

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

IN THE MATTER OF THE CLAIM OF

HEINRICH WERNER BUCHHOLZ

Under the International Claims Settlement
Act of 1949, as amended

Claim No. G-2560

Decision No. G-3128

Hearing on the Record held on APR 01 1981

FINAL DECISION

This claim in the amount of \$42,500.00 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 an apartment house at Fehrbelliner Strasse 81 in East Berlin, and a leather belt factory at Gruenstrasse 5/6 in East Berlin.

By its Proposed Decision dated February 11, 1981, the Commission denied this claim for the reason that the loss of both pieces of property occurred on a date when the claimant's interest therein was not owned by a national of the United States, as required for compensation by section 603 of the Act. The Commission found that, because of the language in his father's will, the claimant's property interest did not vest until August 15, 1967, the date of the death of his mother, Johanna Buchholz, a citizen of the United Kingdom.

By letter dated February 25, 1981, the claimant objected to the findings of the Proposed Decision on the following grounds:

1. The Commission's interpretation of the language in the will of the claimant's father, which named his mother, Johanna Buchholz, as "befreite Vorerbin", is incorrect in that it did not give her unlimited power to dispose of the estate. Although the

claimant admits that his mother was free to dispose of the estate by using it up, it is his contention that his mother's inability to dispose of it through a will created a vested remainder interest for him.

2. It was not the intention of his father to give his mother the freedom to dispose of the estate in any manner she might wish.

3. The words "befreite Vorerbin", rather than meaning a mere expectancy, actually created a remainder interest.

With respect to the first objection, the Commission reiterates the findings of its Proposed Decision in that Johanna Buchholz's status as a "befreite Vorerbin", combined with language in the will stating that she is to be free of all restrictions to the extent allowed by law, gave her the power to alienate and dispose of any and all the property of the estate. Since the claimant, as a "Nacherben", was an heir only of what was left over of the inheritance at the time of his mother's death, what the claimant referred to as an interest in property was, at the time of the taking thereof by the German Democratic Republic on December 18, 1951, only a mere expectancy.

In regard to the second objection, the Commission finds that the intent of the claimant's father is clearly expressed in the terms of his will which named Johanna Buchholz as "befreite Vorerbin" and the claimant and his brother as "Nacherben". Accordingly, had the claimant's father intended to limit the power of Johanna Buchholz to dispose of the estate, he would have used other language in the will to describe her interest.

With respect to the third objection, the Commission notes that it was the designation of Johanna Buchholz as a "befreite Vorerbin" plus the language of paragraph 2 of the will stating that she be free of all restrictions to the extent allowed by law which made the claimant's interest a mere expectancy. It was not, as the claimant suggests, just the words "befreite Vorerbin" that raised Johanna Buchholz's status beyond that of a life tenant.

• Rather, it was Johanna Buchholz's designation as a "befreite Vorerbin" combined with the complete power of alienation of the estate given to her in paragraph 2 of the will which created the unrestricted power.

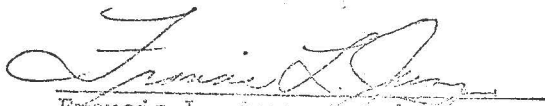
Accordingly, having given full consideration to the entire record, including the claimant's objections, the Commission finds that the evidence does not warrant any change in its Proposed Decision.


The Commission therefore affirms the findings in its Proposed Decision as its final determination on this claim.

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

APR 01 1981


Richard W. Yarborough, Chairman


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 APR 1 1981


Executive Director

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IN THE MATTER OF THE CLAIM OF

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PROPOSED DECISION

This claim in the amount of \$42,500.00 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 an apartment house at Fehrbelliner Strasse 81 in East Berlin, and a leather belt factory at Gruenstrasse 5/6 in East Berlin.

The record indicates that claimant became a United States citizen on May 7, 1951.

