

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

IN THE MATTER OF THE CLAIM OF

GERARD D. GROSSMAN

Claim No. CU-1023

Decision No. CU- 5919

Under the International Claims Settlement
Act of 1949, as amended

Counsel for claimant:

Melvin D. Schiller, 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 amended amount of \$35,100.00, was presented by GERARD D. GROSSMAN based upon the asserted loss of certain real and personal property in Cuba. Claimant has been a national 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.

Claimant asserts the following losses:

Plymouth automobile - 1958	\$ 1,600.00
35 shares of stock in Minimax Corporation, a Cuban corporation	3,500.00
30 shares of stock in Argonaut Trading Company, a Cuban corporation	3,000.00
Open stock account with Luis Mendoza y Cia., a Cuban corporation	2,000.00
2/15 interest in improved real property in Camaguey, Cuba	<u>25,000.00</u>
Total	<u>\$35,100.00</u>

Automobile

On the basis of the evidence of record, the Commission finds that claimant owned a 1958 Plymouth automobile which he maintained at his residence in Havana, Cuba.

Law 989, published in the Official Gazette on December 6, 1961, by its terms effected confiscation of all goods and chattels, rights, shares, stocks, bonds, securities and bank accounts of persons who had left Cuba. The Commission finds that this law applied to claimant who had left Cuba before that date. In the absence of evidence to the contrary, the Commission finds that claimant's automobile was taken by the Government of Cuba on December 6, 1961. (See Claim of Floyd W. Auld, Claim No. CU-0020, 25 FCSC Semiann. Rep. 55 [July-Dec. 1966], and Claim of Wallace Tabor and Catherine Tabor, Claim No. CU-0109, id. at 53.)

Claimant states that his automobile had a value of \$1,600.00, but has submitted no evidence in support of his asserted valuation. On the

basis of information contained in the October 1961 publication of the National Automobile Dealers Association, the Commission finds that claimant's 1958 automobile had a value of \$1,000.00 on December 6, 1961, the date of loss.

Minimax Super-Mercados, S. A.

Claimant asserts the loss of 35 shares of the Minimax Super-Mercados, S.A., a Cuban corporation, for which he claims \$3,500.00, his asserted cost at the rate of \$100.00 per share.

Based upon the evidence of record and information available to the Commission concerning stockholders of Minimax Super-Mercados, S.A. (Minimax), the Commission finds that claimant owned 35 shares of stock of that corporation.

In our decision entitled Claim of Libby Holman Reynolds (Claim No. CU-1384 which we incorporate herein by reference), we held that the properties owned by Minimax were intervened by the Government of Cuba on September 1, 1960 and that this type of claim is allowable to an American national under the facts and conditions set forth therein. We need not again detail here the reasons or the method used in determining the value per share of \$1.0023.

Accordingly, the Commission finds that the value of claimant's stock interest in Minimax on September 1, 1960, the date of loss, was \$35.08.

Argonaut Trading Company

The record includes claimant's affidavit, dated January 26, 1967, in which he states that Argonaut Trading Company (Argonaut) was a Cuban corporation, organized in August 1946; that he and Sam Grossman and Bernardo Figueredo were the officers of Argonaut; that Argonaut's shares of stock had a par value of \$100.00 per share; that claimant and Sam Grossman were the sole stockholders of Argonaut, each owning 30 shares; and that all corporate records remained in Cuba and are no longer available, Argonaut having been taken in September 1961.

Claimant's statements are supported by other evidence of record as follows:

1. A letter of June 2, 1966 addressed to claimant from an officer of the First National Bank of Boston in which he states that "as an officer of our former Havana Branch, I am pleased to state that I knew of the existence of the Argonaut Trading Company and that for many years it was a valued depositor at our Galiano Street Branch. It was also my impression that you were the principal at interest."
2. An affidavit of June 30, 1969 from Bernardo Figueredo, former Secretary of Argonaut, in which he attests that claimant and Sam Grossman were the sole stockholders of Argonaut.
3. An affidavit of July 15, 1969 from Luisa Solis, an employee of Argonaut for 10 years prior to the taking thereof in September 1961, in which she states that claimant's stock investment in Argonaut was \$3,000.00.

