

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

IN THE MATTER OF THE CLAIM OF

ELLA GROSS
FRIEDA ORBACH
JOSEPH REISS

Claim No. G-2853

Decision No. G-2499

Under the International Claims Settlement
Act of 1949, as amended

Hearing on the Record held on **MAY 06 1981**

FINAL DECISION

This claim in the amount of \$158,000.00 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 an apartment building at Siegfriedstrasse 23 in East Berlin, and the accrued rental income from the property from 1939 to the present.

The record indicates that claimants ELLA GROSS, FRIEDA ORBACH, and JOSEPH REISS, became United States citizens on January 15, 1951, December 17, 1951, and April 9, 1956, respectively.

In a Proposed Decision dated August 20, 1980, the Commission granted to claimants ELLA GROSS and FRIEDA ORBACH awards of \$2,250.00 each for the loss of respective three-sixteenths beneficial ownership interests in the above-described real property as of December 18, 1951. The claim of claimant JOSEPH REISS for a three-sixteenths beneficial interest in the property was denied, however, for the reason that, because he did not become a United States citizen until April 9, 1956, his interest in the property was not owned by a national of the United States as of December 18, 1951, the date of its loss, as is required for compensation under sections 602 and 603 of the Act. In addition, the Commission denied the portion of the claimants' claim for accrued rental

income from the property, for the reason that the record failed to establish that any of those monies were nationalized or otherwise taken by the German Democratic Republic, as required for compensation under the Act.

Claimants filed an objection to the Proposed Decision, and requested an oral hearing at which to present statements and argument in support of the objection. Pursuant to their request, an oral hearing was first scheduled for Tuesday, November 18, 1980, in the Commission's hearing room in Washington, D.C. Prior to the hearing date, claimants submitted a further request that the hearing be rescheduled sometime after the end of February, 1981, and in a letter dated November 19, 1981, claimants were informed that the hearing would accordingly be rescheduled. Claimants were also advised in the letter that it would probably not be possible, due to the Commission's workload, to reschedule the hearing a second time. Claimants' hearing was then set for March 19, 1981, at 2:00 p.m., but claimants informed the Commission by telephone on the morning of March 19, 1981, that they would not be present at the hearing, and they requested that the hearing again be rescheduled. However, they were advised that a further rescheduling would not be possible, and that it would be necessary for them to submit any further evidence which they wished to be considered in support of their objection no later than April 1, 1981, after which date the Commission would reach a final determination on their claim through a hearing on the record. Inasmuch as no further evidence has since been received from the claimants, the Commission has considered their claim on the record based upon the evidence which was on file at the time of issuance of the Proposed Decision, together with the statements and arguments set forth in their original objection.

Claimants first contend that the Commission's denial of the claim of claimant JOSEPH REISS for an interest in the real property in East Berlin is based upon a "misreading" of section 603 of the International Claims Settlement Act. They assert that this

section does not require that the property interest claimed for have been owned by a national of the United States on the date of its loss, but rather merely requires that the property have been owned by the claimant on the date of loss and requires only that the claimant be a national of the United States as of the date of filing of his or her claim. They further assert that the Commission's interpretation of the section creates an "artificial distinction between two classes of U.S. citizens--citizens of long-standing and newer citizens--favoring the former with the services of the U.S. government in seeking redress from the German Democratic Republic. . . .while denying similar services to the latter." They then assert the belief that this interpretation is contrary to the legislative intent of the Act, and fails to take into account the fact that they had all become United States citizens by the time diplomatic relations were established between the United States and the German Democratic Republic.

Section 603 of the Act provides 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."

Claimants' interpretation of the above-quoted section of the statute is wholly untenable. It is obvious from a reading of the section that it is devoid of any requirement that the property claimed by a claimant have been owned by him or her at the time of loss; rather, it clearly requires that the claimed property have been owned by a national of the United States at the time of loss--and continuously thereafter, until the date of filing with the Commission--by one or more persons who were also United States nationals. This section was included in the Act by Congress in conformity with the well-settled principle of international law which holds that a State (in this case, the United States)

may not espouse against a foreign State a claim for a loss of property unless that property was owned by one of its nationals at the time of loss. This principle, in turn, is based upon the concept that a loss of property sustained by the national of a State is, in terms of international law, an injury to the State itself, for which it is entitled to redress by the injuring State. That claimant JOSEPH REISS subsequently became a national of the United States upon being naturalized in 1956 therefore is of no consequence, since the taking of his interest in the East Berlin property in 1951 did not give rise under international law to an injury to the United States. The "distinction" between classes of United States citizens which the section sets up is not "artificial," as the claimants assert; on the contrary, it flows naturally from the incorporation of the principles of international law in the Act. In any event, because claimant JOSEPH REISS did not become a United States national until his naturalization in 1956, the Commission is without authority under the Act to give favorable consideration to his claim.

