

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

IN THE MATTER OF THE CLAIM OF

EVA KROY WISBAR
RUTH E. KROY

Under the International Claims Settlement
Act of 1949, as amended

Claim No. G-2455

Decision No. G-2795

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

FINAL DECISION

This claim in the amount of \$23,000.00 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 asserted loss of a house in Burg/Magdeburg on Bahnhofstrasse 25, a country house and land in the Berlin suburb of Erkner/Fangschleuse, and the Conrad Tack Shoe Factory located in Burg/Magdeburg.

By Proposed Decision dated January 7, 1981, the Commission denied the parts of the claim made for the loss of the house in Burg/Magdeburg at Bahnhofstrasse 25 and the country house and land in Erkner/Fangschleuse for the reason that claimant EVA KROY WISBAR had failed to show that she owned any real property or an interest therein which was nationalized, expropriated or otherwise taken by the German Democratic Republic, as is required for compensation under section 602 of the Act. The Commission further denied the portion of the claim made for the loss of the Conrad Tack Shoe Factory in Burg/Magdeburg on the ground that no evidence had been submitted to show that the subject property survived World War II and was subsequently taken by the German Democratic Republic.

By letters dated January 23, 1981 and March 12, 1981, claimant EVA KROY WISBAR, objected to the findings of the Proposed Decision and submitted affidavits and documentation in support of her contention that she had succeeded to an ownership interest in all three subject real properties.

Based upon evidence submitted by the claimants and through information supplied by the Commission's West German field office, the Commission now finds that Rudolf Mayer, claimant EVA KROY WISBAR's uncle, owned the house in Burg/Magdeburg on Bahnhofstrasse 25 until his death in 1933.

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.

Following the death of Rudolf Mayer's wife, Franziska, in 1934, and the subsequent death of his son, Kurt, during World War II as a result of his incarceration by the Nazis, 1/3 of the retained beneficial ownership of the subject house in Burg/Magdeburg at Bahnhofstrasse 25 passed to claimant EVA KROY WISBAR and 1/3 passed to her brother, Frederick Kroy (Fritz Krojanker), a United States citizen since September 7, 1944. Following his death on September 5, 1970, Frederick Kroy's 1/3 beneficial ownership interest in the subject property passed in its entirety to his wife, RUTH E. KROY, a United States citizen since April 27, 1946. The Commission accordingly has joined RUTH E. KROY to this claim as the successor to the beneficial ownership interests of Frederick Kroy.

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 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 Commission therefore finds that the subject real property was taken by the German Democratic Republic, within the meaning of the Act, as of September 6, 1951, and that claimants EVA KROY WISBAR and RUTH E. KROY are entitled to awards for the loss of their respective 1/3 beneficial ownership interests therein as of that date.

Based on the entire record, including descriptions of the property supplied by the claimants, and through a comparison to awards made by the Commission for similar properties located in neighboring communities, the Commission finds that the house at Bahnhofstrasse 25 in Burg/Magdeburg, claimed for herein, had a value of \$30,000.00 as of the previously determined date of loss of September 6, 1951. Claimants EVA KROY WISBAR and RUTH E. KROY are accordingly entitled to awards of \$10,000.00 each based on their individual 1/3 retained beneficial ownership interests therein.

With respect to the part of the claim made for the loss of a country house and land outside of Berlin in Erkner/Fangschleuse, the Commission, through evidence supplied by the claimants and information furnished by its European field office, now finds that Heinrich Brueckmann, claimant EVA KROY WISBAR's uncle, owned the subject real property until the time of his death in 1928.

Based upon the German laws of intestate succession, 1/2 of the ownership of the country villa in question would have passed to Heinrich Brueckmann's wife, Selma, and the remaining 1/2 would have been divided up evenly among the five surviving Brueckmann families. Following the death of Franziska Mayer, the last surviving Brueckmann sister, in 1934, 1/8 of the ownership of the subject property would have passed to claimant EVA KROY WISBAR and 1/8 to her brother, Frederick Kroy.

