

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

IN THE MATTER OF THE CLAIM OF

ZENA K. FELDMAN
BETH M. FELDMAN

Claim No. CU-0091

Decision No. CU 3693

Under the International Claims Settlement
Act of 1949, as amended

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, for \$393,390.00, was presented by ZENA K. FELDMAN and BETH M. FELDMAN based upon the asserted loss of certain interests in real property, personal property, a business, insurance policies, and for a nervous breakdown. Claimant ZENA K. FELDMAN has been a national of the United States since birth. Claimant BETH M. FELDMAN states that she became a national of the United States through derivation on July 28, 1949.

Under Title V of the International Claims Settlement Act of 1949 [78 Stat. 1110 (1964), 22 U.S.C. §§1643-1643k (1964), as amended, 79 Stat. 988 (1965)], the Commission is given jurisdiction over claims of nationals of the United States against the Government of Cuba. Section 503(a) of the Act provides that the Commission shall receive and determine in accordance with applicable substantive law, including international law, the amount and validity of claims by nationals of the United States against the Government of Cuba arising since January 1, 1959 for

losses resulting from the nationalization, expropriation, intervention 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.

Section 502(3) of the Act provides:

The term 'property' means any property, right, or interest including any leasehold interest, and debts owed by the Government of Cuba or by enterprises which have been nationalized, expropriated, intervened, or taken by the Government of Cuba and debts which are a charge on property which has been nationalized, expropriated, intervened, or taken by the Government of Cuba.

Section 503(b) of the Act provides as follows:

The Commission shall receive and determine in accordance with applicable substantive law, including international law, the amount and validity of claims by nationals of the United States against the Government of Cuba . . . arising since January 1, 1959 . . . for disability or death resulting from actions taken by or under the authority of the Government of Cuba . . .

Although claimant BETH M. FELDMAN claims a one-third ownership interest in the real property, personal property and business portions of this claim, there is no evidence of this other than a statement executed by Isaac Feldman on November 28, 1966 to the effect that he intended that there would be equal ownership in himself, his wife, Zena Kraiman Feldman, and his daughter, Beth Millicent Feldman. The claim was filed on June 21, 1965 and validated as of November 1, 1965. This statement may intend an assignment. However, under the Commission's Regulations, a claim may not be amended after filing to reflect assignment to another person. Accordingly, the claim of BETH M. FELDMAN is denied as to these items.

Isaac Feldman is not a United States national and is not a party claimant herein.

Real Property

Claimants state that they lost an investment in improved real property in Havana and two lots in Alamar in the aggregate amount of \$180,000. They submitted a copy of a purchase contract evidencing the purchase of an apartment building at 740 - 30th Street, Parque Residential, Alturas del Vedado, Havana, on January 30, 1959 by Isaac Feldman for the price of 35,000 pesos; and two copies of purchase contracts dated July 17, 1957 evidencing the purchase of lots 19 and 20 (Block) 10 residential zone of the Residential Section, Alamar, Guanabacao by Isaac Feldman, each for the price of 2,822 pesos. Claimants stated that all their real property, personal property

and their business were intervened in April 1962 when the Cuban militia told Isaac Feldman to hand over all keys and documents and to leave the premises.

According to the Community Property Law of Cuba, those properties which belong in equal parts to both spouses include (1) those acquired by one or both spouses during the marriage with money of the marriage partnership; (2) property acquired by the industry, salary or work of either or both spouses, and (3) the fruits, income or interests received or accrued during the marriage from the common or private properties of the spouses or spouse.

Based on the entire record, including information received from the Department of State, the Commission finds that claimant ZENA K. FELDMAN owned a one-half interest in an apartment building situated at 740 - 30th Street, Parque Residential, Alturas del Vedado, Havana, and a one-half interest in lots 19 and 20 (Block) 10, Alamar, Guanabacao, which were intervened by the Government of Cuba on April 1, 1962.

In arriving at the value of the improved and unimproved real property, consideration was given to the three contracts indicating the purchase price of the apartment building to be 35,000 pesos and of each lot to be 2,822 pesos. Consideration was also given to Isaac Feldman's sworn statement wherein he indicated that he paid \$10,000.00 in cash toward the purchase of the building with a mortgage for the remaining balance. He further stated he paid \$1,430.22 toward the purchase of lots 19 and 20 with a mortgage for the remaining balance. The Commission finds that the value of the apartment building to be \$35,000.00 and each of the two lots to be \$2,822.00.

