

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

IN THE MATTER OF THE CLAIM OF

MARGOT S. MARON

Under the International Claims Settlement
Act of 1949, as amended

Claim No. G-2894

Decision No. G-3276

Counsel for Claimant:

Julius Schlezinger, Esquire

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

FINAL DECISION

This claim in excess of \$1,000,000.00 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 real property at Jaegerstrasse 12 and Hoher Steinweg 5-7/Bischofstrasse 23-24, and at Alt-Glienicke, Grottewitzer Strasse 1/Ecke Buntzelstrasse 38, all in East Berlin, and interests in the following businesses: Berliner Kindl Brauerei A.G., Landre Breithaupt Weissbierbrauerei A.G., Loewenbrauerei Boehmisches Brauhaus A.G. and Aktien-Malzfabrik Landsberg near Halle.

In its Proposed Decision dated February 25, 1981, the Commission granted claimant an award in the total amount of \$510,082.15, plus interest, for her interests in the loss of real property and businesses located in the German Democratic Republic, including East Berlin. The claim for losses relating to the brewery known as Landre Breithaupt Weissbierbrauerei located in East Berlin was denied for failure of proof of ownership.

Claimant, through counsel, filed objections to the Proposed Decision and submitted new evidence. Subsequent to the issuance of the Proposed Decision, the Commission also received additional evidence from its field office in Munich regarding this claim.

Based upon all the evidence of record and having considered arguments submitted in support of claimant's objections, the Commission now finds that:

1. The value of claimant's 1.34% interest in the total assets of the Berliner Kindl Brauerei A.G., taken by the German Democratic Republic on February 9, 1949, is \$49,427.00;

2. Claimant's predecessor in interest, the partnership known as Boehm & Reitzenbaum, owned 3,095,200 reichsmarks out of 6,000,000 reichsmarks total capital of Loewenbrauerei Boehmisches Brauhaus A.G. (LBB) rather than 2,420,000 reichsmarks found in the Proposed Decision and that, accordingly, claimant had a 19.3% interest in the assets of LBB on the date of loss;

3. Based upon the formula developed by Dr. Rudolph Bethmann as set forth in his 1938 textbook, The Computations Systems of Breweries and the Malting Plant, the value of the LBB's plant at the time of loss was 3,259,600 reichsmarks;

4. Reconsidering the value of the land in East Berlin and the plant and equipment valued under the Bethmann formula, the total value for the assets of LBB on February 8, 1949, the date of loss, was 6,642,600 reichsmarks rather than 4,458,000 reichsmarks as found in the Proposed Decision and, accordingly, claimant's award for her interest in this loss is \$305,243.30;

5. The value of claimant's interest in the assets of the Aktien-Malzfabrik Landesberg plants was \$316,555.70 on the dates of loss;

6. The evidence of record now establishes that claimant owned a 5.3% beneficial interest in the assets of the Landre Breithaupt Weissbierbrauerei A.G. (LBW) in East Berlin which was taken on December 18, 1951 when claimant's right to restoration of her interest, originally lost as the result of persecutory measures during the Nazi regime, was cut off by the decree of that date; and,

7. The value of claimant's interest in the assets in LBW on the date of loss was \$7,738.00.

Accordingly, the Commission concludes that claimant is entitled to a total award in the amount of \$740,214.00 under section 602 of the Act and it is ordered that the award granted in the Proposed Decision be restated as set forth below; that the Proposed Decision be affirmed in all other respects; and that the foregoing be entered as the Commission's final determination on this matter.

A W A R D

Claimant, MARGOT S. MARON, is therefore entitled to an award in the amount of Seven Hundred Forty Thousand Two Hundred and Fourteen Dollars (\$740,214.00), plus interest at the rate of 6% simple interest per annum on \$305,243.30 from February 8, 1949; on \$49,427.00 from February 9, 1949; on \$221,191.61 from July 1, 1950; on \$95,364.09 from August 4, 1951; and on \$68,988.00 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
Richard W. Yarborough, Chairman

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

Francis L. Jung
Francis L. Jung, Commissioner

Francis T. McMahon
Executive Director

Ralph W. Emerson
Ralph W. Emerson, Commissioner

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PROPOSED DECISION

This claim in excess of \$1,000,000.00 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 real property at Jaegerstrasse 12 and Hoher Steinweg 5-7/Bischofstrasse 23-24, and at Alt-Glienicke, Grottewitz Strasse 1/Ecke Buntzelstrasse 38, all in East Berlin, and interests in the following businesses: Berliner Kindl Brauerei A.G., Landre Breithaupt Weissbierbrauerei A.G., Loewenbrauerei Boehmisches Brauhaus A.G., and Aktien-Malzfabrik Landsberg near Halle.