Claimants next assert that it was incorrect for the Commission to apply the intestate succession law of Germany in determining the fractional interests in the East Berlin property for which they are entitled to compensation under the Act. They assert that their predecessor, Wolf Reiss, "was unable to provide for the succession to his property" upon his death in England in 1944, and for some reason, they apparently believe that application of the German law of intestate succession, whether of the Nazi regime or the German Democratic Republic, to determine the distribution which would have been made of his estate upon his death operates to penalize them for his inability or failure to leave a will. They then assert that the Commission should simply assume that Wolf Reiss' entire estate descended to them upon his death, "with the remaining heirs having waived all rights or claims to the estate," and that they should be found entitled to awards for the loss of the entire ownership interest in the East Berlin property subject herein.

This portion of the claimants' objection is also without merit. Reference to the German law of intestate succession--whether of the Nazi regime or the German Democratic Republic, both of which contained identical provisions on the matter here in question--to determine the descent and distribution of ownership interests in the real property claimed herein is in no way a penalty on the claimants. Such reference is required by the well-established conflicts-of-law rule that the law of the situs of real property governs in the intestate succession of ownership interests therein, and the Commission is obligated under the terms of the present Act to apply this rule in its adjudication of the claims before it. Moreover, it should be pointed out that application of the rule is entirely neutral in its effect; the fact that the "law of the situs" in this instance happens to be that of Germany is of no consequence, since its application produces an identical result regardless of matters such as the political or religious beliefs of the decedent or of any potential heir.

As for claimants' contention that they should be considered the heirs of the entire beneficial ownership interest in the real property in East Berlin previously held by their predecessor, Wolf Reiss, no evidence or authority has been submitted or cited as a basis for such an assumption. Their contention must accordingly be rejected. Once again, the Commission is required to apply the German intestate succession law in determining the extent of claimants' inherited interests in the property, and it is clear that the result reached in the Proposed Decision is in conformity with the provisions of that body of law.

Claimants' third ground of objection relates to the Commission's finding in the Proposed Decision that the equity in the property at Siegfriedstrasse 23 in East Berlin had a value of \$12,000.00 as of December 18, 1951. They assert instead that the evidence submitted establishes a value of the property at the time of \$100,000.00. In addition, they contend that the Commission's valuation of the property should take into account the fluctuation in value of the German mark in relation to the dollar during the period from 1951 to the present.

The Commission first notes that claimants have stated no specific basis for their objection to the Commission's determination, in the Proposed Decision, that the equity in the subject property had a value of \$12,000.00 in 1951, nor have they pointed to any evidence which would justify a valuation of \$100,000.00 for the property as of that time. On the other hand, evidence submitted by the claimants prior to the issuance of the Proposed Decision establishes that the total annual rental income from the property in 1937 amounted only to approximately 6,500 reichsmarks, or approximately \$1,550.00. Furthermore, evidence obtained by the Commission's field office in West Germany establishes that the tax-assessed valuation of the property as of 1935 amounted only to 31,300 reichsmarks, or approximately \$7,500.00, and that the property was encumbered by mortgages amounting to approximately 13,000 reichsmarks (approximately \$3,000.00) which were still outstanding when claimants' predecessor's legal title to the property was lost during the Nazi regime. As was stated in the Proposed Decision, consideration was also given to the fact that land values in Eastern Europe experienced a general appreciation after World War II, and based upon all of the foregoing factors, the Commission then arrived at the figure of \$12,000.00 as the value of the equity in the property in 1951. Having reviewed the record, and in the absence of further evidence or argument submitted by the claimants, the Commission concludes that this \$12,000.00 figure represents a fair and reasonable valuation of the equity in the property at the time of its loss, and an increase in the valuation is not warranted or justified.

Claimants' further contention that the valuation and the awards granted in the Proposed Decision should take into account the fluctuation in value of the German mark in relation to the dollar after 1951 is also without merit. The Commission's function is to determine the value, in dollars, of the property for which

a claim is asserted, as of the time of the property's loss. Thus, to the extent that the conversion ratio between the particular foreign currency and the dollar is a factor in reaching that value determination, the conversion ratio in effect at the time of loss is the ratio which must be used, and any subsequent changes in the ratio are entirely irrelevant.