The Commission further finds that the improved real property was encumbered by a mortgage in the amount of \$25,000.00 and the two lots also were encumbered by mortgages aggregating \$4,213.78. After deduction of

these amounts, the equity in the above-described properties at the time of loss is found to be \$11,430.22. The Commission holds that claimant ZENA K. FELDMAN suffered a loss in the amount of \$5,715.11 for her one-half interest within the meaning of Title V of the Act, as the result of the intervention of the properties by the Government of Cuba on April 1, 1962.

Personal Property

Claimants further state that they lost personal property consisting of art objects, oil paintings, silverware and other personal effects totalling \$34,159.00. In support of this item, claimants submitted an affidavit listing the approximate dates of purchase and cost of each item.

Based on the entire record, the Commission finds that claimant ZENA K. FELDMAN owned a one-half interest in certain personal property, including art objects, oil paintings and silverware that was intervened by the Government of Cuba on April 1, 1962.

In arriving at the value of the personal property consideration was given to the affidavit of ZENA K. FELDMAN on August 3, 1967. Each item was depreciated 5% for each year from March 1958 (probable average date of acquisition) through March 1962, or a total of 20% per item with the exception of the art objects, oil paintings and silverware which were not depreciated. The Commission finds that at the time of loss the aggregate value of the personal property amounted to \$28,007.20 and that claimant ZENA K. FELDMAN suffered a loss in the amount of \$14,003.62 within the meaning of Title V of the Act, as the result of the intervention of the personal property by the Government of Cuba on April 1, 1962.

Business

Claimants also state that they lost a clothing business known as "Montriol" at Calle Monte 409, Havana. In support of this item, Isaac Feldman submitted an affidavit setting forth in an inventory each item and the approximate cost thereof.

The Commission finds that claimant ZENA K. FELDMAN owned a one-half interest in the business known as "Montriol" at Calle Monte 409, Havana which was intervened by the Government of Cuba on April 1, 1962.

In arriving at the value of the inventory of "Montriol" favorable consideration was given to an affidavit made by Isaac Feldman on January 30, 1969 which showed that the items thereon were new. Therefore, no depreciation has been deducted. The Commission finds the value of the inventoried items was \$49,778.50 at the time of loss and that claimant ZENA K. FELDMAN suffered a loss in the amount of \$24,889.50 within the meaning of Title V of the Act, as the result of the intervention of this personal property by the Government of Cuba on April 1, 1962.

Insurance Policies

Claimants state that they suffered a loss of \$20,000.00 because of the confiscation of certain (life) insurance policies. They submitted a letter from the Confederation Life Association of Canada, dated October 18, 1962, wherein it indicated that Isaac Feldman owned policy No. 773907 with the company which policy could not be transferred out of Cuba. No information was given as to other policies nor as to the face amount of the policy No. 773907 although some indication was given as to the peso amounts then available to the policy to continue it in force. The company further indicated that the policy was issued through the Havana office on October 25, 1949 and that the next premium was due on October 25, 1962 in the amount of 308.45 pesos. The insurer, in effect however, in that letter disclaimed liability to make a cash settlement in other than unusable Cuban pesos in an unknown amount. Claimants failed to or were unable to submit additional evidence concerning the policy and other policies assertedly owned by claimants. Nor has an actual seizure or confiscation of policy No. 773907 by the Cuban Government been shown.

