

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

IN THE MATTER OF THE CLAIM OF

DAYMOND E. ELMORE
and
RUBY A. COBB ELMORE

Claim No. CU -0571

Decision No. CU 5859

Under the International Claims Settlement
Act of 1949, as amended

Counsel for claimants:

Foley and Thompson
By W. J. Foley, Esq.

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, was presented by DAYMOND E. ELMORE in the amended amount of \$63,263.52 based upon the asserted ownership and loss of personalty, a retirement pension and an insurance policy. Pursuant to the community property laws of Cuba, claimant's spouse has an interest in portions of the claim and has been added as claimant. Claimants have been nationals of the United States since birth.

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.

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) (1969).)

Claimants describe their losses as follows:

Bank deposit	\$ 3,137.52
Timber	4,126.00
Household furnishings	5,000.00
Sugar Fund Retirement	36,000.00
Government Insurance	<u>15,000.00</u>
	\$63,263.52

Bank Account, Timber, Household Furnishings

Based upon the entire record, including a bank statement, correspondence from the intended purchaser of timber and some statements listing personalty, the Commission finds that claimants owned personalty, a bank account in Cuba, certain timber stacked for shipment and household furnishings.

On December 6, 1961, the Cuban Government published its Law 989 which effectively confiscated all assets, personal property and real estate, rights, shares, stocks, bonds and securities of persons who had left the country. Claimants state they left the country before that date.

Based on the foregoing and the evidence of record, the Commission finds that claimants' bank account, timber and household furnishings in Cuba were taken by the Government of Cuba on December 6, 1961 pursuant to the provisions of Law 989. (See Claim of Wallace Tabor and Catherine Tabor, Claim No. CU-0109, 25 FCSC Semiann. Rep. 53 [July-Dec. 1966]; and Claim of Floyd W. Auld, Claim No. CU-0020, 25 FCSC Semiann. Rep. 55 [July-Dec. 1966].)

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 record includes, in support of the claimed values a bank statement of The First National Bank of Boston in Santiago de Cuba; a copy of a letter from Lignum-Vitae Products Corporation, datelined Jersey City, N. J., October 29, 1959; several lists of personalty, and claimants' explanations in connection with these items.

Based on the entire record, the Commission finds that the bank account had a balance of \$3,137.52; the household furnishings, appropriately depreciated, had a fair value of \$5,890.00; and the timber had a value of \$4,126.00. Accordingly, the Commission concludes that each claimant suffered a loss in the amount of \$6,576.76 within the meaning of Title V of the Act, as the result of the taking of their above-described property by the Government of Cuba on December 6, 1961.

Retirement Pension

Claimant DAYMOND E. ELMORE states that he was employed by the Ermita Sugar Company, and was manager of the Central Ermita plant at Santiago, in Oriente Province. He left Santiago in early January of 1960 because he was under threat of arrest for alleged counter-revolutionary activity. He further states that his retirement pay would have been \$150.00 a month for life; that his salary when he left Ermita Sugar Company was \$1,150.00 per month; that he does not have a copy of the retirement plan but had paid into it since 1944.

He asserted this item of claim in the amount of \$36,000.00, stating that he computed it at \$150.00 per month on a life expectancy of twenty years.

In support, he has submitted a letter of August 30, 1960 from an acquaintance in Ermita, addressed to claimant in Florida, forwarding a letter concerning claimant's retirement. The referred-to letter is from the Social Insurance Bank of Cuba, of August 19, 1960, addressed to claimant, and indicates that a file has been established and that in future correspondence he should use the cited number following it with the word "Sugar". He has also submitted a book reflecting his registration in the "Registro de Extranjeros" as an American citizen. He points out that the money required to be paid for renewal of this registration each year (apparently 45 centavos) establishes that he was in the highest brackets for sugar retirement income.

Although claimant has not been able to document this item of claim fully, on the evidence of record and evidence available in other pension claims before it, the Commission finds that claimant was entitled to a pension of \$150.00 a month.

