

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

IN THE MATTER OF THE CLAIM OF

THE FLORIDA NATIONAL BANK AND TRUST
COMPANY AT MIAMI, AS ADMINISTRATOR
c.t.a. OF THE ESTATE OF FRANCISCO
HIDALGO GATO, DECEASED

Claim No. CU - 0587

Decision No. CU - 5760

Under the International Claims Settlement
Act of 1949, as amended

Counsel for claimant:

Redfearn & Simon
By Edwin O. Simon, 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 \$291,683.66 was presented by THE FLORIDA NATIONAL BANK and TRUST COMPANY AT MIAMI, AS ADMINISTRATOR c.t.a. OF THE ESTATE OF FRANCISCO HIDALGO GATO, DECEASED on December 3, 1965 based on the asserted loss of improved and unimproved real property in Cuba. FRANCISCO HIDALGO GATO was born in Florida and died in Florida on February 17, 1961. THE FLORIDA NATIONAL BANK and TRUST COMPANY AT MIAMI was appointed Administrator c.t.a. on April 11, 1962.

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.

According to an affidavit of a Cuban attorney, submitted with the claim, the decedent had been owner or part-owner of seven properties in Havana and Santiago de las Vegas; that six of these, being improved with various structures, come within the purview of the Urban Reform Law of October 14, 1960 at which time it appears the decedent lost his title. The unimproved property would have been subject to confiscation under Law 989 of December 6, 1961 and presumably was taken from his heirs at that time.

The beneficiaries under the will of the decedent are his widow, Margarita Adot, whom he apparently married in 1909, and his children, born in Cuba, being two sons, two daughters, and the heirs of a deceased son, Francisco Gato, Jr.

On several occasions the Commission suggested to counsel that the nationality of the widow and children be established. The Commission had been informed by one of the children of Francisco Gato, Jr., that all the children of Francisco Gato, Sr., had elected Cuban citizenship. It was brought to counsel's attention that under Section 1401, Title 8, United States Constitution, concerning aliens and nationality, the children of a United States citizen who are born outside the United States must make an election when they reach their majority.

Counsel stated, under date of December 12, 1968, that the bank, as Administrator c.t.a., is the claimant in behalf of the estate of the decedent, and that thus the nationality of the widow and children of the decedent would not be material.

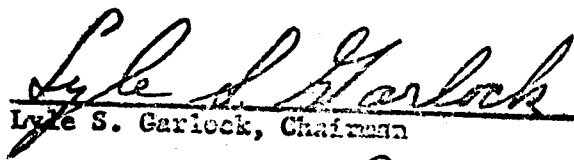
Nevertheless, under the provisions of Section 504(a) of the Act, the property or claim arising from its loss must have been held by one or more nationals of the United States continuously from the date of loss to the date of filing claim with the Commission. Moreover, the Commission has consistently held that the test of United States nationality must be applied to the beneficial owner of a claim and not to the nominal or mere legal title holder (see the Claim of Siegfried Arndt, Docket Y-595, Decision Y-1536, FCSC Dec. and Ann. 27; also, Claim of American Security and Trust Co., Trustee, Claim No. HUNG-20540, Ibid. p. 178; and Claim of Hanover Bank, et al, Claim No. BUL-1181, Final Decision 10 FCSC Semiann. Rep. 16 (Jan. - June 1959), Ibid. p. 178; see also Claim of National Bank of Westchester, Administrator c.t.a. Estate of Meta Blum, Claim No. CZ-1872, 17 FCSC Semiann. Rep. 251 (July - Dec. 1962), Ibid. p. 383).

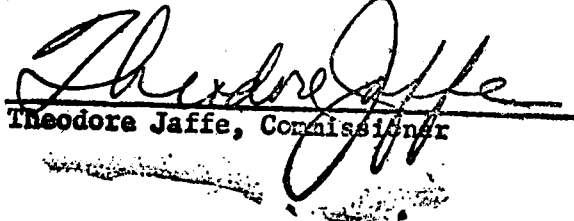
By letter of December 27, 1968 the Commission informed counsel that while the Bank has filed in its representative capacity, it is not the real or beneficial owner and that the nationality of the heirs should be established. No response or evidence was received thereafter.

The Commission finds that claimant has not met the burden of proof in that it has failed to establish the United States nationality of the claim from the date it arose to the date of filing with the Commission, as required by the Act. Thus, the Commission is 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 9 1970


Lyle S. Garlock, Chairman


Theodore Jaffe, 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, 32 Fed. Reg. 412-13 (1967).)

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