

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

IN THE MATTER OF THE CLAIM OF

FRANK MARCUS BONHEIM, JR., aka
JACK DUMONT and
MARY REXFORD BONHEIM, aka
MARY REXFORD DUMONT

Claim No. CU-1963

Decision No. CU-6251

Under the International Claims Settlement
Act of 1949, as amended

Counsel for claimants:

Sidney I. Pilot, Esq.

Petition to reopen; Proposed Decision dated and entered July 6, 1971; Final Decision entered August 9, 1971.

AMENDED FINAL DECISION

Under date of July 6, 1971, the Commission entered its decision certifying losses in the amount of \$11,000 in favor of each claimant for loss of their residence and personalty therein. A portion of the claim based on cash and jewelry in a safe deposit box, and an interest in a drive-in theater was denied as the record failed to establish the assertions.

Claimants have now submitted documentation which establishes that as of April 8, 1960, the date of a certain stockholders' meeting, claimants held 140 shares out of 1,840 shares of stock issued by Auto Cine Novia del Mediodia, S.A. This corporation built and operated a drive-in theatre on land owned by one of the investors. The Commission further finds that this corporation and its assets were nationalized by the Government of Cuba on May 10, 1961 pursuant to the provisions of Resolution 2868 (See the Claim of Metro Goldwyn Mayer, Inc., Claim No. CU-2225).

In determining the extent of the claimants' loss in this respect, the Commission has considered all evidence of record, including the par value of the stock and the claimants' investment (which are not accurate measures of the value on the date of loss), as well as photographs, which have since been returned to claimant, and the contents of a newspaper clipping referring to the asserted cost of the venture as \$379,000, and which also displays

a photograph of some of the improvements. Although the record does not contain documentation such as financial statements which might support the higher value asserted, the Commission finds that on the date of loss the corporation had an asset value of \$184,000, no liabilities being of record. Accordingly, the Commission finds that claimants each suffered a loss of \$7,000 in connection with the 140 shares they held in the corporation.

Each claimant's losses are now summarized as follows:

<u>Item</u>	<u>Date of Loss</u>	<u>Value</u>
Residence and furnishings	July 31, 1960	\$11,000
Stock interest	May 10, 1961	<u>7,000</u>
		\$18,000

Accordingly, the Certifications of Loss in the Proposed Decision which became final, are set aside, the following Certifications of Loss will be entered, and in all other respects, the Final Decision is affirmed.

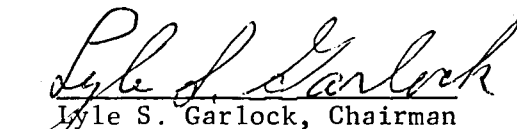
CERTIFICATIONS OF LOSS

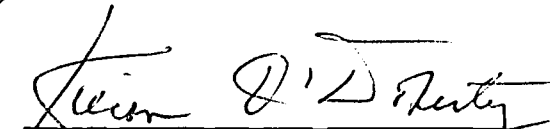
The Commission certifies that FRANK MARCUS BONHEIM, JR., aka JACK DUMONT suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Eighteen Thousand Dollars (\$18,000.00) with interest thereon at 6% per annum from the respective dates of loss to the date of settlement; and

The Commission certifies that MARY REXFORD BONHEIM aka MARY REXFORD DUMONT 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 Eighteen Thousand Dollars (\$18,000.00) with interest thereon at 6% per annum from the respective dates of loss to the date of settlement.

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

JUN 30 1972


Lyle S. Garlock, Chairman


Kieran O'Doherty, 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.

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Act of 1949, as amended**

Counsel for claimants:

Sidney I. Pilot, 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 FRANK MARCUS BONHEIM, JR., aka JACK DUMONT, for \$165,333.00, as amended, and is based upon the asserted ownership and loss of real and personal property, and interests in a drive-in theatre, in Cuba. Under the community property laws of Cuba, it appears that MARY REXFORD BONHEIM, aka MARY REXFORD DUMONT, would have an interest in this claim, and accordingly she has been added as a claimant. Claimants have been nationals 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) (1970).)

Claimants describe their losses as follows:

1. One story, 2-bedroom house on lot of 70' X 150', located at Calle 218, #2112, Reparto Nuevo Biltmore, Marianao	\$ 12,000.00
2. House furnishings, equipment and personal effects at above residence	10,000.00
3. Cash and jewelry in safe deposit box	17,000.00
4. One-third interest in a partnership owning a drive-in theatre known as Novia del Mediodia, valued at a total sum of \$379,000.00, without the land	<u>126,333.00</u>
T O T A L:	\$165,333.00

Residence and Furnishings

Based on the entire record, including affidavits, itemized lists and the statements of claimants, as well as similar evidence, the Commission finds that claimants owned respective one-half interests in the house, lot and personal property therein. Claimants stated that they left Cuba in August 1960, but that they were evicted from their home "around the end of July 1960" by agents of the Cuban Government; and that they were not permitted to remove any items of personal property except a limited amount of clothing.