The Sugar Retirement Fund was established by Law No. 20 of March 27, 1941, and amended by Law No. 4 of November, 1948, Law-Decrees No. 586 of December 17, 1952, No. 711 of February 27, 1953 and No. 1239 of January 1, 1954, Decree No. 3394 of September 5, 1949, and Law-Decree No. 1959 of January 25, 1955.

On May 29, 1959, Law No. 351 was enacted which provided for the establishment of the Banco de Seguros Sociales de Cuba (Social Insurance Bank of Cuba) as an agency of the Government of Cuba to supervise and administer social insurance, as well as to direct the policy concerning all social security matters. The law also provided for the transfer of the assets and liabilities of all pension funds to the Banco de Seguros Sociales de Cuba. Information shows that retired employees after departure from Cuba

received no retirement benefits. On the basis of evidence of record the Commission finds that on January 15, 1960, claimant became entitled to a retirement pension. (See Claim of A. M. Joy de Pardo, Claim No. CU-1906; and Claim of Olive E. Cortis, Claim No. CU-1343.)

The Commission has adopted as a basis for the valuation of annuities the Makehamized mortality table, appearing as Table 38 of United States Life Tables and Actuarial Tables 1939-41, and a 3-1/2% interest rate, compounded annually, as prescribed by United States Treasury Department regulations of June 24, 1958, for the collection of gift and estate taxes, respectively. (See 23 F.R. 4547, 26 C.F.R. 2031-7.) According to that method of valuation, the value of the annuity for a person of the age of 54 amounts to 13.4734 times the yearly sum of the annuity. Since on January 15, 1960, claimant was 54 years of age (according to his nearest birthday on September 10, 1959) the value of his discounted annuity on that date amounted to \$1,800.00 (the peso being on a par with the United States dollar) times 13.4734 or \$24,252.12.

Cuban Government Insurance

Claimant asserts ownership of a paid-up Cuban Government Insurance policy in the amount of \$15,000.00. In support he has submitted a letter from an acquaintance in Cuba, dated June 30, 1962, stating he enclosed a card from the Office of Control of Life Insurance; stating that it reflects that upon not paying a premium due, a "loan" is effected, and applied to the payment of the premium due on March 9, 1962; and further that the interest on the loan is \$106.78; that the policy is up to date and presumably the said Office of Control of Life Insurance would continue in this manner in order that the policy continue in force.

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The card in question does reflect that the claimant had an insurance policy, but does not reflect the amount, nor that it was paid up as asserted. Claimant further suggests that the amount is approximately \$15,000.00 and that the amount must be arrived at by deduction, but does not offer the means of doing so.

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 finds that claimants herein have not met the burden of proof in that they have failed to establish ownership or the extent thereof in the insurance policy. Accordingly, the Commission is constrained to deny this portion of the instant claim and it is hereby denied.

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.

CERTIFICATIONS OF LOSS


The Commission certifies that DAYMOND E. ELMORE 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 Thousand Eight Hundred Twenty-eight Dollars and Eighty-eight Cents (\$30,828.88) with interest at 6% per annum from December 6, 1961 on \$6,576.76; and from January 15, 1960 on \$24,252.12, to the date of settlement.

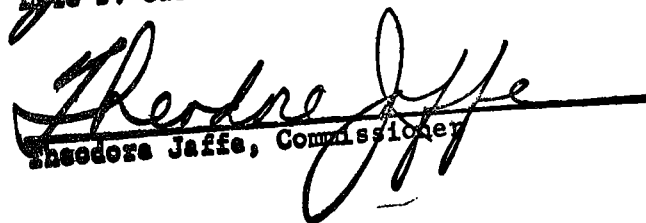
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The Commission certifies that RUBY A. COBB ELMORE suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Six Thousand Five Hundred Seventy-six Dollars and Seventy-six Cents (\$6,576.76) with interest at 6% per annum from December 6, 1961 to the date of settlement.

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

SEP 23 1970


Lyle S. Garlock, Chairman


Theodore Jaffe, 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).)