

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

IN THE MATTER OF THE CLAIM OF

PAULINE KAMINSKY

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-1030

Decision No. CU

1945

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 PAULINE KAMINSKY, and is based on the asserted loss of her interests in bonds issued by the Cuba Railroad Company. Claimant has been a national of the United States since her birth in the United States.

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 nine bonds, in the original face amount of \$1,000.00 each, issued by the Cuba Railroad Company, and known as "First Lien and Refunding Bonds, Series A, 4%, due June 30, 1970" issued under an Indenture of March 10, 1922 and a Supplemental Indenture dated July 1, 1952, with the First National City Bank of New York as Successor Trustee. The bonds in question are numbers TRM8, TRM82 through TRM87 inclusive, TRM1346 and TRM1347.

The Cuba Railroad Company by Indenture dated March 10, 1922, and Supplemental Indentures dated June 2, 1926 and July 1, 1952, issued Dollar bonds secured by mortgage upon the real property of the Company. By the Supplemental Indenture of July 1, 1952, the bonds were re-issued as 4% bonds, due June 30, 1970. As of 1952, the outstanding principal balance on each \$1,000.00 bond was \$635.00, with interest at 4% per annum to be paid on the principal balance. The record discloses that the last payment of interest on these bonds was made on December 1, 1958.

The Commission further finds on the basis of the evidence of record 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. M221 through M225 inclusive.

Pursuant to the Supplemental Indenture of July 1, 1952, these bonds are 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.

With regard to the value of these bonds 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 record discloses that the Cuba Railroad Company was organized in the State of New Jersey as a wholly-owned subsidiary of Consolidated Railroads of Cuba, a Cuban corporation. The properties of the Cuba Railroad Company were nationalized by Cuban Law 890, published in the Cuban Official Gazette on October 13, 1960. Although the Cuba Railroad Company was organized under the laws of the State of New Jersey, it was owned by a Cuban entity and 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. Therefore, claimant is entitled to file this claim based upon the bonds in question which represent a debt of a nationalized enterprise within the purview of Section 502(3) of the Act. (See Claim of Albert I. Harris, Claim No. CU-2398 and Claim of Joseph Gans, Claim No. CU-1720.)

The Commission finds that the total amount of the unpaid indebtedness on the bonds of the claimant was \$8,607.34, including the principal amounts of \$635.00 on each First Lien and Refunding Bond and the principal amounts of \$460.00 on each First Mortgage Bond, and the interest due on

on each First Lien and Refunding Bond from December 1, 1958 through October 13, 1960, in the amount of \$47.56 and on each First Mortgage Gold Bond from January 1, 1959 through October 13, 1960, in the amount of \$32.86.

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

Accordingly, the Commission concludes that the amount of loss sustained by the 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 claimant as the extent thereof.

CERTIFICATION OF LOSS

The Commission certifies that PAULINE KAMINSKY 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 Eight Thousand Six Hundred Seven Dollars and Thirty-Four Cents (\$8,607.34) with interest 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

JUN 13 1963

Leonard v. B. Sutton

Leonard v. B. Sutton, Chairman

Theodore Jaffe

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 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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