

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

IN THE MATTER OF THE CLAIM OF

BERNARD COHEN

Claim No. CU-1444

Decision No. CU-5929

**Under the International Claims Settlement
Act of 1949, as amended**

FINAL DECISION

Under date of October 28, 1970, the Commission issued its Proposed Decision on this claim. The Decision denied the part of the claim based on property inherited by claimant's spouse, a non-United States national, and certified losses for claimant's one-half interest in personalty taken on March 31, 1961, in the amount of \$6,675; and also for his one-half interest in the stock in trade, equipment and fixtures of a store taken on June 30, 1961, in the amount of \$12,500, aggregating \$19,175.00.

Claimant contends that however his original claim for \$9,000.00 for land was for land he purchased in 1952 for himself and family and had no connection with the inheritance of his spouse. In support he has submitted the affidavit of one who had an option to purchase the land in 1959, paid \$1,000 thereon, which claimant returned when the situation in Cuba steadily worsened. The record shows that this property consisted of two parcels in the farm "La Jutia", barrio de Jaimanitas facing 12th Avenue in Marianao whereas the property inherited by his spouse consisted of an improved parcel which was formerly part of the farm Cruz del Padre, in the Arroyo Apolo section of Havana.

The matter having been re-examined, the Commission now finds that claimant owned the two parcels in Marianao, which were also taken by the Government of Cuba on March 31, 1961, and which had a value of \$9,000.00 on that date. Further, the Commission finds that claimant's spouse had an interest in one-half, but inasmuch as she was not a United States national at that time, claim based on her interest must be denied.

Accordingly claimant's losses are now summarized as follows:

	<u>Date of Loss</u>	<u>Amount</u>
Household furnishings and Automobile	March 31, 1961	\$6,675
Two lots	March 31, 1961	4,500
Stock, equipment and fixtures of store	June 30, 1961	<u>12,500</u>
		\$23,675


Accordingly, the Certification of Loss in the Proposed Decision is set aside and the Certification of Loss as restated below will be entered and in all other respects, the Proposed Decision, as amended herein, is affirmed.

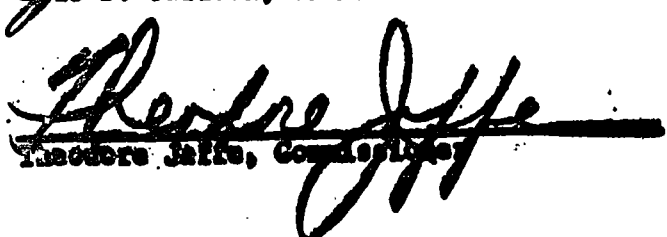
CERTIFICATION OF LOSS

The Commission certifies that BERNARD COHEN 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-Three Thousand Six Hundred SeventyFive Dollars (\$23,675.00) with interest at 6% per annum from the aforesaid dates of loss to the date of settlement.

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

SEP 1 1971


Louis S. Garlock, Chairman


Theodore Jaffe, Commissioner

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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 BERNARD COHEN, in the amount of \$63,000.00, and is based upon the asserted loss of real and personal property in Havana, 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.

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) (1969).)

Claimant describes his losses as follows:

- | | |
|---|------------------|
| 1. One-half interest in improved real property at 721 San Mariano Street, Santo Suarez, Havana, Cuba | \$21,500.00 |
| 2. Furnishings and personal effects at claimant's residence, as above, and automobile at the same address | 6,500.00 |
| 3. Stock in trade, equipment and fixtures located at the Zamba Store, 56 Neptuno Street, Havana, Cuba | <u>35,000.00</u> |
| | \$63,000.00 |

The claimant has submitted evidence pertaining to the ownership, loss and value of the subject property, including affidavits of former Cuban residents, assertedly having personal knowledge of the property, a copy of a decree of distribution of the property of the parents of Ofelia Loshinsky Mechaber Cohen, wife of claimant. The record also includes reports from abroad concerning the ownership of the subject properties.

The evidence of record discloses that claimant's wife, Ofelia Loshinsky Mechaber Cohen, inherited a 50% interest in improved real property located at 721 San Mariano Street, Havana, Cuba; that this property was nationalized or otherwise taken by the Government of Cuba on or about March 31, 1961; and that the wife of the claimant became a national of the United States on May 22, 1964.

