evidence to support his argument. On the other hand, the regulations which were issued in implementation of those decrees, copies of which have been provided to the claimant, clearly indicate that the decrees were to be brought to bear as quickly as possible; the regulations directed the appropriate administrative agency of the German Democratic Republic government ". . .to procure, without delay, the exclusive disposition right over the assets transferred under its administration. It must secure that all portions of the asset are seized and the income from the assets is collected." This language is the basis for the Commission's presumption that, in the absence of specific evidence, property which would have been subject to those decrees would be considered to have been taken as of the date of issuance of the regulations--that is, as of October 23, 1952, in the case of property in East Berlin, and as of August 11, 1952, in the case of property elsewhere in the German Democratic Republic.

Claimant also argues that his property would not have been subject to the aforementioned decrees when they were issued on December 18, 1951, in the case of property in East Berlin, and September 6, 1951, in the case of property elsewhere in the German Democratic Republic, because he had been a citizen and resident of Germany in 1945. However, a review of the decree-implementing regulations indicates that the decrees were to be applied to all property which was owned to the extent of 50% or more by a national of a foreign State as of May 8, 1945. The Commission has in fact seen that at times, the authorities in the territory of the German Democratic Republic and in East Berlin equated permanent residence in a foreign country as of May 8, 1945, with foreign nationality as of that date. Furthermore, it has been seen that even where property was not acquired until after World War II, and the owner was a citizen or permanent resident of a foreign country at the time, the German Democratic Republic authorities have treated that property as coming within the purview of the respective decrees and regulations. In view of these variations, the Commission has held that property of claimants who became United States citizens at any time before the issuance of the decree-implementing regulations would have been subjected to public administration and consequent taking by the German Democratic Republic through application of those decrees and regulations.

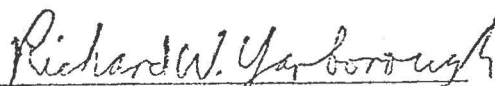
In summary, then, the facts of the claimant's claim may be viewed in two possible alternative ways. On the one hand, given that claimant was apparently a citizen and resident of Germany as of the end of World War II, his property may never have subsequently come under the 1951 decrees and 1952 regulations at all. In the alternative, his establishment of permanent residence in the United States in 1947 may have been considered by the German Democratic Republic authorities to make his property foreign-owned

for purposes of the decrees and regulations, with the result that it would have been placed under administration, and thus taken, as of the dates of the decree-implementing regulations in 1952. In either case, since he did not actually become a United States citizen until after those dates, his claim does not meet the requirements of compensability set forth in the Act and the Commission is precluded from giving it favorable consideration.

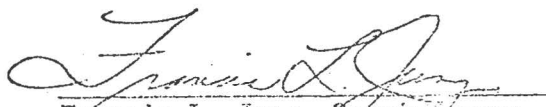
As a final point, the West Berlin court decision submitted by the claimant adds no support to his objection. That decision merely holds that where title to property was forfeited through Nazi persecution and then returned through cancellation of the laws of the Third Reich which had provided for the forfeiture, such restitution would preclude the appellant-persecutees from receiving compensation under the West German "Equalization of Burdens" claims statutes for their earlier Nazi-era persecutory loss. It has no bearing on the issue of whether, or when, such property may have later been nationalized or otherwise taken by the German Democratic Republic.

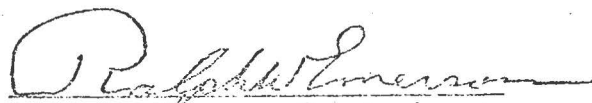
Based upon the foregoing, the Commission must therefore affirm the denial of this claim as set forth in the Proposed Decision. This constitutes the Commission's final determination in this claim.

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


Richard W. Yarborough, Chairman

MAY 15 1981


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 15 1981


Executive Director

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PROPOSED DECISION

This claim in the amount of \$3,350,000.00 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 a block commercial and residential property at Schiffbauerdamm 4a, 5, 6 and 7, in East Berlin; a lakefront house and lot at Am Seeblick 3 in Gross-Glienicke, near Berlin; and a one-half interest in a "hunting estate" at Gross Schulzendorf ueber Zossen, which interest was assertedly inherited by claimant from his father, Fritz Wertheim, upon the latter's death in 1976.

The record indicates that claimant became a United States citizen on November 14, 1952. Claimant's father had become a United States citizen on November 25, 1953.

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."

With respect to the properties in East Berlin and Gross-Glienicke which are subject herein, evidence was submitted at the time of the filing of this claim which establishes that legal title to the properties has been held by the claimant at all relevant times.

However, no evidence was submitted to establish that either of these properties has been nationalized, expropriated, or otherwise taken by the German Democratic Republic, within the meaning of section 602 of the Act, or that, if so taken, such action occurred on or after November 14, 1952, claimant's date of United States citizenship, when the property could first be considered to have been owned by a United States citizen.