Claimants' last ground of objection is addressed to the Commission's denial of their claim for accrued rental income from the property from 1939 to the present. They assert that "when property is confiscated, the loss includes not only the capital value of the property, but the profit-earning potential as well," and that it is therefore unnecessary to establish that any rents were paid or, once paid, that they were taken by the German Democratic Republic.

This portion of the claimants' objection is also without merit. In the first place, it is incorrect to conceive of property as having both capital value and "income-earning potential," as a property's capital value is its income-earning potential. In other words, an investor normally determines the amount of capital he is willing to invest in a piece of property based upon the amount of income he can expect to receive from rental of the property as a return, or profit, on his investment over a period of time.

It appears from the claimants' objection that in referring to the "income-earning potential" of the subject property, their intent may in fact be to claim for income accruing from rental of the property after the date of loss of December 18, 1951. Viewed in this way, however, their contention is also without merit. The right to receive rental income is a right incident to property ownership, and claimants by definition no longer held any rights of ownership after the taking of their beneficial interests in the property on December 18, 1951.

Finally, with respect to the claimants' claim for income from rental of the property between 1939 and December 18, 1951, it is again pointed out that, in order for the Commission to be able to find their claim for such rents to be compensable, the Act requires that there be evidence establishing a nationalization or other taking of those monies by the German Democratic Republic. The Commission has no authority merely to presume that such a taking was effected. Furthermore, even if the Commission could so presume, it would be unable to grant awards to the claimants for any appreciable portion of those funds. According to the record, claimants ELLA GROSS and FRIEDA ORBACH did not become United States citizens until January 15, 1951, and December 17, 1951, respectively. Thus, their fractional shares in any income from rental of the property accruing before those dates would not have been owned by nationals of the United States, and a claim for their loss thus could not be favorably considered, due to the limitations of sections 602 and 603 of the Act.

As for any rents which may have accrued or been paid prior to the demise of the Nazi regime in May 1945, the Commission would likewise be prevented from finding their loss to be compensable by the fact that no right or interest therein was owned by a national of the United States--even if it could presume that the rents were taken. Furthermore, and more importantly, any taking of rents during that period would have been effected not by the German Democratic Republic, but by the Nazi Third Reich. Under the express terms of the Act, the Commission has no authority to consider claims for losses sustained at the hands of the Nazi regime. Rather, it is empowered by the Act only to determine the validity and amounts of the claims arising as a result of the nationalization, expropriation or other taking of property by the German Democratic Republic.

In summary, the Commission concludes that a change in the findings in the Proposed Decision in this claim is not warranted. Accordingly, the awards granted in the Proposed Decision are restated below, and the Commission affirms the Proposed Decision in all respects as its final determination in this claim.

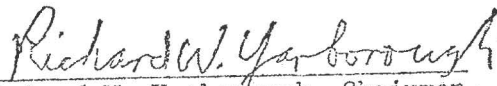
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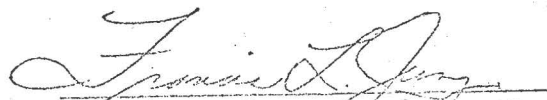
Claimant, ELLA GROSS, is therefore entitled to an award in the amount of Two Thousand Two Hundred Fifty Dollars (\$2,250.00), plus interest at the rate of 6% simple interest per annum from December 18, 1951 until the date of the conclusion of an agreement for payment of such claims by the German Democratic Republic.


Claimant, FRIEDA ORBACH, is therefore entitled to an award in the amount of Two Thousand Two Hundred Fifty Dollars (\$2,250.00), plus interest at the rate of 6% simple interest per annum from December 18, 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.

MAY 6 1981


Richard W. Yarborough, Chairman


Francis L. Jung, Commissioner


Ralph W. Emerson, Commissioner

This is a true and correct copy of the decision
the Commission which was entered as the final
ecision on MAY 6 1981


Executive Director

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

IN THE MATTER OF THE CLAIM OF

ELLA GROSS
FRIEDA ORBACH
JOSEPH REISS

Under the International Claims Settlement
Act of 1949, as amended

Claim No. G-2853

Decision No. G-2499

PROPOSED DECISION

This claim in the amount of \$158,000.00 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 an apartment building at Siegfriedstrasse 23 in East Berlin, and the accrued rental income from the property from 1939 to the present.

The record indicates that claimants, ELLA GROSS, FRIEDA ORBACH, and JOSEPH REISS, became United States citizens on January 15, 1951, December 17, 1951, and April 9, 1956, respectively.

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 . . ."