The Commission, however, has made further investigation of this matter and is now informed by the Canadian insurance carrier, by its letter dated May 15, 1969, that it now has the data concerning policy No. 773907 in its Canadian home office. It has detailed these sufficiently to allow an award to be made under this claim provided it is determined (a) that either or both of these claimants have any interest therein; and (b) that the policy was seized or confiscated, or that its proceeds will be taken by the Cuban Government when it matures. As to the latter issue, the Commission holds that under current Cuban laws, when the policy matures, its proceeds will be confiscated, or subject to confiscation as the property of an American national non-resident in Cuba if claimant, BETH FELDMAN, who is named as the sole beneficiary, is the owner. In such a case the full value of the policy at maturity on October 29, 1969 of 5,000 pesos, plus bonus additions of 508 pesos, less outstanding loans and interest, would be the amount of loss suffered. This leaves a net of 3,251.90 pesos. The insurance carrier, however, has pointed out in its letter of May 15, 1969, that the insured, Isaac Feldman (a non-United States national) is in fact the true owner of this policy and that the net proceeds will be deposited in a blocked account in Cuba to his credit after maturity and surrender of the policy. Since BETH, who is Isaac's daughter, can have no interest in the policy unless her father dies before October 29, 1969, this portion of the claim must be denied. If, however, the insured dies prior to that date Beth M. Feldman may file a petition to reopen this matter within the time allowed by the Commission's regulations.

Nervous Breakdown

Claim is also made by claimant ZENA K. FELDMAN who left Cuba early in 1961 in the amount of \$35,000.00 for a nervous breakdown which she states resulted from the confiscation of her property and the other actions by the Government of Cuba. ZENA FELDMAN submitted a letter dated June 23, 1965 from the Northeast Mental Health Clinic to the Commission wherein it is stated that ZENA FELDMAN applied to them for psychiatric care; that at the time of her initial evaluation on January 14, 1963, the diagnosis was psychoneurotic depressive reaction; that ZENA FELDMAN had slowed down and felt that life had lost its purpose since her family had everything confiscated after the Cuban revolution. She was seen by the clinic for 11 weeks at a total cost of \$55.00 and then ended therapy because she could not afford the fee. Mrs. Feldman also submitted a letter dated June 18, 1965 from the Philadelphia Psychiatric Center addressed "To Whom it May Concern" wherein it was stated that ZENA FELDMAN was seen at the Center from June 1963 to February 1964 for 27 visits. Most of these visits were as a member of a therapy group. It was further stated in the letter that Mrs. Feldman complained of confusion, depression and inability to cope with the problems of daily living. She related having lost all her family's material possessions in Cuba following Castro's taking over the country. The Center further states that this catastrophic blow was undoubtedly instrumental in contributing to the depression Mrs. Feldman experienced.

The Commission has carefully considered this entire matter and holds that in a claim for disability under Section 503(b) of the Act it must be established, as one prerequisite to favorable action, that the disability was the proximate result of the actions of the Government of Cuba in violation of international law. (See Claim of Julio Lopez Lopez, Claim No. CU-3259.)

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.R. §531.6(d) (Supp. 1967).)

Claimant bases her claim for disability solely on the action of the Government of Cuba in taking her property. The Commission finds that claimant has failed to sustain the burden of proof with respect to her claim for disability in that she has not adduced sufficient convincing evidence that her disability was the proximate result of actions taken by the Government of Cuba. This portion of the claim therefore is denied.

Accordingly, the Commission finds that claimant ZENA K. FELDMAN suffered the following losses within the scope of Title V of the Act:

<u>Summary</u>		
Improved real property	April 1, 1962	\$ 5,000.00
Unimproved real property	April 1, 1962	715.11
Personal property	April 1, 1962	14,003.62
Business inventory	April 1, 1962	<u>24,889.50</u>
		\$44,608.23

The Commission has decided that in certification of losses on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be included at the rate of 6% per annum from the date of loss to the date of settlement (see Claim of Lisle Corporation, Claim No. CU-0644), and in the instant case it is so ordered.

CERTIFICATION OF LOSS

The Commission certifies that ZENA K. FELDMAN suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Forty-four Thousand Six Hundred Eight Dollars and Twenty-three Cents (\$44,608.23) with interest thereon at 6% per annum from April 1, 1962 to the date of settlement.

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

JUN 18 1969

Leonard v. B. Sutton
Leonard v. B. Sutton, Chairman

Theodore Jaffe
Theodore Jaffe, Commissioner

Sidney Freidberg
Sidney Freidberg, Commissioner

The statute does not provide for the payment of claims against the Government of Cuba. Provision is only made for the determination by the Commission of the validity and amounts of such claims. Section 501 of the statute specifically precludes any authorization for appropriations for payment of these claims. The Commission is required to certify its findings to the Secretary of State for possible use in future negotiations with the Government of Cuba.

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, 32 Fed. Reg. 412-13 [1967].)