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Rudolph W. Frank (United States) v. Germany

13 March 1928

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II Dec. M.A.T. 526 et seq.; *Green v. German Government*, same tribunal, III Dec. M.A.T. 522 et seq.).

Because the record fails to establish that claimant would have sold or exchanged her bonds had she had possession of them during the period delivery was prevented by German exceptional war measures, a decree must be entered in favor of Germany.

Wherefore the Commission decrees that under the Treaty of Berlin of August 25, 1921, and in accordance with its terms the Government of Germany is not obligated to pay to the Government of the United States any amount on behalf of the claimant herein.

Done at Washington March 8, 1928.

Edwin B. PARKER
Umpire

Chandler P. ANDERSON
American Commissioner

W. KIESSELBACH
German Commissioner

RUDOLPH W. FRANK (UNITED STATES) *v.* GERMANY

(*March 13, 1928, pp. 893-896.*)

ESTATE CLAIMS: EXCEPTIONAL WAR MEASURES. — DAMAGE: RULES FOR DETERMINATION, RATE OF EXCHANGE; DEPRECIATION OF SECURITIES; RULE OF PROXIMATE CAUSE. — PROCEDURE: REFERENCE BACK TO AGENTS TO ASCERTAIN AMOUNT DUE, REVISION. Claim for loss through depreciation of securities resulting from prevention by German exceptional war measure of transmission of securities to American heir in German estate. Application of rules announced in Administrative Decision No. IV, see Vol. VII, p. 117. *Held* that depreciation until October 15, 1919, caused by executors' decision, prior to enactment of German war legislation affecting American property, to keep claimant's property in their custody, and that from that date on, when executors appear to have changed their position, to January 10, 1920, when German war legislation repealed, this legislation was proximate cause for further retention (except for securities deposited with tax department under German law). Case referred back to Agencies to ascertain amount due claimant. Subsequent plea for revision dismissed.

BY THE COMMISSION: —

The principal issue in dispute in this case is whether or not Germany is financially liable for the depreciation of the securities which belong to claimant's share in the estate of Bertha Glazier and which remained in the hands of her executors during the war.

In support of the contention that Germany is so liable the Agent of the United States refers to section 15 (d) of the Order of the Commission of May 7, 1925, and to Administrative Decision No. IV. To these rules the Commission adheres. They will neither be modified nor deviated from. However, in applying these rules to the present case the Commission finds as a conclusion of fact that the loss complained of, so far as the depreciation occurred prior to August 15, 1919, was caused by certain definitely established circumstances other than the application of German exceptional war measures.

In the light of the depositions of Siegmund Wormser (Exh. a), Friedrich Kohn (Exh. G) and Dr. Baerwald (Exh. B) the Commission is satisfied that in or about August 1916 or prior thereto the three executors — whose diligence and care in attending to their duties is illustrated by the investigations instituted as early as 1913 — unanimously agreed (Naphtaly Kohn concurring by correspondence with his brother) in accordance with the will of Bertha Glazier to keep claimant's property in their custody beyond the completion of his fortieth year. On the other hand even if Naphtaly Kohn, who lived at that time in Switzerland, did not participate in that decision the record establishes positively that Siegmund Wormser and Friedrich Kohn decided not to transmit to the claimant his property upon the completion of his fortieth year. It is immaterial in this connection whether this decision was prompted by the result of the investigations concerning claimant's financial situation or on account of the war-time conditions involving large expenses and heavy risk of loss to the claimant in case of the transmittal of his property. This attitude of at least two of the executors operated as an obstacle which by reason of Article X of the will actually prevented, under German law, the transmittal of claimant's property no matter whether or not the decision was concurred in by the third executor.

It results that the record establishes *definite and specific facts* existing prior to the enactment of the German war legislation affecting American property, which facts, unless and until they ceased to exist subsequently, prevented the transmittal of claimant's property even if there had been no German war legislation.

So far as the period prior to October 15, 1919 is concerned there is nothing on record to show that these conditions ceased to exist.