By letter dated October 26, 1978, it was emphasized to the claimant that the Commission's authority under Public Law 94-542 is limited to consideration of the nationalization, confiscation, or other taking by the German Democratic Republic of property owned by United States citizens, and claimant was advised to submit evidence upon which the Commission could base a finding that his property was taken by the German Democratic Republic on or after his date of United States citizenship.

In response to this letter, claimant submitted a translation of a document relating to his property in East Berlin which indicates that this property may have been placed under "trusteeship" as former Jewish-owned property by the governmental authorities in East Berlin in 1949. However, based on information provided by the claimant, including the fact that he is also of Jewish heritage, together with other evidence in the record, the Commission concludes that the East Berlin authorities' action with respect to the property in 1949, if it occurred, was erroneous, that claimant's title to the property was validly acquired, and that any placement of the property under "trusteeship" would at best have been temporary and thus could not have amounted to a taking of the property as defined by the Act.

Except for the evidence and information just discussed, however, the record remains lacking in documentation or evidence of action taken by the Government of the German Democratic Republic against the subject property in East Berlin or the property in Gross-Glienicke, either before or after claimant's date of United States citizenship, which could be considered by the Commission as a possible basis for finding that either property was taken by the German Democratic Republic within the meaning of the statute. On the contrary, claimant stated at the time of his submission of the previously discussed evidence relating to his East Berlin property that in a visit to East Berlin in 1966, he found that his property in East Berlin was still registered in his name in the land records. In addition, he stated that in 1967, the authorities in the area of Gross-Glienicke had written to him requesting authorization to effect a change of tenants in his property there, a fact which could be taken to indicate that he was still considered the property's legal owner.

Accordingly to the record, claimant immigrated to the United States and became a resident thereof in 1947. In previous decisions, where evidence of an actual taking of a claimant's property by the German Democratic Republic has not been submitted but it is shown that the claimant established residency outside of Germany either before or shortly after the end of World War II, the Commission has concluded, based on its knowledge of decrees and regulations in the German Democratic Republic, that the claimant's property in the German Democratic Republic would have come within the purview of certain decrees concerning the "Administration and Protection of Foreign-Owned Property" which were respectively issued by the Municipal Council of East Berlin on December 18, 1951, and by the Government of the German Democratic Republic on September 6, 1951. On the basis of these decrees, the Commission has then determined, in the absence of other evidence, that the properties coming under these decrees would be considered to have been taken by the German Democratic Republic, within the meaning of the Act, as of the dates of the first regulations which implemented the respective decrees. In the case of property in East Berlin, this date was October 23, 1952, and in the case of property in the rest of the German Democratic Republic, the date was August 11, 1952.

As stated, however, claimant did not become a United States citizen until November 14, 1952, which was after both of the dates just cited. Therefore, based on the fact that claimant has submitted no evidence to establish whether, and if so, when, his property in East Berlin and Gross-Glienicke may have been taken by the German Democratic Republic, the Commission must conclude, in accordance with its previous decisions, that if his properties, or either of them, were in fact taken, such taking would have occurred no later than October 23, 1952, in the case of his property in East Berlin, and no later than August 11, 1952, in the case of his property in Gross-Glienicke. Since claimant was not a United States citizen on either of these dates, as required by Sections 602 and 603 of the Act, above quoted, his claim for these properties must be and it is hereby denied.

With respect to the real property at Gross Schulzendorf ueber Zossen on which this claim is partially based, it is noted that an interest in this property is also the subject of a claim asserted by claimant's aunt, Mrs. Frieda Wortham (Claim No. G-2049), which is presently pending before the Commission.

The record in the present claim indicates that legal title to the claimed property at Gross Schulzendorf ueber Zossen 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.

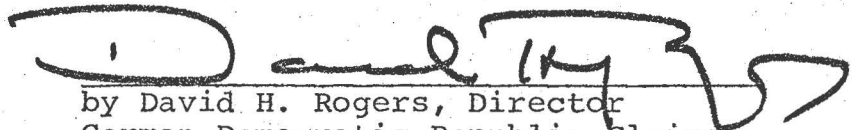
The beneficial ownership interest in the Gross Schulzendorf property which is involved herein, however, was not owned by a United States national at the time of the termination by the German Democratic Republic of the right of restitution on September 6, 1951. As of this date, the interest was held by claimant's father, who did not become a United States citizen until November 25, 1953. The Commission concludes, therefore, that the loss of this property occurred on a date when the claimed interest in the property was not owned by a United States citizen as required by sections 602 and 603 of the Act. See Claim of ARTHUR SIMON, Claim No. G-0479, Decision No. G-1072. Accordingly, this portion of the claim must also be and is hereby 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.

MAR 19 1980

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.)

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.)