

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

IN THE MATTER OF THE CLAIM OF

NELSON S. KERN

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -1773

Decision No. CU -707

AMENDED PROPOSED DECISION

By Proposed Decision issued November 22, 1967, the Commission denied this claim for failure of proof. Claimant, a national of the United States since birth, has filed additional evidence, and the matter having been reconsidered, it is

ORDERED that the Proposed Decision be and it is hereby amended.

Claim is asserted herein for the loss of furniture, household furnishings, kitchen equipment, toys and miscellaneous personal belongings left in Cuba when claimant had to leave that country in 1960.

The record establishes that claimant left Cuba in 1960 and was unable to take the personal property including the household furnishings and furniture with him. The personalty was left in the care of a Cuban national who subsequently sold the items under claimant's instructions. The proceeds of the sale amounting to \$3,100.00 were deposited in the agent's bank account. On April 15, 1961 the agent left Cuba, abandoning the bank deposit.

On December 6, 1961 the Cuban Government published its Law 989 (Official Gazette XXIII, No. 237, p. 23705) which confiscated all

assets, personal property and real estate, rights, shares, stocks, bonds and other securities of persons who had left the country.

The record reflects that claimant had left Cuba prior to December 6, 1961.

Accordingly, the Commission finds that claimant was the owner of \$3,100.00 which was in a bank account taken by the Government of Cuba on December 6, 1961 and that he suffered a loss in that amount within the meaning of Title V of the Act.

Claim has been made for an amount in excess of \$3,100.00 but claimant has not established the loss of any greater amount as a result of the nationalization, expropriation, intervention or other taking of, or special measures directed against property owned directly or indirectly by the claimant. Therefore a claim for the greater amount must be 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.

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

CERTIFICATION OF LOSS

The Commission certifies that NELSON S. KERN 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 Three Thousand One Hundred Dollars (\$3,100.00) with interest thereon at 6% per annum from December 6, 1961 to the date of settlement.

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

MAR 14 1969

Leonard v. B. Sutton

Leonard v. B. Sutton, Chairman

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 Amended 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].)

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

IN THE MATTER OF THE CLAIM OF

NELSON S. KERN

Claim No. CU -1773

Decision No. CU 707

Under the International Claims Settlement
Act of 1949, as amended

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 \$6,617.00, was presented by NELSON S. KERN, and is based upon the asserted loss of personal property located at No. 123 184 Street, Mariano, Havana, Cuba. Claimant stated that he 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).)

Other than an itemized inventory of the personal property assertedly lost, claimant has not submitted evidence in support of this claim, filed on April 24, 1967. By Commission letter of July 28, 1967, claimant was advised as to the type of evidence proper for submission to establish this claim under the Act. Evidence in response to this correspondence was not received.

On September 14, 1967, claimant was invited to submit any evidence available to him within 45 days from that date, and he was informed that, absent such evidence, it might become necessary to determine the claim on the basis of the existing record. No evidence has since been submitted.

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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 or otherwise taken by the Government of Cuba. Accordingly, this claim is denied. The Commission deems it unnecessary to make determinations with respect to other elements of the claim.

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

02 NOV 1967

Edward D. Re
Edward D. Re, Chairman

Theodore Jaffe
Theodore Jaffe, Commissioner

LaVern R. Dilweg
LaVern R. Dilweg, 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).)

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