

FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
WASHINGTON, D.C. 20577

IN THE MATTER OF THE CLAIM OF

JOSEPH L. SHARPE
FRANCES SHARPE

Claim No. CU-1187

Decision No. CU 5908

Under the International Claims Settlement
Act of 1949, as amended

Counsel for Claimant:

Herbert S. Shapiro, Esq.

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 JOSEPH L. SHARPE in the amended amount of \$152,307.21 based upon the asserted ownership and loss of a share interest in a United States corporation, a debt, and other personal property located in Cuba. Claimant JOSEPH L. SHARPE derived nationality of the United States on January 25, 1927.

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 record discloses that FRANCES SHARPE, the wife of JOSEPH L. SHARPE, has been a national of the United States since birth. Pursuant to the Community Property Law of Cuba, she had an interest in property acquired by her husband subsequent to their marriage in 1944. Accordingly, FRANCES SHARPE is joined as claimant in this matter.

Claimant JOSEPH L. SHARPE asserts the following losses:

Cuban Telephone Company stock	\$ 2,000.00
Photography equipment and inventory	4,174.31
Cash deposits for photography	4,000.00
Household furnishings	5,000.00
Accumulated share of profits in Cuban company	125,618.00
Two automobiles	3,000.00
Insurance policy	<u>8,514.90</u>
	<u>\$152,307.21</u>

The evidence establishes and the Commission finds that claimants owned certain items of personal property in Cuba discussed in detail below.

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.

Unremitted Profits Due from Los Precios Fijos Stores, S.A.

The record includes a copy of an agreement between Los Precios Fijos Stores, S.A., a Cuban corporation, hereinafter called "Fijos", and claimant, JOSEPH L. SHARPE, entered into on July 5, 1954. The agreement provided among other things for the operation of the Electrical Appliances Department in "Los Precios Fijos", a store; the distribution of its assets and profits on the basis of 75% for Fijos and 25% for claimant, JOSEPH L. SHARPE; and the payment of \$7,500.00 to claimant, JOSEPH L. SHARPE, every fortnight (the peso being on a par with the United States dollar).

The record also includes a copy of a letter from the president of Fijos to claimant, JOSEPH L. SHARPE, dated August 22, 1960, stating that the balance due JOSEPH L. SHARPE from the Electrical Appliances Department as of January 31, 1960 was \$110,618.00; and a copy of a memorandum, dated February 5, 1960, from an accountant confirming this amount. Claimants' counsel states that Herbert Wallach, Jr., the accountant of claimant JOSEPH L. SHARPE, has stated that an additional sum of \$15,000.00 was due JOSEPH L. SHARPE for the period February 1, 1960 to October 14, 1960. This was also shown in claimant's memorandum of August 25, 1960.

The Government of Cuba, on September 29, 1959, published its Law 568, concerning foreign exchange. Thereafter the Cuban Government effectively precluded not only transfers of funds to creditors abroad, but also payment to creditors within Cuba, by numerous unreasonable and costly demands upon the consignees, who were thus deterred from complying with the demands of the Cuban Government. The Commission holds that Cuban Law 568 and the Cuban Government's implementation thereof, with respect to the rights of the claimant herein, was not in reality a legitimate exercise of sovereign authority to regulate foreign exchange, but constituted an intervention by the Government of Cuba in the contractual rights of the claimant, which resulted in the taking of American-owned property within the meaning of Section 503(a) of the Act. (See Claim of The Schwarzenbach Huber Company,

Claim No. CU-0019, 25 FCSC Semiann. Rep. 58 [July-Dec. 1966]; and Claim of Etna Pozzolana Corporation, Claim No. CU-0049, 1967 FCSC Ann. Rep. 46.)

The Commission holds that implementation of Law 568 constituted an intervention by the Government of Cuba in the contractual rights of claimants with respect to payments due under the contract. (See Claim of Jantzen, Inc., Claim No. CU-1531, 1968 FCSC Ann. Rep. 66.) The record also establishes that Fijos was nationalized by the Government of Cuba on October 13, 1960 pursuant to Law 890 of that date which listed Fijos as nationalized.

On the basis of the foregoing, the Commission finds that Fijos owed claimants debts in the total amount of \$125,618.00.

The Commission has held that debts of an intervened or nationalized Cuban corporation owed to an American claimant constitute losses occurring on the date of intervention or nationalization within the meaning of Title V of the Act. (See Claim of Kramer, Marx, Greenlee and Backus, Claim No. CU-0105, 25 FCSC Semiann. Rep. 62 [July-Dec. 1966].) Accordingly, the Commission finds that the loss suffered by claimants on October 13, 1960 on account of debts due from Fijos was \$125,618.00.

Cuban Telephone Company Stock

Based on a copy of claimant's accountant's report, the Commission finds that claimant, JOSEPH L. SHARPE, owned twenty shares of preferred stock of Cuban Telephone Company.

