

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

IN THE MATTER OF THE CLAIM OF

HENRY B. JEFFRE
DOROTHEA JULIANA DYCKHOFF JEFFRE

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-0175

Decision No. CU-3902

Counsel for claimants:

Fowler, White, Gillen, Humkey & Kinney
By James E. Thompson, Esq.

AMENDED PROPOSED DECISION

Under date of September 24, 1969, the Commission issued its Proposed Decision denying this claim, filed by HENRY B. JEFFRE, for failure to sustain the burden of proof with respect to the ownership, loss and value of a stock interest in Agencias H. B. Jeffre, S.A., Havana, Cuba. Subsequently, new supporting evidence was submitted.

Upon consideration of the new evidence in the light of the entire record the Commission now finds that HENRY B. JEFFRE stated that prior to the loss of the property subject of this claim, he had been married to DOROTHEA JULIANA DYCKHOFF JEFFRE, (a national of the United States since naturalization in 1945), and that prior to their departure from Cuba in 1961, they operated a business enterprise known as Agencias H.B. Jeffre, S.A., Havana, Cuba.

Pursuant to the community property laws of Cuba, properties acquired by either spouse during the marriage, with money of the marriage partnership or by the industry, salary or work of either or both spouses, and the fruits thereof, belong in equal parts to both spouses (see Claim of Robert L. Cheaney, et ux, Claim No. CU-0918). Accordingly, the property discussed hereafter is considered to have been owned by HENRY B. JEFFRE and his spouse and DOROTHEA JULIANA DYCKHOFF JEFFRE is hereby joined as a claimant in this matter.

The evidence of record discloses that the Agencias H.B. Jeffre, S.A. was formed on July 1, 1948, as a distributor of office equipment and merchandise, with 750 shares outstanding at a par value of \$100.00 per share. Claimants have submitted stock certificates in part as well as other evidence, discussed hereafter, establishing that they owned 445 shares at the time of loss on August 2, 1961, when an Interventor was appointed to the firm by the Banco de Comercio Interior, a Cuban governmental agency.

Since the Jeffre corporation was organized under the laws of Cuba, it does not qualify as a corporate "national of the United States" defined under Section 502(1)(B) of the Act as a corporation or other legal entity organized under the laws of the United States, or any State, the District of Columbia, or the Commonwealth of Puerto Rico, whose ownership is vested to the extent of 50 per centum or more in natural persons who are citizens of the United States. In this type of situation, it has been held that an American stockholder is entitled to file a claim for the value of such ownership interest. (See Claim of Parke, Davis & Company, Claim No. CU-0180, 1967 FCSC Ann. Rep. 33.)

The Act provides in Section 503(a) that in making determinations with respect to the validity and amount of claims and value of properties, rights, or interests taken, the Commission shall take into account the basis of valuation most appropriate to the property and equitable to the claimant, including but not limited to fair market value, book value, going concern value, or cost of replacement.

The question, in all cases, will be to determine the basis of valuation which, under the particular circumstances, is "most appropriate to the property and equitable to the claimant". This phraseology does not differ from the international legal standard that would normally prevail in the evaluation of nationalized property. It is designed to strengthen that standard by giving specific bases of valuation that the Commission shall consider.

The evidence of record does not include balance sheets or similar data upon which the Commission may make a determination with respect to the value of the Jeffre corporation. However, the record includes income tax data submitted by claimants to the United States Internal Revenue Service and a stock ledger prepared and maintained by claimant HENRY B. JEFFRE as a series of business transactions incident to transfers of the Jeffre stock and the consideration paid therefor. Further, the evidence includes several affidavits, executed by claimant and others identified with the operation of the Jeffre corporation in Cuba, including one of the primary stockholders, Vinicio A. Ruiz, also a corporation officer, and the accountant for the firm from 1948 to 1960, Ramon G. Gamonada. This data concerns the operation of the business enterprise in question as well as the nature and extent of the assets and liabilities of the firm at the time of loss.

Based upon the record, the Commission finds that the most appropriate basis for evaluation of the stock in question is that evidence prepared by claimant in the course of business operations and the statements of claimant and other affiants with personal knowledge of the Jeffre corporation. Thus, the Commission finds that at the time of loss a share of stock of the Jeffre corporation had a value of \$160.00 per share; that the claimants owned 445 shares as community property; and that they suffered a loss in the amount of \$71,200.00 within the meaning of Title V of the Act.

The Commission has decided that in certifications of loss 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.

Accordingly, the following Certifications of Loss will be entered and in all other respects the Proposed Decision is affirmed.

