

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

IN THE MATTER OF THE CLAIM OF

LUIS GOLDSMITH

Claim No. CU -1730

Decision No. CU -3340

Under the International Claims Settlement
Act of 1949, as amended

Counsel for claimant:

Ira Grossman, Esq.

Appeal and objections from a Proposed Decision entered on November 27, 1968; oral hearing requested.

Oral hearing held on May 13, 1969.

FINAL DECISION

Under date of November 27, 1968, the Commission issued its Proposed Decision, denying this claim in its entirety for failure to sustain the burden of proof.

Claimant objected to the Proposed Decision and requested an oral hearing which was held on May 13, 1969. Upon consideration of the evidence presented at the oral hearing, including the testimony of claimant, in the light of the entire record, the Commission now finds as follows:

1. Claimant's testimony is credible as to matters relating to the operation and types of businesses in which claimant was engaged in Cuba. The evidence, however, was insufficient to establish the duration of the asserted leases, the values thereof or the potential long-range earning capacities of these rather new enterprises. Accordingly, the record does not justify an allowance for either the value of the asserted leaseholds or the going concern values of the enterprises in question.

2. The record now establishes that claimant owned a one-half interest in: accounts receivable due from Cuban customers in the amount of \$116,000.00; cash on hand in the amount of \$6,000.00; inventory in the amount of \$70,000.00; and cash in banks in the amount of \$90,000.00, the aggregate amount of claimant's one-half interests being \$141,000.00.

3. Pursuant to Law 989 of December 6, 1961, all properties of persons who had left Cuba were confiscated. This law applied to claimant, who had left Cuba prior to that date. Accordingly, his interests in the foregoing items of property were taken by Cuba on December 6, 1961, the effective date of Law 989. (See Claim of Floyd W. Auld, Claim No. CU-0020, 25 FCSC Semiann. Rep. 55 [July-Dec. 1966]; and Claim of Wallace Tabor and Catherine Tabor, Claim No. CU-0109, id. at 53.)

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.

Accordingly, the following certification of loss is entered, and in all other respects the Proposed Decision is affirmed.

CERTIFICATION OF LOSS

The Commission certifies that LUIS GOLDSMITH 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 One Hundred Forty-one Thousand Dollars (\$141,000.00) with interest at 6% per annum from December 6, 1961 to the date of settlement.

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

SEP 11 1969

Leonard v. B. Sutton

Leonard v. B. Sutton, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

Sidney Freidberg

Sidney Freidberg, Commissioner

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PROPOSED DECISION

This claim against the Government of Cuba, filed under Title V of the International Claims Settlement Act of 1949, as amended, in the amount of \$1,035,500.00, was presented by LUIS GOLDSMITH and is based upon the asserted loss of interests in certain Cuban enterprises and certain other items of personal property. Claimant has been a national of the United States since his naturalization on November 20, 1943.

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.

Claimant asserts the following losses which aggregate \$1,035,500.00:

1. A 50% interest in Commercial Gama, S.A., a Cuban corporation, which owned and operated four department stores in Havana, Cuba. It is stated that the tangible assets of the four stores aggregated \$252,000.00; that these stores had long leases, valued in the aggregate amount of \$350,000.00; and that the intangible value of these stores aggregated \$500,000.00. Accordingly, \$551,000.00 is claimed on account of these asserted losses.
2. A 100% interest in a concern known as L. Goldsmith Representations, which carried on an export and import business. It is stated that the tangible assets of this concern had a value of \$1,000.00, and that the intangible value of the concern was \$400,000.00. The loss claimed on account of this concern is \$401,000.00.
3. A 100% interest in Standard Sales Corporation, a Cuban corporation, engaged in the wholesale distribution business, apparently in conjunction with the export and import business. It is stated that the tangible assets of this corporation had a value of \$28,000.00, and that the intangible value of the corporation was \$25,000.00. The loss claimed on account of this corporation is \$53,000.00.
4. Claim is made for the loss of personal belongings including clothing, jewelry, miscellaneous items, a car and cash, aggregating the amount of \$16,500.00.

5. Claim is also made for \$14,000.00, representing a 50% interest in \$28,000.00 stated to have been transferred by Commercial Gama, S.A. to the Cuban National Bank to remit to foreign suppliers, "which they never paid".

In support of his claim, claimant initially submitted numerous letters from former business associates stating that they engaged in business transactions with claimant, and that they knew claimant owned the enterprises in question; photographs of the premises claimed; copies of advertisements caused to be published by the department stores; copies of business cards for Commercial Gama, S.A. and Standard Sales Corporation, indicating thereon

that claimant was Vice President and President thereof, respectively; and a copy of an affidavit, dated November 25, 1961, at Havana, tending to show that Commercial Gama, S.A. and its subsidiaries were nationalized.

