

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

IN THE MATTER OF THE CLAIM OF

ETHEL H. BERENS
ZUNDEL SIEGFRIED BERENS

Claim No. CU-2313
Claim No. CU-2314
Decision No. CU-CU-4553

Under the International Claims Settlement
Act of 1949, as amended

Counsel for claimants:

William Frohlich, Esq.

Appeal and objections from a Proposed Decision entered March 4, 1970.

Oral hearing requested and held May 12, 1970.
Testimony by claimant Zundel S. Berens, and argument by counsel.

FINAL DECISION

By Proposed Decision issued on March 4, 1970, the Commission certified losses of each claimant in the amount of \$4,112.39 on account of personalty, and denied for lack of evidence so much of the claims as was based on stock issued by Finca El Barranco, S.A., and Mr. Berens' interest in a partnership.

Objections were entered and testimony received at a hearing held on May 12, 1970. Additional evidence was thereafter received. The Commission now finds as follows.

ZUNDEL S. BERENS purchased 19 shares of stock of Finca El Barranco in 1958, which became community property under the laws of Cuba. ETHEL H. BERENS received 5 shares of stock of Barranco in 1964 as a gift from her father, a United States national, and these are not subject to the community property law of Cuba.

The Commission further finds that claimants' interests in Barranco were taken on December 6, 1961, pursuant to the Cuban Law 989 of that date.

In determining the value of Barranco the Commission has considered the evidence of record in this case and in other claims based on stock interests in Barranco. Based on this record, the Commission finds that the only asset of Barranco was 1,513,635 square meters of land, and that it had no liabilities or mortgages. The Commission further finds that a value of

\$1.30 per square meter is fair and reasonable and that this land had therefore a value of \$1,967,725.50, representing the net worth of the corporation. There were 852 shares outstanding and thus each share had a value of \$2,309.5369.

Accordingly, the Commission holds that ETHEL BERENS suffered a loss of \$33,488.28 in this connection, and ZUNDEL S. BERENS suffered a loss of \$21,940.60 in this connection.

The Commission finds that ZUNDEL S. BERENS had a 50% interest in a partnership known as Berens & Berens which was formed in 1946. A balance sheet for 1959 has been submitted which shows the capital account of ZUNDEL S. BERENS in the amount of \$62,895.27 (the peso being on a par with the dollar); and holds that he suffered a loss in this amount on December 6, 1961, when his interest in the partnership was taken.

With regard to the personalty, the Commission has examined a five-page listing of claimants' personalty, reflecting costs, and the separate property of ETHEL BERENS. Considering that some items were antiques and others were not subject to depreciation, and applying appropriate depreciation rates to the remainder of the property lost on December 6, 1961, the Commission now finds that the interest of ETHEL BERENS in the personalty had a value of \$13,005.47 and the interest of ZUNDEL S. BERENS had a value of \$10,424.47.

Accordingly, the certifications of loss in the Proposed Decision are set aside and the following Certifications of Loss will be entered and in all other respects the Proposed Decision is affirmed.

CU-2313
CU-2314


CERTIFICATIONS OF LOSS

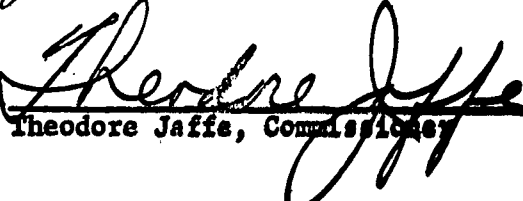
The Commission certifies that ETHEL BERENS suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Forty-Six Thousand Four Hundred Ninety-Three Dollars and Seventy-Five Cents (\$46,493.75) with interest at 6% per annum from December 6, 1961 to the date of settlement; and

The Commission certifies that ZUNDEL SIEGFRIED BERENS 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-Five Thousand Two Hundred Sixty Dollars and Thirty-Four Cents (\$95,260.34) with interest at 6% per annum from December 6, 1961 to the date of settlement;

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

FEB 3 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.

CU-2313
CU-2314

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

IN THE MATTER OF THE CLAIM OF

ETHEL H. BERENS
ZUNDEL SIEGFRIED BERENS

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-2313
CU-2314

Decision No. CU 4553

Counsel for claimants:

William Frohlich, Esq.