The Commission has held that a claim based upon stock of the Cuban Telephone Company is within the purview of Title V of the Act because, although the Cuban Telephone Company was a national of the United States at all pertinent times, it is now defunct. (See Claim of International Telephone and Telegraph Company, Claim No. CU-2615.) In that claim, the Commission found that the assets of the Cuban Telephone Company had been taken by the Government of Cuba on August 6, 1960. We need not again detail here the reasons or the method used in determining the value per

preferred share of \$104.50 including accrued dividends. Accordingly, the Commission finds that claimants suffered a loss with respect to this portion of the claim in the aggregate amount of \$2,090.00 within the meaning of Title V of the Act.

Photography Equipment

Claimant JOSEPH L. SHARPE has submitted a list of the photography equipment located at the Hotel Havana Riviera which he asserts was taken by the Cuban Government. He asserts that the large majority of the equipment was purchased between November 1957 and March 1958, and that its value after depreciation was \$3,500.00. The record also includes a summary of losses prepared on August 25, 1960 including the photography equipment which he sent to the American Embassy in Havana.

Based upon the entire record the Commission finds that claimant owned the photography equipment included in this portion of the claim and that, in the absence of evidence to the contrary, it was taken by the Government of Cuba on October 24, 1960 when the Hotel Havana Riviera was nationalized pursuant to Cuban Resolution 3, published on October 24, 1960.

Moreover, the Commission has considered the description of the equipment and finds the asserted depreciated value to be fair and reasonable. It therefore concludes that on October 24, 1960, the date of loss, the photography equipment had a value of \$3,500.00.

Household Furnishings and Automobiles

Claimant JOSEPH L. SHARPE has also submitted a list and a description of his household furnishings and his two automobiles with values depreciated 50 per cent as of the time of loss, to \$5,000.

Based on the entire record, the Commission finds that claimants owned the personalty included in this portion of the claim.

Law 969 published in the Official Gazette on December 6, 1961, by its terms effectively confiscated goods and chattels, rights, shares, stocks, bonds and other securities of persons who left Cuba. In the

absence of evidence to the contrary, the Commission finds that claimants' personalty was taken by the Government of Cuba on December 6, 1961. (See Claim of Wallace Tabor and Catherine Tabor, Claim No. CU-0109, 25 FCSC Semiann. Rep. 53 [July-Dec. 1966].)

The Commission further finds that the asserted values of this personalty are fair and reasonable and concludes that on December 6, 1961, the date of loss, the aggregate value of the household furnishings and two automobiles was \$5,000.00.

Cash Deposits for Photography and Insurance Policies

Claimant JOSEPH L. SHARPE asserts that in connection with his photography business he had \$4,000.00 on deposit at the Hotel Riviera and \$674.31 on deposit at a bank. He also asserts a loss of \$8,514.90 under insurance policies which he states he left at the office of Fijos, and are not available.

With regard to this portion of the claim, the Commission finds that there is insufficient evidence in the record to establish these losses or that they resulted from actions of the Government of Cuba. Accordingly, this portion of the claim is denied for failure of proof.

It also appears that claimant JOSEPH L. SHARPE has asserted and the United States Internal Revenue Service has allowed an income tax deduction in 1960 in the sum of \$145,307.21.

RECAPITULATION

Claimants' losses within the meaning of Title V of the Act are summarized as follows:

<u>Items</u>	<u>Date of Loss</u>	<u>Amount</u>
Unremitted profits due from Fijos	October 13, 1960	\$125,618.00
Cuban Telephone Co. stock	August 6, 1960	2,090.00
Photography equipment	October 24, 1960	3,500.00
Household furnishings and automobiles	December 6, 1961	<u>5,000.00</u>
		<u>\$136,208.00</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>
JOSEPH L. SHARPE	August 6, 1960	\$ 1,045.00
	October 13, 1960	62,809.00
	October 24, 1960	1,750.00
	December 6, 1961	<u>2,500.00</u>
		\$68,104.00
FRANCES SHARPE	August 6, 1960	\$ 1,045.00
	October 13, 1960	62,809.00
	October 24, 1960	1,750.00
	December 6, 1961	<u>2,500.00</u>
		\$68,104.00

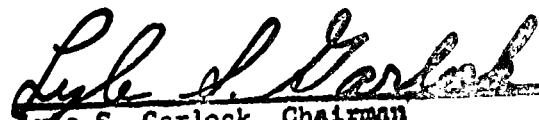
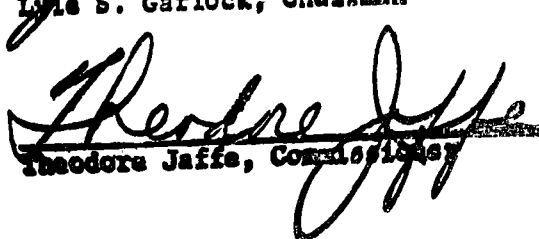
CERTIFICATIONS OF LOSS

The Commission certifies that JOSEPH L. SHARPE 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 Sixty-eight Thousand One Hundred Four Dollars (\$68,104.00) with interest thereon at 6% per annum from the respective dates of loss to the date of settlement; and

The Commission certifies that FRANCES SHARPE 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 Sixty-eight Thousand One Hundred Four Dollars (\$68,104.00) 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

OCT 14 1970


Lyle S. Garlock, Chairman

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.

ICE: Pursuant to the Regulations of the Commission, if no objections 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. 101.5(e) and (g), as amended, 32 Fed. Reg. 412-13 (1967).)