The record indicates that claimant became a United States citizen on August 16, 1946.

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 . . ."

Based upon all the evidence of record, the Commission finds that prior to World War II Fritz Wallach was the owner of improved real property at Jaegerstrasse 12 in East Berlin and that he owned a one-half interest in real property at Hoher Steinweg 5-7/Bischofstrasse 23-24 in East Berlin and a three-fourths interest in real property at Grotteitzer Strasse 1/Ecke Buntzelstrasse 38, also in East Berlin. The Commission further finds, based upon the evidence of record, that upon the death of Fritz Wallach on or about May 1, 1943, MARGOT S. MARON, his daughter, succeeded to a one-half interest in his estate.

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 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. Accordingly, the Commission finds that the beneficial interests in the subject real properties in East Berlin were taken by the German Democratic Republic on December 18, 1951.

It is asserted by the claimant that the values of her interests in the three subject properties on the date of loss were 191,000, 93,602 and 1,500 reichsmarks, respectively.

In determining the value of the properties in question, the Commission has considered the following:

1. That the property at Jaegerstrasse 12 was sold under duress in 1938 for 620,000 reichsmarks, that the property had an outstanding mortgage of 102,000 reichsmarks, that the improvements to the property were completely destroyed during World War II, and that the property is 722 square meters in area and has a per square meter value of 500-700 reichsmarks according to "The Value Building Sites in Berlin" by Ferdinand Kalweit.

2. That the real property at Hoher Steinweg 5-7/Bischofstrasse 23-24 had a prewar tax assessed value of 289,100 reichsmarks; that there was a mortgage of 31,250 reichsmarks and a one-half interest in a 150,000 reichsmarks mortgage outstanding against the property; that the improvements to the property were totally destroyed during World War II; and that the area of the property in question is approximately 1,214 plus 494.5 square meters and that the value ranges for this property according to the "Kalweit" book referred to above, are 220-265 reichsmarks per square meter and 200-250 reichsmarks per square meter.

3. That the unimproved real property at Grottewitzer Strasse 1/Ecke Buntzelstrasse 38 had a prewar tax assessed value of 6,100 reichsmarks, and that the property is approximately 2,000 square meters in area with a value range as shown in the "Kalweit" book of 1.5 - 2 reichsmarks per square meter for this property.

Based upon the foregoing, the Commission finds that the remaining real properties at Jaegerstrasse 12 and Hoher Steinweg 5-7/Bischofstrasse 23-24 in East Berlin had an equity value of \$91,000 and \$60,000 respectively, at the time of loss, and that the unimproved lot at Grottewitzer Strasse 1/Ecke Buntzelstrasse 38 in East Berlin had a value of \$2,000 on the date of loss. Therefore, the Commission concludes that MARGOT S. MARON is entitled to an award in the total amount of \$61,250 as compensation under section 602 of the Act for her respective one-half, one-fourth and three-eighths interests in these losses.

A portion of this claim is based upon an ownership interest in the Berliner Kindl Brauerei A.G. (BKB), which, prior to World War II, was a large brewery with its central administrative office located in what is now West Berlin. BKB had two branches located in what is now East Berlin and in Potsdam.

Based upon all the evidence of record, the Commission finds that claimant's father, Fritz Wallach, had a 75 percent partnership interest in a Berlin banking firm known as Boehm & Reitzenbaum (B&R) and that B&R owned shares in the amount of 334,000 reichsmarks out of a total capital of 9,375,000 reichsmarks in BKB, for a total percentage ownership of 3.56%. Therefore, claimant's predecessor in interest Fritz Wallach owned a 2.67% interest and, upon his death in 1943, claimant acquired a 1.34% interest in BKB. As in the case of the real property for which an award was granted, above, claimant's interest in the property of BKB is a beneficial interest since the 334,000 reichsmarks worth of shares in BKB were originally lost during the Nazi regime as the result of a forced sale.

