

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

IN THE MATTER OF THE CLAIM OF

EDUARDO HERNANDEZ

Claim No. CU -2095

Decision No. CU

153

Under the International Claims Settlement
Act of 1949, as amended

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, in the amount of \$291,280.20, was presented by EDUARDO HERNANDEZ, and is based upon the asserted ownership and loss of personal property consisting of bank accounts, furniture, equipment and merchandise. Claimant asserts that this personal property was used in his two places of business located at Laborde No. 304 in Cardenas, province of Matanzas, Cuba, and at Lonja del Comercio, Havana, Cuba, respectively. In addition thereto, claimant also asserts the loss of profits from each business for a period of seven years. Claimant states that he has been a national of the United States since his naturalization on August 10, 1965.

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 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.

Section 502(1) of the Act defines the term "national of the United States" as "(A) a natural person who is a citizen of the United States." The term does not include aliens.

Thus, in order for the Commission to favorably consider claims under section 503(a) of the Act, it must be established (1) that the subject property was owned in whole or in part by a national of the United States on the date of nationalization or other taking; and (2) that the claim arising as a result of such nationalization or other taking has been continuously owned thereafter in whole or in part by a national or nationals of the United States to the date of filing with the Commission.

Claimant states that in the year 1963 the present Cuban Government confiscated or otherwise took all of the assets of his two businesses including monies deposited in two separate accounts with the Cuban branch office of the First National City Bank of New York.

The evidence of record before the Commission in this claim consists of claimant's own statements concerning his ownership and loss of the subject matter claimed. Claimant submitted a banking statement, dated April 29, 1961, indicating that claimant's cash balance as of that date was 2,258.81 pesos. Further, claimant submitted itemized lists of the personal property at the aforesaid locations in Cuba.

The Commission finds it not established that claimant was the owner of property which assertedly was taken by the Government of Cuba. However, even if this were so, the Commission is constrained to deny the claim on other grounds.

Under the provisions of Sections 502(3), 503(a) and 504(a) of the Act, supra, not only should the claimant herein establish that he owned the subject matter claimed, he must establish also that some measure depriving him of his interest therein was applied by the Government of Cuba not only after January 1, 1959, but subsequent to August 10, 1965, the date he assertedly acquired citizenship of the United States. This he has not done.

Therefore, even if claimant established that he owned personal property confiscated from him by the Government of Cuba, and even if it were to be assumed that the Government of Cuba confiscated such property in 1963, such action, which might have given rise to a claim in international law, which would be subject to determination under Title V of the International Claims Settlement Act of 1949, supra, occurred prior to the date on which claimant assertedly acquired citizenship of the United States.

Accordingly, for the reasons stated above, the Commission concludes that this claim is not one within the purview of the Act, supra, and it is denied.

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

JUL 26 1967

Edward D. Re

Edward D. Re, Chairman

This is a true and correct copy of the decision
of the Commission which was entered as the final
decision on ----- AUG 25 1967

Theodore Jaffe

Theodore Jaffe, Commissioner

Francis M. ...
Clerk of the Commission

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).)