

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

IN THE MATTER OF THE CLAIM OF

HERMAN LEVINE

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-1757

Decision No. CU 5915

Counsel for claimant:

Mark Bernstein, 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 HERMAN LEVINE for \$202,771.57 based upon the asserted ownership and loss of personal property and a business in Cuba. Claimant has been a national of the United States since birth.

Although claimant's spouse, Golde Levine, was invited to join in this claim, and did so petition, the record will show that the properties subject of the claim were taken by the Government of Cuba prior to her asserted naturalization in the United States on April 10, 1964. Accordingly, as no useful purpose would be served by joining Golde Levine herein, the petition is hereby denied.

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 has described the losses subject of this claim as follows:

- | | | |
|-----|---|--------------|
| (1) | 100% interest in "Almacenes
Orlon, S.A." | \$185,621.57 |
| (2) | Personal property such as house
furnishings and clothing | 17,150.00 |

Almacenes Orlon, S.A.

The record includes an affidavit of the person who sold to claimant his entire capital stock interest in Almacenes Orlon, S.A. (hereafter referred to as Almacenes) in 1954, resulting in claimant's entire ownership of the company. Further, it appears that Internal Revenue Service has recognized claimant's full ownership of the capital of the company. On the basis of the record, the Commission finds that claimant and, pursuant to the community property laws of Cuba, his spouse, owned a 100% interest in Almacenes.

Additionally, the record includes a copy of Decision No. 3296, of August 13, 1962, of the Cuban Ministry of Domestic Commerce, published on September 13, 1962, intervening Almacenes. As this company was engaged in the selling of textiles, it is probable that Almacenes was nationalized by Law 1076 of December 5, 1962, which concerned enterprises dealing in textiles, among other things. However, the Commission finds that Almacenes was intervened within the meaning of Title V of the Act on September 13, 1962.

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 record includes, in support of the claimed value, a balance sheet for December 31, 1959, a balance sheet for September 14, 1962, a ruling from Internal Revenue Service in 1962 allowing the initial investment of claimant, less a debt of \$6,429.93. In addition, the record includes a number of pictures of the plant.

The balance sheet for December 31, 1959, reflects a net worth of \$106,772.79. However, the Commission finds that the balance sheet of September 14, 1962 more accurately reflects the standing of Almacenes on the date of loss. This reflects a net worth of \$182,358.34, and the Commission finds that Almacenes had a net value of \$182,358.34. In arriving at the extent of claimant's loss, the Commission finds it appropriate to deduct the debt of \$6,429.93 which claimant reported to Internal Revenue Service in 1962 but which is not found on the balance sheet. This reduces the net worth to \$175,928.41, and the Commission finds that claimant HERMAN LEVINE suffered a loss in the amount of \$87,964.20 in this respect, within the scope of Title V of the Act.

Personal Property

The Commission finds that claimant and his spouse owned certain personal property in Cuba and that it was taken on September 20, 1960, subsequent to their departure from Cuba.

Claimant has submitted a list of the personal property which was located at claimants' residence when they departed Cuba on September 18, 1960. This reflects purchases from 1953 into 1960, and prices paid. The Commission finds that whereas some items such as silverware are not depreciable, nevertheless, the asserted values

are not supported by probative evidence. Other items such as appliances are customarily depreciated at a rate of 5% a year, furnishings, including lamps, are depreciable at a rate of 10% a year and clothing is depreciable at a rate of 20% a year.

Accordingly, the Commission finds that the value of the personal property on the date of loss was \$6,040.00, and that claimant HERMAN LEVINE suffered a loss of \$3,020.00 in this connection.

The file reflects that claimant HERMAN LEVINE was of the opinion that his spouse had only an inchoate interest in the property subject of the claim, not perfectable until his death. The Commission has found otherwise, but that her interest is not compensable. Nevertheless, so much of the claim of HERMAN LEVINE as may be based on the interest vested in Golde Levine is denied.

Recapitulation

Claimant's losses are summarized as follows:

<u>Item</u>	<u>Date of Loss</u>	<u>Value</u>
Almacenes	September 13, 1962	\$87,964.20
Personal property	September 20, 1960	<u>3,020.00</u>
		\$90,984.20


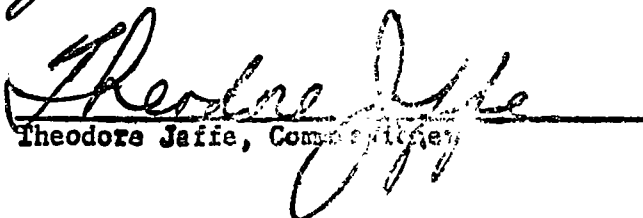
The Commission has decided that in certifications of loss on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be included at the rate of 6% per annum from the date of loss to the date of settlement (see Claim of Lisle Corporation, Claim No. CU-0644), and in the instant case it is so ordered.

CERTIFICATION OF LOSS

The Commission certifies that HERMAN LEVINE 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 Ninety Thousand Nine Hundred Eighty-Four Dollars and Twenty Cents (\$90,984.20) 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 21 1970


Lyle S. Carlock, 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).)

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