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 in this claim, including a report from the Commission's West German field office, establishes that Siegfried Buchholz, the father of claimant HEINRICH WERNER BUCHHOLZ, owned a factory at Fehrbelliner Strasse 81 in Berlin, which in 1934 had been converted into an apartment house, until his death on May 27, 1935. Subsequent to Siegfried Buchholz's death, the apartment building in question was forceably sold by the Nazis.

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 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.

At the time of filing, claimant HEINRICH WERNER BUCHHOLZ asserted that he acquired a 1/2 remainder interest in the subject property, under the terms of his father's will, while his mother, Johanna Buchholz, had received a life estate therein.

However, the language used in Siegfried Buchholz's will, submitted as evidence to the Commission, shows that Johanna Buchholz was named as "befreite Vorerbin" and claimant HEINRICH WERNER BUCHHOLZ and his brother were named as "Nacherben"; terms which are not exactly comparable to the common law concepts of life tenants and remaindermen.

Under paragraph 2137 of the German civil law (BGB), the language of the instrument creating the estate must specify the powers of the "Vorerbin". In the instant case, paragraph 2 of Siegfried Buchholz's will states that Johanna Buchholz is to be free of all restrictions to the extent allowed by law. Accordingly, the "befreite Vorerbin" (literally: freed primary heir) was given the power to alienate and dispose of any and all of the property of the estate. Claimant HEINRICH WERNER BUCHHOLZ, as a "Nacherben" (literally: the subsequent heir) was an heir of whatever was left over from the inheritance at the time of his mother's death when the subsequent inheritance "set in". The Commission finds therefore, that the power of the primary heir, Johanna Buchholz, was in no way limited and that she was not merely a life tenant as the claimant contended. The Commission further finds that what the claimant referred to as a remainder interest was a mere expectancy and not an interest in the property.

The record shows that Johanna Buchholz became a citizen of the United Kingdom in 1948 and remained so until her death on August 15, 1967. Since the apartment building in question was taken by the German Democratic Republic on December 18, 1951, the Commission finds that the claim for the beneficial ownership therein remained until August 15, 1967 with the primary heir, Johanna Buchholz. As a result, the beneficial ownership interest in the subject apartment building was not owned by a United States national at the time of the termination of the right of restitution on December 18, 1951 by the German Democratic Republic. 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 reason, that portion of this claim based on the loss of an apartment house at Fehrbelliner Strasse 81 in Berlin must be and hereby is denied.

With respect to that part of the claim based on the loss of the business "M. & E. Buchholz" at Gruenstrasse 5/6 in Berlin, which manufactured leather belts, the Commission notes that because of the terms of Siegfried Buchholz's will, the beneficial ownership interest in the subject business was not owned by a United States citizen at the time the right of restitution was terminated by the German Democratic Republic pursuant to the above-referenced decree of December 18, 1951. Therefore, 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.

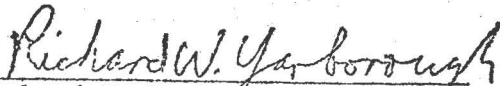
Furthermore, the Commission notes that the claimant has not asserted any loss of real property and that the report from the Commission's European field office shows that the inventory, good will, and other assets of the business in question, which are the subject of this part of the claim, did not survive World War II. Therefore, there is no basis for the Commission to conclude that there was any such 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.

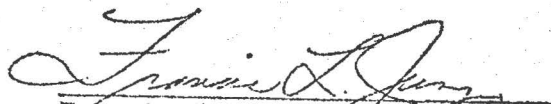
For the above cited reasons, that part of this claim based on the loss of the business "M. & E. Buchholz" at Gruenstrasse 5/6 in Berlin, must be and hereby is denied.

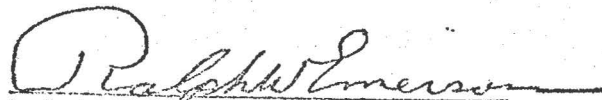
The Commission finds it unnecessary to make determinations with respect to other elements of this claim.

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

FEB 11 1981


Richard W. Yarborough, Chairman


Francis L. Jang, Commissioner


Ralph W. Emerson, 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).