As previously indicated, the Commission has held in the Claim of MARTHA TACHAU that persecutees or their heirs who lose title to property during the Nazi regime will be considered to have retained a beneficial ownership interest in the property lost until the right to restitution of such property is terminated by an act of East German authorities or the German Democratic Republic after World War II. In the same claim, the Commission held that any action by the East German authorities or the German Democratic Republic nationalizing or expropriating such property prior to the termination of the right of restitution by the German Democratic Republic under the decrees of September 6, 1951 and December 18, 1951, as explained above, will be deemed a taking of the interest of the persecutee or his heirs. The evidence available to the Commission establishes and the Commission finds that BKB was nationalized on or about February 9, 1949.

In determining the value of the property owned by the brewery in East Berlin and Potsdam, the Commission has considered the following: the tax assessed values for the brewery and business buildings, including depots, as submitted by the claimant and the general increase in real property values in Eastern Europe after World War II. The Commission has considered, but not relied entirely upon, a copy of an auditor's report for final year 1944/45 which contains values in the amount of 424,493.62 reichsmarks as current accounts receivable and some 2,911,650.50 reichsmarks indicated as "claims against the German Reich", the actual value of which as of the date of taking is not established in the record.

Therefore, based upon all the evidence of record concerning value, the Commission finds that the assets of BKB in East Berlin and Potsdam on the date of loss had a value of \$1,021,000 and that MARGOT S. MARON is entitled to compensation in the amount of \$13,631.40 under section 602 of the Act for her 1.34% interest therein.

The record in this claim also indicates and the Commission finds that B&R originally owned 2,420,000 reichsmarks shares out of a total capital of 6,000,000 reichsmarks in the Loewenbrauerei Boehmisches Brauhaus A.G. (LBB); that claimant therefore acquired a 37.5% interest therein upon the death of her father, Fritz Wallach; and that claimant's interest is a beneficial interest for the reason that the shares were originally lost as the result of Nazi persecutory laws prior to World War II. The Commission further finds that the assets of LBB in East Berlin and what is now the German Democratic Republic were taken on or about February 8, 1949, pursuant to a decree of the Magistrate for Greater Berlin of the same date.

In determining the value of the assets of LBB, including the property in East Berlin, Potsdam and seventeen depots, the Commission has considered the prewar tax assessed value for the land and buildings of the main brewery in East Berlin, the restaurant in Potsdam and the seventeen other properties outside of East Berlin in what is now the German Democratic Republic, as submitted by claimant and verified by the Commission's field office in Munich. Based upon the foregoing and, taking into consideration the general increase in real property values in Eastern Europe after World War II and depreciation, the Commission finds that the real property owned by the brewery in East Berlin had a value of 2,300,000 reichsmarks, the real property in Potsdam and at seventeen other locations in the German Democratic Republic had a value of 633,000 reichsmarks, and that the machinery and equipment of the company had a value of 1,525,000 reichsmarks on the date of loss. Accordingly, the Commission concludes that claimant is entitled to an award in the amount of \$160,539.75 for her 37.5% interest in the interest of B&R in LBB as compensation under section 602 of the Act.

The evidence of record indicates and the Commission finds that B&R originally owned some 1,879,000 reichsmarks and Fritz Wallach, in his own right, apparently owned 121,000 reichsmarks out of 2,000,000 reichsmarks total capital in the Aktien-Malzfabrik Landesberg (AML) which owned plants in Landesberg, Loebau, and Wismar. These interests in AML were lost as a result of persecutory measures during the Nazi regime and the property in Landesberg was taken by the German Democratic Republic on July 1, 1950 and the property in Wismar and Loebau was taken on August 4, 1951.