Based upon the foregoing, the Commission finds that claimant owned a 1/2 stock interest in Argonaut. The Commission further finds on the basis of the affidavits of Luisa Solis, dated October 10, 1966 and July 15, 1969, that Argonaut's assets were taken by the Government of Cuba in September 1961. In the absence of evidence to the contrary, the Commission finds that the taking occurred on September 15, 1961.

Claimant asserts a loss of \$3,000.00 based apparently upon the par value of his 30 shares of stock, which represented a 1/2 interest in Argonaut. Since all corporate records were left in Cuba, there are no balance sheets or other financial statements concerning Argonaut. However, the record includes other evidence relating to Argonaut's assets and liabilities.

The affidavit of October 10, 1966 from Luisa Solis, the former employee of Argonaut for the last 10 years of its existence, indicates that Argonaut owned furniture and fixtures; a bank account maintained at the First National Bank of Boston, Galiano Branch, Cuba, having a value of \$1,000.00 to \$1,500.00; and other physical assets. The said letter of June 2, 1966, from a former officer of that Galiano Branch indicates that Argonaut was a "valued depositor", but fails to set forth any balance of the account. The said affidavit of June 30, 1969, from the former Secretary of Argonaut indicates that claimant's stock interest in Argonaut had a value in excess of \$3,000.00.

The affidavit of July 15, 1969, from Luisa Solis recites that claimant's stock investment in Argonaut was \$3,000.00. That affidavit contains a detailed listing of the items of personal property that were owned by Argonaut, adding that "there were no outstanding liabilities against the said Argonaut Trading Company in excess of the cash on deposit with banks in Cuba." Affiant states that after she arrived in the United States in 1962 she presented to claimant a list of Argonaut's personal property, which list is set forth in her affidavit. According to affiant, Argonaut owned the listed items of personal property and good will.

Upon consideration of the entire record, the Commission finds that Argonaut owned items of personal property having a value of \$3,292.00, as set forth in the said list. In the absence of more convincing evidence, particularly evidence establishing a profitable operation over a period

of years, the Commission finds no valid basis for concluding that Argonaut's asserted good will had any value on the date of loss. It is noted in this respect that it has not even been alleged that Argonaut's good will had any specific value. The Commission further finds that Argonaut's bank accounts were equivalent in value to its liabilities.

Moreover, the Commission finds that while the amount of claimant's investment in Argonaut in August 1946 has some probative value, it alone is insufficient to establish the value of Argonaut on September 15, 1961, the date of loss. (See Claim of Warren and Arthur Smadbeck, Inc., et al., Claim No. CU-2465, Amended Proposed Decision.)

Accordingly, the Commission finds that the net worth of Argonaut or the excess of its assets over its liabilities on September 15, 1961, the date of loss, was \$3,292.00. Therefore, claimant's 1/2 interest therein had a value of \$1,646.00.

Open Stock Account

Claimant states that he owned an open stock account with Luis Mendoza y Cia., a Cuban corporation, and that the value thereof was \$2,000.00. The record shows that claimant communicated with this firm of brokers at Havana, Cuba, concerning that account. The firm's response of March 2, 1962 was, in pertinent part, as follows:

We have your letters in which you request a statement of your esteemed account with the Stocks Department of this company. We regret we are unable to comply with your request on orders from our superiors.

In claimant's affidavit of January 6, 1969, he states that he had written three letters to the brokerage firm in an effort to obtain evidence in support of his claim for the loss in this respect of \$2,000.00, but without success.

The Commission finds that claimant has failed to sustain the burden of proof with respect to the portion of his claim based upon an open stock account. Accordingly, this portion of the claim is denied.

