

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

IN THE MATTER OF THE CLAIM OF

SHERWOOD WOLFER

Under the International Claims Settlement  
Act of 1949, as amended

Claim No. CU - 1054

Decision No. CU 6209

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 SHERWOOD WOLFER for \$153,500.00 based upon the asserted ownership and loss of certain real and personal property including an interest in a partnership. 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.

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)(1970).)

Claimant describes his loss as follows:

1. Farm in Marianao	\$ 41,500
2. Farm in Santiago	40,000
3. Building in Marianao	12,500
4. 1/2 interest in S. Wolfer & Co.	20,000
5. Yacht	3,000
6. Two Automobiles	3,000
7. Household furnishings	5,000
8. 1/4 interest in warehouse	20,000
9. Gift shop	7,500
10. Cash	<u>1,000</u>
Total	\$153,500

On the basis of the record the Commission finds that claimant owned certain items of this claim as further discussed below. Pursuant to the Community Property Law of Cuba, his wife, Olga Franca, a Cuban national, owned a 1/2 interest therein except as otherwise stated hereafter. (See Claim of Robert L. Cheaney and Marjorie L. Cheaney, Claim No. CU-0915.) Since she is not a United States national she is ineligible under Title V of the Act, and the Commission therefore holds that the portion of this claim which is based on her 1/2 interest is denied. (See Claim of Sigridur Einarsdottir, Claim No. CU-0728, 25 FCSC Semiann. Rep. 45 [July-Dec. 1966].)

1. Farm in Marianao

The record includes the deed to this farm wherein claimant states that the property belongs to his wife since the moneys paid for the property and the lien belonged to her prior to their marriage. Under these circumstances the Commission finds that claimant's wife was the sole owner of this farm and that claimant acquired no interest therein under the Community Property Law of Cuba or otherwise. This portion of the claim is therefore denied in its entirety.

2. Farm in Santiago

Based on the entire record, including a report from abroad and a deed cancelling a mortgage on the property, the Commission finds that claimant, pursuant to the Community Property Law of Cuba, owned a 1/2 interest in a recreational farm in Santiago de las Vegas.

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

Claimant states that he left Cuba on December 28, 1966, and that the property was taken when he departed.

The Commission finds, in the absence of evidence to the contrary, that the subject real property was taken by the Government of Cuba on December 28, 1966, 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].)

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 question, in all cases, will be to determine the basis of valuation which, under the particular circumstances, is "most appropriate to the property and equitable to the claimant". This phraseology does not differ from the international legal standard that would normally prevail in the evaluation of nationalized property. It is designed to strengthen that standard by giving specific bases of valuation that the Commission shall consider.

The deed of cancellation recites that the farm was purchased in 1962 for \$15,000, that it measured about 3263 square meters, and that on it there was a one-story building consisting of about seven rooms. Claimant states that after its purchase he improved it by planting every fruit tree that grew in Cuba; added a full wing to the house with about five rooms; built a swimming pool and a rustic house; renovated the kitchen; enclosed all windows and doors with iron gratings; and air-conditioned three bedrooms. His estimate of the cost of the improvements (exclusive of any household furnishings) is \$20,900.00.

Based on the entire record including evidence available to the Commission as to the value of similar properties in Cuba, the Commission finds that on the date of loss the value of the farm including the improvements was \$34,000, and that claimant suffered a loss of \$17,000 in this connection.

The household furnishings are discussed further below.

### 3. Building in Marianao

With respect to this item, the record includes a report from abroad and a recorded description of the improvements on this property. Based on the evidence of record the Commission finds that pursuant to the Community Property Law, claimant owned a 1/2 interest in this improved property, and further, that it was also taken by the Government of Cuba on December 28, 1966, the date claimant left Cuba.

In the recorded description of this property, claimant states that on the unimproved realty he built 10 apartments of masonry, each consisting of 4 rooms and that the value of the building and lot is \$9,500.

Based on the evidence of record including a report from abroad and an affidavit by claimant that the mortgage on the property was satisfied, the Commission finds that the value of the 10 apartments was \$9,500.

4. S. Wolfer & Co.

Based on the evidence of record including evidence submitted in Claim of Carl C. Helmling (Claim No. CU-1493), the Commission finds that claimant was a 50% partner in this company which distributed Texaco products in Havana.

