

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

IN THE MATTER OF THE CLAIM OF

HANS WACHSBERGER

Under the International Claims Settlement
Act of 1949, as amended

Claim No. G-2411

Decision No. G-0498

Appeal and objection from a Proposed Decision entered on February 21, 1979.

Oral Hearing held on July 9, 1979.

FINAL DECISION

This claim in the amount of \$450,000.00 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 certain personal property and a paper wholesale business, which losses originally occurred in 1937 when claimant's parents left Germany.

In its Proposed Decision, issued February 21, 1979, the Commission denied the claim in its entirety. That part of the claim for the loss of personal property was denied on the ground that the loss occurred in 1937 when the property was left in a Berlin apartment when claimant's parents fled from Germany, and there was no evidence or reason to presume that the articles of personal property survived the Second World War and were the subject of a nationalization, expropriation or other taking by the German Democratic Republic.

That part of the claim for the loss of a paper wholesale business was denied on the ground that the business was owned by claimant's father, a German national, until July 15, 1954, and no evidence had been offered nor was there reason to presume that any action had been taken against the assets of this business by the German Democratic Republic after July 15, 1954.

Claimant filed objection to the Proposed Decision and requested an oral hearing which was held on July 9, 1979, at which claimant appeared.

As to the personal property lost in Berlin, claimant has submitted no additional evidence to indicate that the property survived World War II. Evidence previously submitted to the Commission establishes that the apartment in which the personal property was left was totally destroyed by bombing during the war. Therefore, the Commission finds no basis to change its original denial of this aspect of the claim.

Concerning the loss of the paper wholesale business, claimant contends that the business was partly owned by his mother, despite the fact that the commercial register listed his father as the sole owner of the business. In support of his contention, claimant has cited section 1438 of the German Civil Code which he contends established a system of community property in Germany under which all property of a spouse was, as a matter of law, jointly owned.

The Commission has reviewed the law in force in Germany at the time the business was lost. Book four, title six of the German Civil Code prescribes the marital property rights. Section 1 of said title defines the marital property rights given by law and does not prescribe any joint or communal interest of a spouse in the property of the other spouse. Section 2 of title six allows husband and wife to enter a marriage contract in which certain property rights may be granted to either or both spouses. This section prescribes the elements which must be met to enter such a marriage contract, which requirements include among others that it be closed in the presence of both parties in court or before a notary. Section 1438, cited by claimant, sets forth a definition of and the terms and conditions relating to community property when and where created by a marriage contract. As no evidence has been presented to the Commission indicating the existence of a formal marriage contract, the section of the code cited by claimant would appear to have no bearing on the issue of ownership of the business.

The German Commercial Code on the other hand provides for the registration of a business in the commercial register and requires that any change in ownership must be officially recorded in the commercial register. A copy of the commercial register has been provided to the Commission which specifically reads that claimant's father, Leo Wachsberger, is the sole owner of the firm.

The Commission further notes that no matter who may have been the owner of the property when it was originally lost in 1938, there was no evidence nor reason to believe that any assets of this business survived the Second World War to be the subject of a nationalization, expropriation or other taking by the German Democratic Republic to form the basis of a compensable claim.

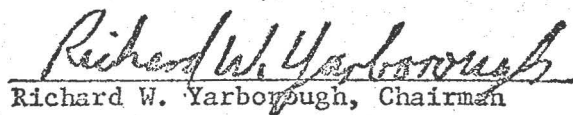
For the above cited reasons, the Proposed Decision denying this claim is affirmed and made the final determination of the Commission.

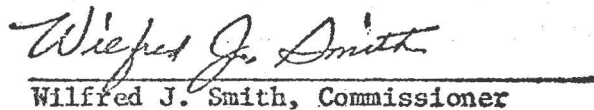
Dated at Washington, D.C.
and entered as the Final
Decision of the Commission.

AUG 22 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


Executive Director


Richard W. Yarborough, Chairman


Wilfred J. Smith, Commissioner

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PROPOSED DECISION

This claim in the amount of \$450,000.00 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 certain personal property and a paper wholesale business which losses originally occurred in 1937 when claimant's parents left Germany.

The record indicates that claimant became a United States citizen on March 28, 1956. Claimant's mother was a United States citizen by birth and claimant's father is asserted to have become a United States citizen on July 15, 1954.

Under section 602, Title VI of the Act, supra, 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, supra, 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."

Claimant previously asserted claim for the same losses with the Commission in 1965 under Title II of the War Claims Act of 1948. As requested by claimant, the Commission has incorporated all evidence and documentation previously filed in consideration of his claim. Claimant has submitted no further evidence in support of his claim under Public Law 94-542.

Based upon the entire record, the Commission finds that personal property consisting of furniture, household effects, and jewelry owned by claimant's mother, was left behind by claimant's parents in October 1937 when they fled from Berlin to Prague.

The evidence of record does not establish that these items of personal property survived World War II. Therefore, the evidence does not establish that there was property in existence which was the subject of a loss "arising as a result of the nationalization, expropriation, or other taking" by the German Democratic Republic, as required by section 602 of Title VI of the Act, supra.

For this reason the claim for personal property assertedly owned by claimant's mother must be and hereby is denied.

The Commission further finds, based upon the evidence previously submitted and consistent with its decision number W-13181 in claim number W-16565 under the War Claims Act of 1948, that the wholesale paper business was owned by claimant's father, a German national until July 15, 1954, the asserted date of his naturalization as a United States citizen. This finding was affirmed by Final Decision of the Commission, issued October 19, 1966, after an objection and an oral hearing at which claimant gave testimony in his own behalf.

Therefore, under no theory could any of the assets of the wholesale paper business be considered to be property owned by a United States citizen until July 15, 1954.

Claimant has submitted no evidence nor is the Commission aware of any evidence of any act by the German Democratic Republic which could be construed as a nationalization, expropriation or other taking of this wholesale paper business by the German Democratic Republic occurring on or after July 15, 1954.

The Commission has reviewed a series of postwar decrees and regulations affecting property such as that for which claimant makes claim. The Commission concludes that if any assets of the wholesale paper business, in fact, survived World War II and were, in fact, taken by the Government of the German Democratic Republic, such taking would have occurred prior to July 15, 1954. It therefore follows that any loss of this property occurred at a time when it was not owned by a United States national, as required by section 603 of the Act, supra.

For the above cited reasons, the entire 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 21 1979


Richard W. Yarborough, Chairman


Wilfred J. Smith, 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.)