Improved Real Property

Based upon claimant's statements, a report from abroad, and an affidavit from an individual with personal knowledge of the facts, the Commission finds that claimant inherited in 1955 a 2/15 interest in certain improved real property in Camaguey, Cuba, known as Hotel Plaza.

The Commission finds that Hotel Plaza was within the purview of the Urban Reform Law of October 14, 1960. In the absence of evidence to the contrary, the Commission finds that Hotel Plaza was taken by the Government of Cuba on October 14, 1960. (See Claim of Henry Lewis Slade, Claim No. CU-0183, 1967 FCSC Ann. Rep. 39.)

The sole remaining question is the value of claimant's interest in the property on the date of loss.

In claimant's amended claim, he asserts that his 2/15 interest in Hotel Plaza, including the land, building, equipment, furniture and fixtures, had a value of \$25,000.00. In effect, therefore, his assertion is that the hotel had a value of \$187,500.00. His original statement of October 10, 1966, was that the assessed value of Hotel Plaza was \$250,000.00. A copy of claimant's letter of October 20, 1967 to counsel includes his statement that "I am not too sure that my memory serves me well when I am of the impression that it was a 60-guest room hotel, with space for public rooms, dining room, bar, office space, etc." Claimant also stated in that letter that the building had been constructed by his late father; that it was operated by his father and his brother, Sam; and that when his brother returns from abroad he may be able to furnish more specific information.

The record includes an affidavit, dated July 12, 1969, from claimant's brother, Samuel Grossman, in which he states that Hotel Plaza consisted of a three-story stone structure containing 75 guest rooms; 75 private bathrooms; four public rest rooms, one dining room with a seating capacity of 200; a bar; a lobby and reception area; an interior patio; an Otis elevator; and an administrative office.

Affiant further states that the building was appropriately equipped as a hotel, restaurant and bar, and that he was manager of the establishment from 1933 to November 1959 when he left Cuba. Affiant recalls that in 1957 or 1958 when an expansion of the hotel was contemplated to meet increasing demands for hotel facilities, it appeared that a loan of \$250,000.00 could be obtained with Hotel Plaza as security. Apparently no such loan was ever made, nor was there any expansion of the hotel's facilities. On the basis of the foregoing, affiant states that \$25,000.00 is a fair valuation of claimant's interest in the hotel.

It appears from the evidence of record that claimant's late father had constructed the hotel in 1929 and commenced operations in 1930. It further appears that neither the improved real property nor the personal property situated therein was encumbered by any mortgage or lien on the date of loss.

Upon consideration of the entire record, the Commission finds that claimant's valuation is fair and reasonable. Accordingly, the Commission finds that the value of claimant's interest in Hotel Plaza on October 14, 1960, the date of loss, was \$25,000.00.

Claimant's losses are summarized as follows:

<u>Item of Property</u>	<u>Date of Loss</u>	<u>Amount</u>
Automobile	December 6, 1961	\$ 1,000.00
Minimax	September 1, 1960	35.08
Argonaut	September 15, 1961	1,646.00
Hotel Plaza	October 14, 1960	<u>25,000.00</u>
	Total	<u>\$27,681.08</u>

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, as follows:

<u>FROM</u>	<u>ON</u>
September 1, 1960	\$ 35.08
October 14, 1960	25,000.00
September 15, 1961	1,646.00
December 6, 1961	<u>1,000.00</u>
Total	<u>\$27,681.08</u>

CERTIFICATION OF LOSS

The Commission certifies that GERARD D. GROSSMAN 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 Twenty-seven Thousand Six Hundred Eighty-one Dollars and Eight Cents (\$27,681.08) with interest at 6% per annum from the respective dates of loss to the date of settlement.

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

OCT 21 1970

Lyle S. Garlock
Lyle S. Garlock, Chairman

Theodore Jaffe
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).)