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Accordingly, the Commission finds that claimants' house, lot and personal property in the house (apart from the theatre or contents of safe deposit box) were taken by the Government of Cuba on July 31, 1960.

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 claimants have asserted that the house and lot were valued at \$12,000.00 and the personal property therein had a value of \$10,000.00 at the time of loss in July 1960. The claimants have submitted a description of the improved real property and an itemized list of the personal property therein with valuations at the time of loss. The Commission has considered this evidence and evidence available to the Commission concerning the value of similar property in Cuba and finds the claimants' valuation fair and reasonable. The Commission concludes that claimants suffered a loss within the meaning of Title V of the Act in the total amount of \$22,000.00 for these portions of their claim, each with a one-half interest, or \$11,000.00 for each claimant.

Interest in Drive-In Theater
Contents of Safe Deposit Box

Claimants assert one-third interest in a partnership owning a drive-in theatre known as Novia del Mediodia, located in Marianao, Cuba. The Commission made suggestions at various times as to the type of evidence necessary to establish these portions of the claim within the meaning of the Act. Thereafter, additional suggestions were made by the Commission in letter of March 18, 1971, and efforts were made by the Commission to obtain evidence from sources abroad which were unproductive.

Claimants responded in part to the suggestions of the Commission and submitted evidence concerning the drive-in theatre, indicating that the partnership was composed of claimant JACK DUMONT, Alfred Kolodney, an American

citizen and Miguel A. Moenck, a Cuban citizen who owned the 16 acres of land where the drive-in theatre was constructed. Further, claimants submitted photographs of the theatre, with dance pavillion and cafeteria and other improvements, as well as affidavits, statements and other material obtained prior to and since departure from Cuba. However, no evidence of probative value was submitted to establish ownership of a partnership interest in the aforesaid drive-in theatre, or the ownership and value of the contents of a safe deposit box.

A search of the files of the Commission discloses a despatch to the State Department from the American Embassy in Havana, dated September 15, 1960, concerning a report furnished by Alfred Kolodney, to the American Embassy, in a letter dated August 5, 1960. This includes, in part, the following information concerning the business enterprise known as Auto Cine Novia del Mediodia, S.A., a Cuban corporation, in which Mr. Kolodney owned a substantial interest, as follows:

"Business Project consists of 850 shares of the Auto Cine Novia del Mediodia, S.A. which is a Cuban Corporation situated in Marianao, a suburb of Habana.

"The above represents 45 percent of the outstanding stock of the company, at \$100.00 per share. Added to the above stock, valued at \$85,000.00 there is also outstanding, a loan of \$50,000.00 which is owed to me, from the corporation, total \$135,000.00.

"The company opened for business on December 1959 (the 18th) and I haven't drawn any money, from it, to date.

"Also, you may be able to get information from Mr. Miguel A. Moenck, c/o Moenck & Quintana, who has about an equal amount of the stock, as well as a loan to the Company.

"By the way, I am listed as a Vice President of the corporation of Auto Cine Novia del Mediodia, S.A."

The Commission appreciates the difficulties encountered by the claimants in establishing their claims against the Government of Cuba. However, the Commission must be guided by the evidence of record pertaining to the ownership, loss and value of the property included in each claim. The Commission is constrained to find that claimants have failed to establish ownership of cash and jewelry in a safe deposit box and have failed to establish a partnership arrangement between the aforesaid parties or an ownership interest in the

theatre in question. Accordingly, these portions of the claim are hereby denied for the reasons stated. The Commission deems it unnecessary to make determinations with respect to other elements of these parts of the claim.

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.

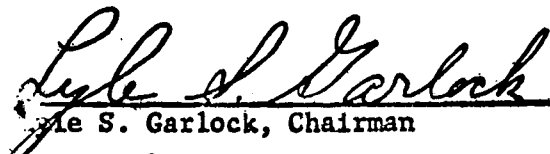
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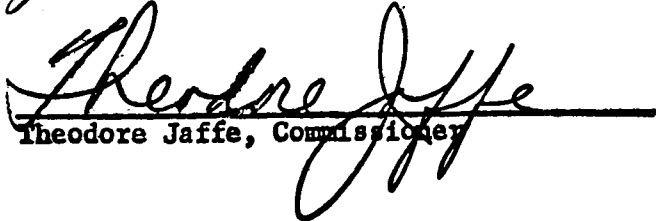
The Commission certifies that FRANK MARCUS BONHEIM, JR., aka JACK DUMONT suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Eleven Thousand Dollars (\$11,000.00) with interest thereon at 6% per annum from July 31, 1960 to the date of settlement; and

The Commission certifies that MARY REXFORD BONHEIM aka MARY REXFORD DUMONT 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 Eleven Thousand Dollars (\$11,000.00) with interest thereon at 6% per annum from July 31, 1960 to the date of settlement.

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

JUL 6 1971


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. 31.5(e) and (g), as amended (1970).)

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