

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

IN THE MATTER OF THE CLAIM OF

MAX FRANK
KATHARINA FAIBUSCH
KATE FRANK

Under the International Claims Settlement
Act of 1949, as amended

G-2956
G-2957
Claim No. G-2958

Decision No. G-2631

Counsel for Claimants:

Nicholas Doman, Esquire

PROPOSED DECISION

These claims in the aggregate amount of \$297,620.00 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), are based upon the loss of commercial and residential property at Berlin at Berliner Strasse 107/109 and Berliner Strasse 108/110, an apartment house at Deutsch-Kroner-Strasse 4-5 in Berlin, and an apartment building on Bismarckallee in Saarow-Strand.

The record indicates that claimants MAX FRANK, KATHARINA FAIBUSCH, and KATE FRANK became United States citizens on February 25, 1944, June 29, 1944 and July 9, 1945, 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. . ."

The record establishes that Hartog Frank, the father of claimants MAX FRANK and KATHARINA FAIBUSCH and husband of claimant KATE FRANK, was the owner of all the property interests involved herein before World War II. The evidence indicates that Hartog Frank was a Dutch citizen until August 21, 1944, at which time he

acquired United States citizenship. Under the will of Hartog Frank, who died in 1971, MAX FRANK and KATHARINA FAIBUSCH were each designated as successors in interest to 25% of his estate, while KATE FRANK was designated as successor in interest to 50% of the estate.

The record indicates that Hartog Frank and his family immigrated to the United States from the Netherlands in 1938 to seek refuge from the rising tide of anti-Jewish discrimination in neighboring Germany. The record includes a report from the Commission's field office in West Germany indicating that the subject real property on Bismarckallee (renamed Ernst-Thaelmann-Strasse 21 after World War II) in Saarow-Strand was sold in 1941 by the Local Government to a private party in Germany because real estate taxes had not been timely paid. Based upon the entire record, however, including a January 3, 1955 letter from Hartog Frank's postwar administrator in Germany, the Commission finds that the non-payment of real estate taxes by Hartog Frank after his immigration to the United States was a direct result of the exigent circumstances created by the Nazi persecution of Jews and merely served as a pretext for the Nazi authorities to foreclose on Jewish-owned property and sell it to a German.

Thus, the record in this claim indicates that legal title to the subject property in Saarow-Strand 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.

Therefore, the Commission finds that the beneficial interest Hartog Frank retained in the subject real property at Ernst-Thaelmann-Strasse 21 in Saarow-Strand was taken by the German Democratic Republic as of September 6, 1951, at which time it was owned by a United States national as required for compensation under the Act.

The record includes correspondence from the City Council of Greater Berlin, dated February 3, 1951 and February 23, 1951, indicating that the real property at Berliner Strasse 108/110 in Berlin had been placed under its administration pursuant to an August 1, 1950 directive of the Soviet Control Commission. The correspondence stated that neither Hartog Frank nor his administrator would have any control over the subject property. The Commission finds, therefore, that the property at Berliner Strasse 108/110 has been taken within the meaning of section 602 of Act and that the date of taking was February 3, 1951.

Based upon the entire record, including a report from the Office for the Legal Protection of Property of the German Democratic Republic, the Commission finds that the other real property interests involved in this claim at Berliner Strasse 107/109 and Deutsch-Kroner-Strasse (renamed Fritz-Riedel-Strasse after World War II) 4-5 have also been taken over by governmental authorities. In the absence of specific evidence as to the circumstances of the takings, the Commission finds that these properties came under the purview of the "Decree on the Administration and Protection of Foreign Property in Greater Berlin," dated December 18, 1951. The Commission holds that the date of taking was October 23, 1952, the date of the first implementing regulation for the decree.

In determining the values of the various property interests involved in this claim, the Commission has considered such evidence as the Einheitswerte (tax assessed values), pre-war appraisals, the types of improvements located on the premises, the sizes of

the lots, and outstanding mortgages. The record indicates that the property at Deutsch-Kroner-Strasse 4-5 was encumbered by mortgages totalling 71,000 reichsmarks before World War II and there is no evidence that such mortgages were ever extinguished. The record also indicates that the apartment houses located at Deutsch-Kroner-Strasse 4-5 were destroyed during the War. The Commission is not authorized under Public Law 94-542 to grant awards for buildings destroyed in World War II since such property could not have been taken thereafter by the German Democratic Republic. Thus, an award for the loss of Deutsch-Kroner-Strasse (Fritz-Riedel-Strasse) 4-5 must be based on the value of the remaining land. There is no evidence to indicate that the commercial and residential property on Berliner Strasse or the residential property in Saarow-Strand (which served as a Jewish children's home until its original loss during the Nazi era), sustained any significant damage during World War II. Based upon the entire record, the Commission determines that the subject property interests had the following values at the time of their taking by the German Democratic Republic:

1. Commercial property at Berliner Strasse
107/109--\$80,000.00,
2. Residential property at Berliner Strasse
108/110--\$20,000.00,
3. Land at Fritz Riedel Strasse (Deutsch-Kroner-Strasse)
4-5--\$18,000.00,
4. Residential property in Saarow-Strand--\$18,000.00

Section 606 of the Act provides:

"With respect to any claim under section 602 of this title which, at the time of the award, is vested in persons other than the person by whom the original loss was sustained, the Commission shall issue a consolidated award in favor of all claimants then entitled thereto, which award shall indicate the respective interests of such claimants therein, and all such claimants shall participate, in proportion to their indicated interests, in any payments that may be made under this title in all respects as if the award had been in favor of a single person."

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Thus, claimants MAX FRANK, KATHARINA FAIBUSCH, and KATE FRANK are entitled to share in respective percentages of 1/4, 1/4 and 1/2 in a consolidated award totalling \$136,000.00.

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)).

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A W A R D

A consolidated award is made in the amount of One Hundred Thirty-Six Thousand Dollars (\$136,000.00), plus interest at the rate of 6% simple interest per annum, on Twenty Thousand Dollars (\$20,000.00) from February 3, 1951, on Eighteen Thousand Dollars (\$18,000.00) from September 6, 1951, and on Ninety-Eight Thousand Dollars (\$98,000.00) from October 23, 1952, until the date of the conclusion of an agreement for payment of such claims by the German Democratic Republic, as follows:

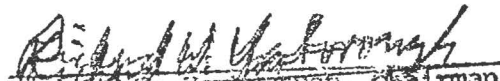
MAX FRANK (1/4)	\$34,000.00
KATHARINA FAIBUSCH (1/4)	\$34,000.00
KATE FRANK (1/2)	\$68,000.00

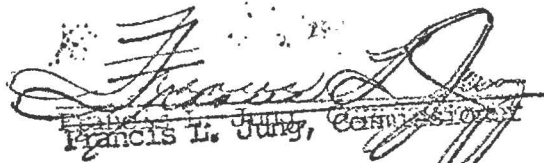
Dated at Washington, D.C.
and entered as the Proposed
Decision of the Commission.

OCT 8 1980

This is a true and correct copy of the decision
of the Commission which was entered as the final
decision on ~~NOV 12 1980~~


Executive Director


Richard W. Yarbrough, 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.)

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