

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

IN THE MATTER OF THE CLAIM OF

FERMIN PORFIRIO AZCUY

Claim No. CU-1905

Decision No. CU 3806

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 \$75,000.00, was presented by FERMIN PORFIRIO AZCUY and is based upon the asserted loss of a hotel assertedly held under lease. Claimant has been a national of the United States since 1942.

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).)

Claimant states that one Gustavo Portas Capote leased a hotel building and land to one Buenaventura Pons for 20 years, and that under applicable law Pons' possession could not be disturbed. However, according to claimant, Pons sold his lease to claimant. Thereafter Capote entered into a new contract with claimant for 20 years. Claimant states his purchase was made for \$11,000.00 and that he invested \$64,000.00 in improvements.

Information received from sources abroad indicates that claimant did enter into a purchase-sales agreement with Pons, and paid \$6,000.00 on an agreed \$10,000.00, but that claimant did not record his interest, whereas the hotel is registered in the name of Pons.

By Commission letter of March 20, 1968, claimant was advised as to the type of evidence proper for submission to establish this claim under the Act.

On July 9, 1968, claimant was invited to submit any evidence available to him within 30 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. A further reminder was sent on September 18, 1968. No evidence has since been submitted.

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. Thus, the Commission is constrained to deny this claim and it is hereby 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

AUG 20 1969

*Leonard v. B. Sutton*

Leonard v. E. 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).)