

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

IN THE MATTER OF THE CLAIM OF

THEODORE L. BAILEY

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -1148

Decision No. CU 4302

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 THEODORE L. BAILEY in the amended amount of \$34,339.00 and is based upon the asserted ownership and loss of certain personal property in Cuba, including household furnishings, an automobile, bonds and accounts receivable. Claimant has been a national of the United States since his 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.

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.

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) (Supp. 1967).)

Claimant has submitted various affidavits concerning the ownership, loss and value of the household furnishings and automobile, subject of this claim. Claimant advised that for several years prior to the loss of the personal property in question he was a resident of Cuba where he was President and General Manager of Theodore Bailey & Company, Mobiliario Interior, S.A., a Cuban enterprise which manufactured and sold furniture, being located in La Lisa, Marianao, Havana, Cuba. Claimant further stated that most of the furniture which is the subject of his claim was manufactured at his personal direction to meet certain requirements in furnishing his home at 519 Calle 14, Reparto Miramar, Marianao, Cuba.

The record in this and a related claim (FCSC Claim No. CU-0596) filed for loss of the furniture factory, includes several letters from persons who were residents of Cuba and had personal knowledge of claimant's personal property, including his automobile and household furnishings, and his work in the management of the furniture factory. The record also includes extensive lists of the personal property, prepared by

CU-1148

claimant, giving detailed descriptions and the value of the personal property in question, much of which was purchased at cost from the factory. The evidence of record also includes a cablegram from an associate in Cuba advising claimant, then in the United States, that his property would be taken by the Government of Cuba unless he returned to Cuba on August 23, 1961. The claimant advised that the cablegram was received on or about such date of confiscation, and, as an American citizen, absent from Cuba, his property was subject to confiscation in any event.

Based upon the entire record the Commission finds that claimant was the owner of certain personal property, including household furniture and a 1958 automobile; and that such personalty was taken by the Government of Cuba without compensation on August 23, 1961. Upon consideration of the record herein, including evidence available to the Commission as to the value of similar items in Cuba at the time of loss and factors relating to depreciation of personal property the Commission finds that \$21,500.00 is the fair and reasonable value of the household furnishings and automobile owned by claimant on the aforesaid date of loss. Accordingly, the Commission concludes that claimant suffered a loss in that amount, within the meaning of Title V of the Act.

This leaves for determination those portions of the instant claim asserted for loss of bonds and certain furniture accounts receivable from the prior Government of Cuba. By Commission letters of June 22, 1967, July 17, 1968, and October 6, 1969, claimant was advised as to the type of evidence proper for submission to establish these portions of the claim. Claimant advised, however, that he had no available evidence to support these portions of his claim.

The Commission appreciates the difficulties encountered by some claimants in establishing portions of their claims against the Government of Cuba. However, the Commission must be guided by the evidence of record pertaining to the ownership, loss and value of the property included in each claim. Thus, the Commission is constrained to find that claimant herein has not met the burden of proof in that he has failed to establish ownership of rights and interests in such bonds or accounts receivable which was nationalized, expropriated or otherwise taken by the Government of Cuba. Accordingly, the Commission is constrained to deny these portions of the claim and they are hereby denied.

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), and in the instant case it is so ordered.

CERTIFICATION OF LOSS

The Commission certifies that THEODORE L. BAILEY 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-One Thousand Five Hundred Dollars (\$21,500.00) with interest thereon at 6% per annum from June 13, 1962 to the date of settlement.

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

DEC 10 1969

Theodore Jaffe

Theodore Jaffe, Commissioner

Sidney Freidberg

Sidney Freidberg, 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).)

CU-1148