Inasmuch as Ofelia Cohen was not a United States national at the time the improved realty was taken by the Government of Cuba, in March 1961, she does not meet the nationality requirements of the Act. It is to be noted that in order for the Commission to favorably consider a claim filed under Title V of the Act, it must be established (1) that the subject property was owned in whole or in part by a national of the United States on the date of taking by the Government of Cuba and (2) that the claim arising as a result of such nationalization has been continuously owned thereafter in whole or in part by a national or nationals of the United States to the date of filing claim with the Commission. (See Claim of Joseph Dallos Hollo, Claim No. CU-0101, 25 FCSC Semiann. Rep. 46 [July-Dec. 1966].) Moreover, under the Community Property Laws of Cuba, the property inherited by Ofelia Cohen from her parents constitutes her separate property and the claimant BERNARD COHEN has no interest therein. (See Claim of Robert L. Cheaney and Marjorie S. Cheaney, Claim No. CU-0915.)

For the foregoing reasons, the Commission is constrained to deny the portion of this claim asserted for the loss of real property at 721 San Mariano Street, Havana, Cuba, and it is hereby denied.

The Commission finds that claimant and his wife were the joint owners of personal property located at the aforesaid residence in Havana, Cuba, including household furnishings and personal effects, as well as an automobile; and that the claimant and his wife also owned stock in trade, equipment and certain fixtures located in a business enterprise known as the "Zamba" store.

The Commission finds that the personalty located at 721 San Mariano Street, Havana, Cuba, was taken by the Government of Cuba on March 31, 1961; and that the business enterprise known as the "Zamba" store was rationalized or otherwise taken by the Government of Cuba on or about June 30, 1961.

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.

Claimant BERNARD COHEN left Cuba in December 1960 and the "Zamba" store was taken by Cuba on or about June 30, 1961. The affiants have stated that the claimant ordinarily maintained stock in trade with an average value of \$30,000.00; and that in 1958 claimant expended approximately \$10,000.00 in renovation and repairs, adding equipment and certain fixtures in the business enterprise which he maintained on rented premises. Additionally, the affiants have stated their opinions that the household furnishings and personal effects at the residence in Havana had a value of \$12,350.00; and that the automobile, a 1955 Chevrolet, had a value of \$2,800.00.

The Commission has considered the evidence of record concerning the value of the personal property on the aforesaid dates of loss and available evidence pertaining to the value of similar personalty in Havana. Claimant has indicated that the stock in trade was acquired in 1960 but has offered no evidence to establish what stock in trade was on hand at the time of loss. The Commission suggested in correspondence to claimant that he forward evidence to establish the items on hand and the value of such stock which was maintained in the business enterprise on the date of loss in 1961. However, claimant submitted no further evidence concerning this aspect of the claim.

The Commission finds on the basis of this record and in the absence of evidence to establish a higher value, that the stock in trade was depleted by 50% at the time of loss; and that such stock in trade, equipment and fixtures had a total value of \$25,000.00 at the time of loss.

The Commission also finds that the asserted value of household furnishings and personal effects in the amount of \$12,350.00 is fair and equitable. However, the Commission finds that the value of the 1955 Chevrolet was \$1,000.00 at the time of loss in March 1961.

Ofelia Loshinsky Mechaber Cohen, pursuant to the Community Property Laws of Cuba, owned a one-half interest in the said personal property. As stated above, she was not a national of the United States at the time of loss. While she has not asserted a claim for her one-half interest, the claim was based upon the total value of all property included in the claim. Accordingly, the claim asserted herein for loss of her one-half interest in the property is hereby denied.

The Commission concludes that claimant herein suffered a loss in the amount of \$19,175.00 within the meaning of Title V of the Act.

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 respective dates 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:

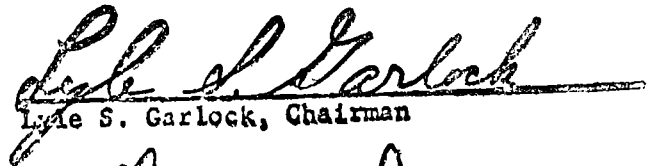
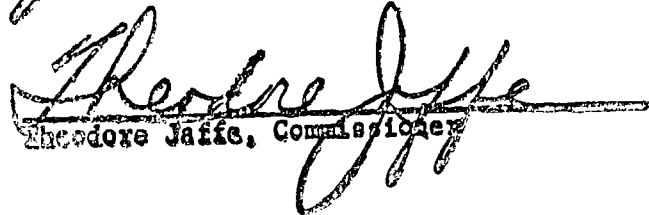
<u>FROM</u>	<u>ON</u>
March 31, 1961	\$ 6,675.00
June 30, 1961	<u>12,500.00</u>
	\$19,175.00

CERTIFICATION OF LOSS

The Commission certifies that BERNARD COHEN 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 Nineteen Thousand One Hundred Seventy-five Dollars (\$19,175.00) with interest at 6% per annum from the aforesaid dates of loss to the date of settlement.

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

OCT 28 1970


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, 32 Fed. Reg. 412-13 (1967).)

CU-1444