The Commission finds that, as with the previously mentioned property at Bahnhofstrasse 25 in Burg/Magdeburg, although legal title to the subject property was lost during the Nazi regime, the original owners or their heirs retained a beneficial interest therein. The Commission further finds that the subject property would have been taken by the German Democratic Republic, pursuant to the above-referenced decree of September 6, 1951, and that claimant EVA KROY WISBAR and claimant RUTH E. KROY, as the successor to Frederick Kroy, are entitled to awards for the loss of their individual 1/8 beneficial ownership interests in the property as of that date.

Based upon the entire record, including descriptions of the property provided by the claimants and former neighbors, comparisons to Commission awards made for similar properties located on the outskirts of Berlin, and information supplied by the Commission's West German field office which indicates that the subject country villa was subsequently turned into a home for disabled children following World War II, the Commission finds that the country house and land near Berlin in Erkner/Fangschleuse, claimed for herein, had a value of \$24,000.00 as of the previously determined date of loss of September 6, 1951. Claimant EVA KROY WISBAR and RUTH E. KROY are accordingly entitled to award of \$3,000.00 each based on their respective 1/8 retained beneficial ownership interests therein.

With regard to the part of the claim made for the loss of the Conrad Tack Shoe Company factory in Burg/Magdeburg, the Commission now finds, based upon information supplied by the claimants as well as evidence produced by the Commission's West German field office, that the subject company was originally formed by Gustav and Hermann Krojanker but that later 40% of the ownership was transferred to the company's executive director, Rudolf Mayer, claimant EVA KROY WISBAR's uncle. Other evidence establishes that the owners were forced under duress to sell the Conrad Tack Company in 1933.

As with the previously mentioned properties at Bahnhofstrasse 25 in Burg/ Magdeburg and in Erkner/Fangschleuse, the Commission finds that the original owners of the Conrad Tack Company or their heirs retained a beneficial interest in the subject property and that the shoe factory in question was taken by the German Democratic Republic, pursuant to the above-referenced decree of September 6, 1951. Claimant EVA KROY WISBAR and claimant RUTH E. KROY, as the successor to Frederick Kroy, are accordingly entitled to awards based on their individual 2/15 beneficial ownership interests in the subject property growing out of their succession to equal 1/3 shares in Rudolf Mayer's original 40% ownership interest in the company.

Based upon the entire record, including descriptions of the factory complex provided by the claimants, the Commission finds that the factory building and grounds formerly belonging to the Conrad Tack Shoe Company in Burg/Magdeburg, claimed for herein, had a value of \$225,000.00 as of the previously determined date of loss of September 6, 1951. Claimants EVA KROY WISBAR and RUTH E. KROY are accordingly entitled to awards of \$30,000.00 each based on their respective 2/15 retained beneficial ownership interests therein.

The Commission has concluded that in granting awards on claims under section 602 of Title VI of the Act, for the nationalization or other taking of property or interests therein, interest shall be allowed at the rate of 6% per annum from the date of loss to the date of settlement. (Claim of GEORGE L. ROSENBLATT, Claim No. G-0030, Decision No. G-0100 (1978)).

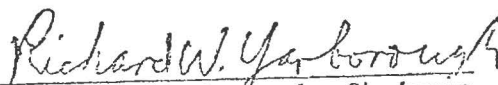
The Commission therefore withdraws its previous denial and makes the following awards as its final determination on this claim.

A W A R D S

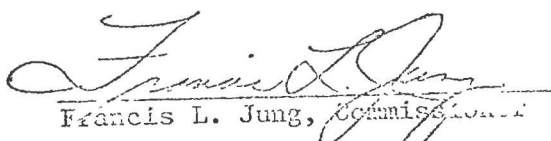
Claimant, EVA KROY WISBAR, is therefore entitled to an award in the amount of Forty-Three Thousand Dollars (\$43,000.00), plus interest at the rate of 6% simple interest per annum from September 6, 1951 until the date of the conclusion of an agreement for payment of such claims by the German Democratic Republic.