With respect to the real property subject herein, the record establishes that the original owner of the property was the claimants' father, Wolf Reiss, who had acquired the property in or about 1923.

The record further establishes 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.

According to the record, Wolf Reiss died in England in October 1944, and upon his death, his estate, including his interest in the subject real property, was inherited by the claimants herein, by their mother, and by their sister, Sali Weinfeld. Based upon the intestate succession law of Germany, the situs of the subject real property, the Commission concludes that the fractional interests in the property which the claimants acquired as the heirs of their father's estate amounted to a 3/16 interest each. The Commission therefore finds that, after the death of their father in October 1944, claimants each held a 3/16 beneficial ownership interest in the real property subject herein.

In the Claim of MARK PRICEMAN, Claim No. G-2116, Decision No. G-1073, the Commission held 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 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 claimants' interests in the subject property were taken by the German Democratic Republic, within the meaning of the Act, as of December 18, 1951. Claimants, ELLA GROSS and FRIEDA ORBACH, are accordingly entitled to awards for the loss of their respective 3/16th interests in the property as of that date.

With respect to the beneficial ownership interest of the claimant, JOSEPH REISS, however, it is again noted that Mr. Reiss did not become a United States citizen until April 9, 1956. As such, his interest in the subject property was not owned by a United States national at the time of termination, by the German Democratic Republic, of the right of restitution on December 18, 1951.

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."

Therefore, in as much as the claimant, JOSEPH REISS, was not a United States citizen as of December 18, 1951, his interest in the subject real property was not owned by a national of the United States at the time of the property's loss, as required by section 603 of the Act, above quoted. See Claim of ARTHUR SIMON, Claim No. G-0497, Decision No. G-1072. Accordingly, the claim of the claimant, JOSEPH REISS, for his inherited interest in the subject property must be and it is hereby denied.

A figure of \$100,000.00 has been asserted as the value of the claimed real property at the time of its loss. In support of this asserted valuation, evidence has been submitted consisting of two photographs of the property, a copy of the architectural plans pertaining to the property, and an accounting sheet showing the income and expenditures for the property in October 1937. In addition, an investigation of this claim by the Commission's field office in West Germany disclosed the 1935 tax-assessed valuation of the property and the amounts of two mortgages which remained outstanding after the original loss of legal title to the property during the Nazi regime.

Based upon the entire record, and taking into account the general rise in real property values in Eastern Europe in the years following World War II, the Commission finds that the equity in the subject real property had a value of \$12,000.00 at the time of the property's loss on December 18, 1951. For their respective 3/16 interests therein, claimants, ELLA GROSS and FRIEDA ORBACH, are therefore each entitled to an award of \$2,250.00.

With respect to the portion of this claim based upon the asserted loss of the accrued rental income from 1939 to the present, it must be noted that no evidence has been submitted to establish that such rents were paid, or, if they were paid, that any of the funds from such payments were nationalized or otherwise taken by the German Democratic Republic, as required for compensation under section 602 of the Act.

Moreover, a claim for any rents from the property accruing after the taking of the property on December 18, 1951, cannot be validly asserted by the claimants, since they no longer had any legal right or interest in the property after that date.

For the foregoing reasons, this portion of the present claim must be and it is hereby denied.

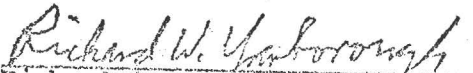
The Commission has concluded that in granting awards on claims under section 602 of Title VI of the Act, for the nationalization or other taking of property or interests therein, interest shall be allowed at the rate of 6% per annum from the date of loss to the date of settlement. (Claim of GEORGE L.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

A W A R D S

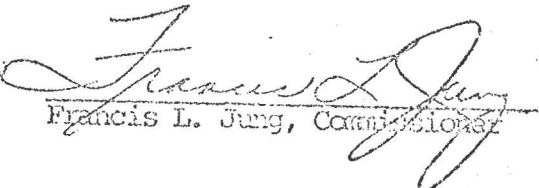
Claimant, ELLA GROSS, is therefore entitled to an award in the amount of Two Thousand Two Hundred Fifty Dollars (\$2,250.00), plus interest at the rate of 6% simple interest per annum from December 18, 1951 until the date of the conclusion of an agreement for payment of such claims by the German Democratic Republic; and,

Claimant, FRIEDA ORBACH, is therefore entitled to an award in the amount of Two Thousand Two Hundred Fifty Dollars (\$2,250.00), plus interest at the rate of 6% simple interest per annum from December 18, 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 Proposed
Decision of the Commission.


Richard W. Yarborough, Chairman

AUG 20 1980


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 of 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 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.)