In determining the value of the property at Landesberg, Loebau and Wismar owned by AML, the Commission has considered the evidence submitted by claimant and evidence available in Claim No. W-20235 filed by Corn Products Company previously under Public Law 87-846, in the War Claims Program. In that claim, the Commission found that the wartime value of the land, buildings and machinery owned by AML was as follows:

(1) <u>Landesberg</u> Land, Buildings and Machinery	\$256,238.75
(2) <u>Loebau</u> Land, Buildings and Machinery	61,451.25
(3) <u>Wismar</u> Land, Buildings and Machinery	49,745.75
Total Losses	<u>\$367,435.75</u>

The Commission now finds that the value of the land and buildings at the three locations on the date of loss, taking into consideration the general increase in real property values in Eastern Europe after World War II, plus the value of the machinery and other assets at Landesberg was \$501,000 and at Wismar and Loebau \$216,000 and that claimant, MARGOT S. MARON, is therefore entitled to an award under section 602 in the amount of \$274,611.00 for her 38.3% interest 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)).

A portion of this claim is based upon the loss of an interest in a brewery known as Landre Breithaupt Weissbierbrauerei A.G. (LBW) in East Berlin. It is asserted that B&R has an ownership interest therein of 101,200 reichsmarks worth of shares out of a total capital of 300,000 reichsmarks. However, the Commission finds that the evidence of record concerning the ownership of this stock interest only indicates that B&R was a major shareholder in LBW, and that the exact percentage of B&R's ownership interest, and therefore the claimant's interest, is not documented sufficiently.

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.Rs 531.6 (d) (1977)).

Therefore, since the Commission finds that the record in this claim is insufficient to establish the asserted ownership interest of claimant's predecessor in interest in LBW, this portion of the claim must be and it is hereby denied.

The Commission notes that a portion of this claim is based upon the loss of 775,200 reichsmarks worth of shares in LBB assertedly owned individually by her father Fritz Wallach, over and above the interest of claimant's father in B&R for which an award is granted herein. However, the Commission finds that the record in this claim does not establish the asserted prewar ownership interest of Fritz Wallach of 775,200 reichsmarks worth of shares. Moreover, the Commission's field office in Munich has been unable to verify the ownership of these additional shares. Accordingly, this portion of the claim must be and it is hereby denied.

Finally, a portion of this claim is based upon the asserted loss of an interest in a company known as Industriegebäude Berlin-Hohenschoenhausen A.G. (IBH) which owned property in East Berlin, Brandenburg and Werder. It is asserted that LBB owned nearly a 100% interest in IBH, that is, 99.97%, and that the remaining .03% ownership interest was held by the Dresdener Bank, prior to World War II, at the discretion of LBB.

Section 604(c) of the Act provides:

"A claim under section 602 of this title for losses based upon an indirect ownership interest in a corporation, association, or other entity, shall be considered, subject to the other provisions of this title, only if at least 25 per centum of the entire ownership interest thereof, at the time of such loss, was vested in nationals of the United States."

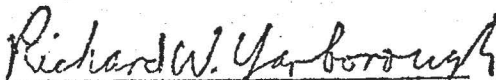
Therefore, in view of the fact that B&R owned 2,420,000 reichsmarks out of 6,000,000 reichsmarks total capital in LBB or a 40.33% interest therein, and claimant, a United States national on the date of loss, had a one-half of a 75% interest in the 40.33% interest of B&R for a total 15.12% interest in LBB and approximately the same interest in IBH, the Commission finds that that portion of this claim based upon an indirect ownership in IBH must be and it is hereby denied for the reason that the record does not establish that IBH was owned by United States nationals at the time of loss to an extent of at least 25%, as required for compensation under section 604(c) of the Act.

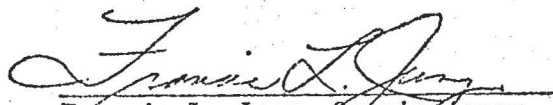
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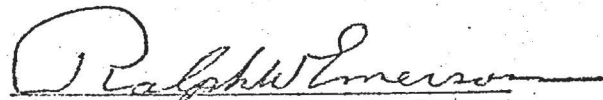
Claimant, MARGOT S. MARON, is therefore entitled to an award in the amount of Five Hundred Ten Thousand Eighty-Two Dollars and Fifteen Cents (\$510,082.15), plus interest at the rate of 6% simple interest per annum with interest on \$160,539.75 from February 8, 1949; on \$13,681.40 from February 9, 1949; on \$191,883.00 from July 1, 1950; on \$82,728.00 from August 4, 1951; and on \$61,250.00 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.

FEB 25 1981


Richard W. Yarborough, Chairman


Francis L. Jung, 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.)