But it appears from the record that when the claimant made a demand in September 1919 he was advised that his property was still under the control of the German Government, and on February 25, 1921, the executors wrote a letter to claimant (Exh. 2 attached to Exh. 3) which is susceptible of the interpretation that, but for the exceptional war measures still existing in 1919, the executors might have changed their position at that time following claimant's demand. Thus the inference might be drawn that from that time on the German war legislation became the virtual and proximate cause for the further retention of claimant's property.

Still this inference remains somewhat doubtful. In the light of the testimony of Friedrich Kohn (Exh. G) it would appear that it was the news of claimant's marriage which ultimately caused the executors to release his property. On the other hand, the record does not disclose at what time the executors received the information of claimant's marriage, and the latter of the executors of February 25, 1921, fails to refer to this fact or to give a clear statement of the time when, and the reasons why, the executors became inclined to change their former attitude. In these circumstances, it appears appropriate to allow claimant the benefit of the doubt.

As claimant's letter was dated September 30, 1919 (page 17 of the American Brief) and as at time that it took probably at least a fortnight for a letter to go from the claimant in Texas to Frankfort o/M. it would follow that claimant is entitled to compensation for the depreciation of the value of his property during the period from October 15, 1919, to January 10, 1920, when the German war legislation was repealed.

This conclusion does not apply to M. 26,000. — $3\frac{1}{4}\%$ Prussian Consols which were deposited with the tax department in order to secure the inheritance taxes (see letter of March 8, 1921 of the executor's attorney). Such deposit has to be made under the German law of inheritance taxes on the demand of

the tax department, and the retention of this amount of the securities therefore has nothing to do either with the executor's attitude or with German exceptional war measures. But the conclusion applies to

87.200 Marks 3 $\frac{1}{2}$ % Prussian Consols

10.000 Marks 4% Moskau & Jarosaw Archangel EB priority 1997 and

34.680 Marks 4% Russian Southwestern Railroad priorities.

Following the rules laid down by this Commission in Administrative Decision No. IV the measure of damages to which the claimant is entitled is the market value of the securities as of October 15, 1919, less their market value as of January 10, 1920, together with interest at the rate of 5% from October 15, 1919. The case is accordingly referred back to the Agencies of the two governments to ascertain the dollar amount to which claimant is entitled under such computation.

In addition to the amount thus to be ascertained the claimant is, furthermore, entitled to an award in the amounts admitted by the German Agent, to wit:

\$2869.80 with 5% interest from December 11, 1921,

\$101.57 with 5% interest from October 27, 1919, and

\$401.83 with 5% interest from January 1, 1920 for a bank balance in the amount of M. 2511.46 due from the Frankfurter Bank.

Done at Washington March 13, 1928.

Chandler P. ANDERSON

American Commissioner

W. KIESELBACH

German Commissioner

[Extract from the Minutes of the meeting of the Commission held on June 14, 1928.]

In the case of Rudolph W. Frank, claimant, Docket No. 8130, the American Commissioner announced on behalf of the National Commissioners that the petition filed on April 13, 1928, by the American Agent for a revision of the interlocutory decree has been brought to their attention and, after careful consideration of the arguments set forth therein both as to the facts and the law, the Commission does not find justification for the contention of the American Agent that the aforesaid decree conflicts with the rules adopted by this Commission in Administrative Decision No. IV or with subsection (d) of paragraph 15 of the Order of May 7, 1925, as interpreted by this Commission, or with any decisions or decrees heretofore rendered in estate claims, and accordingly dismissed the Petition and reaffirmed the interlocutory decree and ordered that a final decree be entered in accordance therewith.

[*Note.* — The National Commissioners under date of January 31, 1929, entered an award in Docket No. 8130 in favor of the Government of the United States on behalf of Rudolph W. Frank, claimant, against the Government of Germany in the amounts of \$1,953.98, \$101.57, \$401.83, and \$2,869.80 with interest thereon at the rate of 5% per annum from October 15, 1919, October 27, 1919, January 1, 1920, and December 11, 1921, respectively, to the date of payment.]