Since the record was deemed insufficient to warrant favorable action, the Commission made suggestions to claimant on several occasions, indicating that the submission of certain additional supporting evidence would be appropriate. The Commission suggested that the submission include the following: (a) original stock certificates evidencing the asserted ownership interests in Commercial Gama, S.A., and Standard Sales Corporation, extracts of entries from the Commercial Register of Cuba, tax records, and any other evidence to establish ownership of the property claimed; (b) proof of nationalization or other taking by Cuba of the various items of property claimed, including the Cuban laws, decrees or other measures under which the properties were taken, pertinent copies of the Cuban Official Gazette listing the nationalization of the enterprises, and proof as to the dates when each item of property was taken, which, claimant had indicated in his official claim form, had occurred between September 30, 1960 and January 1961; (c) certified copies of pertinent balance sheets of the claimed enterprises as of or close to the dates of asserted nationalization, appraisals of the assets claimed, any available tax assessments, insurance data, and any other evidence establishing the values of the various items of property claimed; (d) copies of the leases for the four department stores, which claimant had asserted were long term leases, having an aggregate value of \$350,000.00; and (e) any other appropriate evidence to corroborate claimant's statements and support his claim.

On each occasion claimant submitted a number of affidavits, primarily from those persons who had written the said letters, originally filed with this claim. An examination of those affidavits indicates that they are all of the same general tenor, reciting that the affiants engaged in business transactions with claimant, that he owned the properties claimed and that upon personal knowledge and recollection, the properties had the values claimed by claimant.

The nature of the evidence thus submitted is best illustrated by a typical affidavit from claimant's Certified Public Accountant, which states in pertinent part as follows:

That I was Luis Goldsmith's Certified Public Accountant in Habana, Cuba, from 1958 thru 1960 and handled his personal accounting as well as audited the books and records of Commercial Gama, S.A. and Standard Sales Corporation.

That Luis Goldsmith was the owner of 50% of the capital stock of Commercial Gama, S.A.

That Luis Goldsmith was the owner of 100% of the capital stock of Standard Sales Corporation.

The foregoing affidavit was supplemented by others from the same affiant, stating that Standard Sales Corporation was taken by Cuba on or about September 30, 1960, and that L. Goldsmith Representations was taken by Cuba on or about January 1, 1961. This affiant also set forth in his affidavits his recollection of the net annual earnings, the fair market values, the book values, the going concern values and the replacement values of Commercial Gama, S.A., Standard Sales Corporation, and L. Goldsmith Representations in round figures, on the basis of which this claim was computed by claimant.

In response to a Commission suggestion for the bases of these statements by the said accountant and the other affiants, further supplementary affidavits were submitted. For example, the said Certified Public Accountant stated in his later affidavit as follows:

For Commercial Gama and L. Goldsmith Rep.:

Earnings = recollection and personal knowledge
Book Value = recollection of Net Worth
Fair Market Value = ten times Earnings
Going Concern Value = ten times Earnings
Replacement Value = Assets Value when taken

For Standard Sales:

Fair Market Value = Asset Value
Book Value = Recollection of Net Worth
Going Concern Value = Asset Value
Replacement Value = Assets Value when taken

No documentation to support the affiant's statements was submitted. The Commission attempted to obtain through sources available to it, information concerning the properties in question.

Subsequently the Commission received a copy of a report from sources in Cuba indicating that Commercial Gama, S.A. was registered with the Central Registry of Corporations on November 18, 1959 by Mr. Hugo May Gomez and claimant; that the corporation had an authorized capital stock of \$200,000.00; and that only 400 shares of common stock had been issued, 300 shares to Mr. Gomez and 100 shares to claimant. Nothing in that report indicated what assets were owned by the newly-formed corporation or its disposition, or the interests of any stockholder beyond the original date of registration.

Accordingly, the Commission informed claimant of these circumstances, suggesting an explanation and further supporting evidence inasmuch as it appeared from the report that claimant had originally acquired only a 25% interest in Commercial Gama, S.A., whereas he had claimed a 50% interest. The submission of evidence with respect to the other properties claimed was also suggested by the Commission.

Claimant's response was his own affidavit of May 15, 1968 stating that he had read the entire file of his claim, that all of the statements therein were true and correct; that he had personal knowledge of all matters involved in his claim; and that the total amount of his loss as a result of expropriation or other taking of his property by the Government of Cuba was \$1,035,500.00.

Since that date no further evidence has been submitted although detailed suggestions were made to claimant's counsel on two subsequent occasions when he telephoned 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).)

The Commission has carefully considered the entire record and finds that the evidence does not warrant favorable action.

The Commission finds that claimant has not met the burden of proof, in that he has failed to establish ownership of rights and interests in property which was nationalized, expropriated, intervened or otherwise taken by the Government of Cuba within the meaning of Title V of the Act. Accordingly, this claim is denied in its entirety.

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

NOV 27 1968

Leonard v. B. Sutton

Leonard v. B. Sutton, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

Sidney Freidberg

Sidney Freidberg, Commissioner

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).)