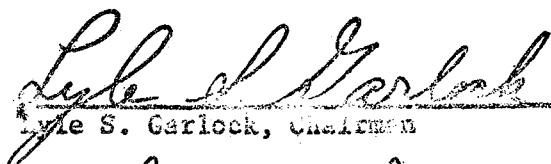
CERTIFICATIONS OF LOSS

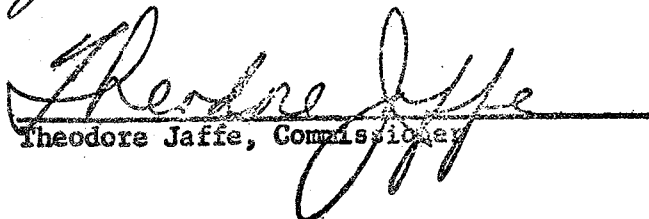
The Commission certifies that HENRY B. JEFFRE suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Thirty-five Thousand, Six Hundred Dollars (\$35,600.00) with interest at 6% per annum from August 2, 1961 to the date of settlement; and

The Commission certifies that DOROTHEA JULIANA DYCKHOFF JEFFRE 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 Thirty-five Thousand Six Hundred Dollars (\$35,600.00) with interest at 6% per annum from August 2, 1961 to the date of settlement.

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

JUN 2 1971


Lyle S. Garlock, Chairman


Theodore Jaffe, Commissioner

NOTICE TO TREASURY: The above-referenced securities may not have been submitted to the Commission or if submitted, may have been returned; accordingly, no payment should be made until claimant establishes retention of the securities or the loss here certified.

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 Amended 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. 131.5(e) and (g), as amended (1970).)

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

IN THE MATTER OF THE CLAIM OF

HENRY B. JEFFRE

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -0175

Decision No. CU 3902

Counsel for claimant:

Charles I. Campbell, Esq.

PROPOSED DECISION

This claim against the Government of Cuba, filed under Title V of the International Claims Settlement Act of 1949, as amended, in the amount of \$71,700.00, was presented by HENRY B. JEFFRE, and is based upon the asserted loss of claimant's stock interest in a business enterprise known as Agencias H. B. Jeffre, S.A., Havana, Cuba. Claimant has been a national of the United States since his naturalization on May 25, 1945.

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 504 of the Act provides, as to ownership of claims, that

(a) A claim shall not be considered under section 503(a) of this title unless the property on which the claim was based was owned wholly or partially, directly or indirectly by a national of the United States on the date of the loss and if considered shall be considered only to the extent the claim has been held by one or more nationals of the United States continuously thereafter until the date of filing with the Commission.

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).)

The claimant herein stated that in 1961 the business enterprise known as Agencias H.B. Jeffre, S.A., in which he assertedly owned 445 shares of stock, was intervened by the Government of Cuba. By Commission letter of July 5, 1966, claimant was advised as to the type of evidence proper for submission to establish this claim under the provisions of the Act.

The claimant submitted, through counsel, his statement concerning the description of the firm and a hand-written record of certain stock transactions or an asserted ownership record of the shares of stock in the subject business enterprise. Thereafter, by Commission letter of November 4, 1966, it was suggested that the stock certificates in the Cuban enterprise be submitted to the Commission. By letter of November 21, 1966, claimant advised, through counsel, that such certificates were not available, being retained in Cuba.

In Commission letter of May 31, 1967, additional suggestions were made toward documentation of the claim. By affidavit of June 8, 1967, the claimant submitted additional information concerning the business

enterprise, stating that he was unable to bring pertinent firm records out of Cuba due to the actions of Cuban officials.

Since the record herein includes only the uncorroborated statements of claimant, with no documentary evidence pertaining to ownership and value of the stock interest in question, the Commission made additional suggestions to claimant, through counsel, in Commission letters dated October 5, 1967, December 12, 1967, and January 17, 1968. In letter of January 3, 1968, claimant advised, through counsel, that neither claimant nor the business enterprise in question owned real property in Cuba. However, the claimant made no response to the primary suggestions made by the Commission in development of the claim and has submitted no additional supporting evidence.

The Commission appreciates the difficulties encountered by some claimants in establishing their claims against the Government of Cuba. However, the Commission must be guided by the evidence of record pertaining to the ownership, loss and value of the property included in each claim. Thus, the Commission is constrained to find that claimant herein has not met the burden of proof in that he has failed to establish ownership of rights and interests in property which was nationalized, expropriated or otherwise taken by the Government of Cuba. Accordingly,

the Commission is also constrained to deny this claim and it is hereby denied. The Commission deems it unnecessary to make determinations with respect to other elements of the claim.

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

SEP 24 1969

Leonard v. B. Sutton

Leonard v. B. Sutton, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

Sidney Feidberg

Sidney Feidberg, Commissioner

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