The Commission has held in Claim No. CU-1493 above that this company was intervened by the Government of Cuba on June 30, 1959 and that the value of the enterprise was \$5,400. Based on the evidence of record the Commission further finds that claimant's interest was \$2,700.00 and that the undistributed profits due to claimant were in the amount of \$4,084.91 or a total of \$6,784.91, and that claimant therefore suffered a loss in the amount of \$3,392.46 for his 1/2 interest in the company. (See Claim of Kramer, Marx, Greenlee and Backus, Claim No. CU-0105, 25 FCSC Semiann. Rep. 62 [July-Dec. 1966].)

5. and 6. Yacht and Two Automobiles

Based on the evidence of record including an affidavit of an individual familiar with the facts, the Commission finds that claimant owned a 1959 Chevrolet, a 1957 Fairlane 500, and a 29-foot Chris-Craft, and that these were also taken by the Government of Cuba on December 28, 1966, when claimant left Cuba.

The Commission further finds that the value of the 2 automobiles after appropriate depreciation was \$1,100.

Further, the asserted value of \$3,000 for the Chris Craft appears fair and reasonable. However, this was subject to depreciation, and the residual value on the date of loss was \$2,550. Claimant therefore suffered a loss in the total amount of \$1,825.00 for his interest in these items.

7. Household Furnishings

The Commission finds that claimant had a one-half interest in certain household furnishings, which were also taken on December 28, 1966. He has been unable to submit a detailed list of these, but has described

the furniture of the dining room, living room, several bedrooms and certain appliances. His listing gives costs of \$3,650. The Commission finds that these were subject to depreciation and finds that the residual value when the properties were taken was \$2,737.50 and that claimant suffered a loss of \$1,368.75 in this connection.

Warehouse, Gift Shop and Cash

Claimant asserts that he inherited a 1/4 interest in a brick warehouse in Havana upon the death of his mother, a United States national, on August 31, 1963; that he purchased a gift shop in 1956; and that he lost \$1,000 in money.

Various suggestions were made to claimant as to evidence appropriate to establish these items of claim. Although several brief affidavits were submitted, no other evidence was received. The Commission finds that the record is not persuasive in these regards.

In view of the foregoing, the Commission finds that claimant has not met the burden of proof with regard to this portion of his claim in that he has failed to establish ownership of rights and interests in property which was nationalized, expropriated or otherwise taken by the Government of Cuba. Thus, the Commission is constrained to deny this portion of the claim and it is hereby denied.

Recapitulation

Claimant's losses are summarized as follows:

<u>Item</u>	<u>Date of Loss</u>	<u>Amount</u>
S. Wolfer & Co.	June 30, 1959	\$ 3,392.46
Santiago Farm	December 28, 1966	17,000.00
Apartment Building	December 28, 1966	4,750.00
Household Furnishings	December 28, 1966	1,368.75
Boat and Automobiles	December 28, 1966	<u>1,825.00</u>
	Total	\$28,336.21

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 the Claim of Lisle Corporation, FCSC Claim No. CU-0644), and in this case it is so ordered as follows:

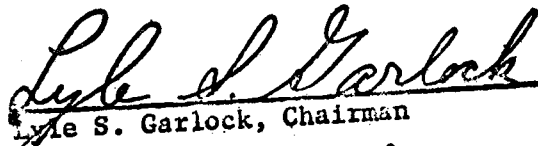
<u>From</u>	<u>On</u>
June 30, 1959	\$ 3,392.46
December 28, 1966	<u>24,943.75</u>
Total	\$28,336.21

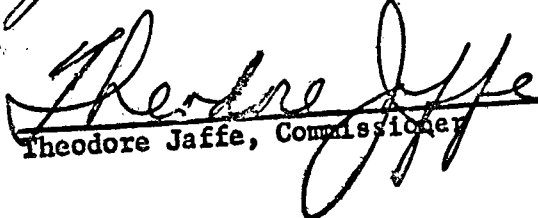
CERTIFICATION OF LOSS

The Commission certifies that SHERWOOD WOLFER 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-Eight Thousand Three Hundred Thirty-Six Dollars and Twenty-One Cents (\$28,336.21) with interest thereon 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

JUN 2 1971

  
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 (1970).)

CU-1054