

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

IN THE MATTER OF THE CLAIM OF

MAY KUTTEN

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -1009

Decision No. CU **1317**

Counsel for claimant:

Martin Auslander, Esq.

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended in the amount of \$1,183.75 was presented by MAY KUTTEN, and is based on the asserted loss of her interest in bonds issued by the Cuba Railroad Company. Claimant has been a national of the United States since her naturalization on February 29, 1944.

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.

On the basis of the evidence of record, the Commission finds that claimant is, and since prior to October 13, 1960, has been the owner of five bonds in the original face amount of \$1,000.00 each, issued by the Cuba Railroad Company and known as First Mortgage Gold Bonds, 4%, due June 30, 1970 issued under a Supplemental Indenture of July 1, 1952, with Guaranty Trust Company of New York as Trustee (formerly First Mortgage, 50 Year Gold Bonds issued September 18, 1902, 5%, due July 1, 1952, with the Morton Trust Company of New York as Trustee). The bonds in question are Nos. 1821, 1822, 1823, 1825 and 1826 with interest coupons Nos. 13 through 36 inclusive, due on and after July 1, 1959.

Pursuant to the Supplemental Indenture of July 1, 1952, each bond is over stamped to set forth an outstanding principal balance of \$460.00, and to provide total annual interest of 4% of the outstanding principal balance.

The Cuba Railroad Company, incorporated in the State of New Jersey, was wholly owned by Consolidated Railroads of Cuba (Ferrocarriles Consolidados de Cuba), a Cuban corporation. The Cuba Railroad Company thus would not qualify as a national of the United States under Section 502(1) of the Act which defines the term "national of the United States" as including "(B) a corporation or other legal entity which is organized under the laws of the United States, or of any State, the District of Columbia, or the Commonwealth of Puerto Rico, if natural persons who are citizens of the United States own, directly or indirectly, 50 per centum or more of the outstanding capital stock or other beneficial interest of such corporation or entity."

The record shows that the properties of Cuba Railroad Company were listed as nationalized by Cuban Law 890, published in the Cuban Official Gazette on October 13, 1960. Claimant's bonds, therefore, represent a debt which was a charge on property which has been nationalized by the Government of Cuba as defined in Section 502(3) of the Act (supra).

The Commission concludes that as a result of the nationalization of the properties of the Cuba Railroad Company, claimant suffered a loss in connection with her bonds within the meaning of Title V of the Act. (See the Claim of Joseph Gans, FCSC Claim No. CU-1720.)

With regard to the value of the bond on the date of loss, information available to the Commission discloses that no part of the outstanding principal balance was ever paid, and that the last payment of interest was made on January 1, 1959.

The Commission, therefore, finds that the amount of the unpaid indebtedness on claimant's bonds on October 13, 1960, the date of loss, was \$2,464.30 including the principal amount of \$2,300.00, and the interest due on the bonds in the amount of \$164.30.

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 the Claim of Lisle Corporation, FCSC Claim No. CU-0644).

Accordingly, the Commission concludes that the amount of loss sustained by claimant shall be increased by interest thereon at the rate of 6% per annum from October 13, 1960, the date of loss, to the date on which provisions are made for settlement thereof.

It will be noted that the total amount of loss found herein is in excess of the amount asserted by claimant. However, in determining the amount of loss sustained, the Commission is not bound by any lesser or greater amounts which may be asserted by the claimant as the extent thereof.

CERTIFICATION OF LOSS

The Commission certifies that MAY KUTTEN 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 Two Thousand Four Hundred Sixty-Four Dollars and Thirty Cents (\$2,464.30) with interest thereon at 6% per annum from October 13, 1960 to the date of settlement.

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

FEB 21 1968

Edward S. Re

Edward S. Re, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

CERTIFICATION

This is a true and correct copy of the decision of the Commission which was entered as the final decision on MAY 27 1968

Francis H. ...

Clerk of the Commission

NOTICE TO TREASURY DEPARTMENT: The above listed bonds may have been returned to claimant and no payment should be made until they are re-submitted.

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).)