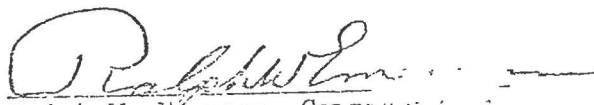
Claimant, RUTH E. KROY, is therefore entitled to an award in the amount of Forty-Three Thousand Dollars (\$43,000.00), plus interest at the rate of 6% simple interest per annum from September 6, 1951 until the date of the conclusion of an agreement for payment of such claims by the German Democratic Republic.

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

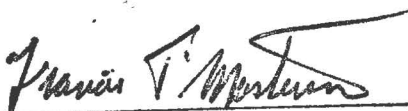

Richard W. Yarborough, Chairman

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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IN THE MATTER OF THE CLAIM OF

EVA KROY WISBAR

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PROPOSED DECISION

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The record indicates that claimant became a United States citizen on February 25, 1944.

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. . ."

At the time of filing, claimant stated that she was the sole heir to her mother's sister and brother-in-law, Franziska and Rudolf Mayer, who owned the real property in Burg/Magdeburg and died in 1934 and 1933 respectively. Through its own investigation, the Commission's field office in West Germany was able to confirm Rudolf Mayer's ownership of the property claimed. Although legal title to the subject property apparently remained with the claimant's relatives during the Nazi regime, the evidence of record indicates

that the property would have been taken by the German Democratic Republic pursuant to the "Decree on the Administration and Protection of Foreign-Owned Property in the German Democratic Republic," of September 6, 1951. The Commission has previously held that, absent evidence of a specific date of taking, the property will be considered to have been taken as of August 11, 1952, the date of the first regulations implementing the decree and that, upon proof of her ownership interest in the subject property, the claimant would have been entitled to an award for her loss as of that date.

The claimant also asserted that she was the sole final heir of her uncle, Heinrich Brueckmann, who owned the real property in Fangschleuse and died in 1928. The Commission's European field office was able to confirm Heinrich Brueckmann's ownership of the property claimed and also ascertained that, following the end of World War II, the local community of Gruenheide turned the former Brueckmann villa into a home for disabled children. Following confirmation of her ownership interest in the subject property, the claimant would have been entitled to an award for the loss of the property as of the date of its conversion to a children's home since the Commission has previously held that such actions of the German Democratic Republic in placing property of United States citizens under administration constitute a "nationalization, expropriation or other taking" as defined by section 602 of the Act.

However, the record indicates that the claimant has failed to provide any evidence to the Commission which would establish her ownership interest in the properties claimed as well as any information concerning the value of the properties.

By Commission letters of November 16, 1978, April 16, 1979, and May 30, 1980, the claimant was informed of the necessity of establishing her ownership interest in the properties claimed and suggestions as to how to provide such evidence were made. No reply to these letters has been received by the Commission.

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)).

By letter dated July 7, 1980, the claimant was informed that the Commission's field office in West Germany had reported on her claim and that proof of her inheritance after Rudolf Mayer and Heinrich Brueckmann was still missing. To date, no such evidence has been received.

Therefore the Commission finds that claimant, EVA KROY WISBAR, has failed to meet the burden of proof in that she has not submitted evidence to establish that she owned property or an interest therein which was taken by the German Democratic Republic as required for compensation under section 602 of the Act.

For the above cited reason the part of the claim for the loss of real properties in Burg/Magdeburg and Erkner/Fangschleuse must be and hereby is denied.

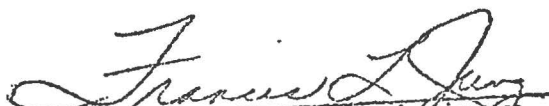
With respect to that portion of the claim based upon shares of stock in the Conrad Tack Shoe Factory, the Commission finds that no evidence has been submitted to show that this property survived World War II and was subsequently taken by the German Democratic Republic. Accordingly, this portion of the claim based on shares of stock 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.

JAN 7 1981


Richard W. Yarborough, Chairman


Francis L. Jung, 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 a 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).