PROPOSED DECISION

These claims against the Government of Cuba, filed under Title V of the International Claims Settlement Act of 1949, as amended, in the amount of \$11,100.00 and \$179,464.75, respectively, were presented by ETHEL H. BERENS and ZUNDEL SIEGFRIED BERENS and are based upon the asserted ownership and loss of certain personal property, stockholder interests in a Cuban corporation, and upon an ownership interest in a department store in Havana, Cuba. Claimant, ETHEL H. BERENS, has been a national of the United States since birth. Claimant, ZUNDEL SIEGFRIED BERENS, has been a national of the United States since his naturalization on August 31, 1939.

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 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).)

These claims are based upon the asserted ownership and loss of property as follows:

(1) personal property, consisting of the furniture, furnishing, and personal belongings of the claimants at their home at No. 108 Calle 6 in Miramar, Cuba;

(2) 24 shares of a Cuban corporation, Finca El Barranco, S.A., and

(3) a one-half interest in the Cuban partnership Berens y Berens which in turn owned and operated a department store under the name of Berens Modas in Havana, Cuba.

The evidence of record establishes and the Commission finds that pursuant to the community property laws of Cuba, each of the claimants acquired a one-half interest in the furniture, furnishing, and personal belongings of their former home at No. 108 Calle 6, Miramar, Cuba, involved in this claim. (See Claim of Robert L. Cheaney and Marjorie L. Cheaney, Claim No. CU-0915.)

On December 6, 1961, the Government of Cuba published Law 989 in its Official Gazette, which effected a confiscation of all goods and chattels, property rights, shares, stocks, bonds, bank accounts and other securities

of persons who left Cuba. The claimants had left Cuba before that date and the Commission finds that this law applied to their personal property now in question, and that it was taken on December 6, 1961, by the Government of Cuba. (See Claim of Wallace Tabor and Catherine Tabor, Claim No. CU-0109, 25 FCSC Semiann. Rep. 53 [July-Dec. 1966].)

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 question, in all cases, will be to determine the basis of valuation which, under the particular circumstances, is "most appropriate to the property and equitable to the claimant." This phraseology does not differ from the international legal standard that would normally prevail in the valuation of nationalized property. It is designed to strengthen that standard by giving specific bases of valuation that the Commission shall consider.

The record includes descriptions and detailed listings of the personal property now in question, furthermore bills of sale by which the more important items of claimants' furniture and appliances were purchased. The values, indicated by claimants, are corroborated by persons who were residing in Cuba and had personal knowledge of the pertinent facts on the basis of their association with the claimants. On the basis of all evidence of record, the Commission finds that claimants' furniture, furnishings, and personal belongings at No. 108 Calle 6 in Miramar had a total value of \$8,224.78 on December 6, 1961, the date of loss, of which the value of a one-half interest therein amounted to \$4,112.39.

CU-2313, CU-2314

The Commission concludes that each of the claimants sustained a loss within the purview of Title V of the Act in the amount of \$4,112.39.

A further portion of the claim is based upon stockholder interest in the Cuban corporation Finca El Barranco, S.A. On the basis of the submitted original stock certificates and other evidence of record, the Commission finds that the claimants, ZUNDEL SIEGFRIED BERENS and ETHEL H. BERENS, owned 19 and 5 shares, respectively, of the said corporation's stock.

In support of this portion of the claim, the claimants submitted affidavits by Meyer Fuchsberg, Max Pincus, and Isack Lesnick, major stockholders and officers of the corporation Finca El Barranco, S.A., who in essence uniformly state that each share of corporate stock represented an actual land area of approximately 1,776 square meters, having a value of \$2.00 per square meter in 1959-1960. Affiant Max Pincus further states that the land owned by the corporation would have sold, under normal conditions, for \$6.00 per square meter.

By Commission letter of May 7, 1968, suggestions were made to claimants to submit balance sheets and other appropriate evidence to establish the net value of the corporation Finca El Barranco, S.A., as of the date of loss. These suggestions were repeated in the course of the interview held in the Commission's office on October 4, 1968, with the counsel for claimants. However, no further evidence has been submitted to date. In view of the foregoing the portion of the claims which is based upon stockholder interests in the corporation Finca El Barranco, S.A., is denied with respect to both claimants for their failure to establish the value of their ownership interest in the corporation, as required for certification under Title V of the Act.

The remaining portion of the claim, made by ZUNDEL SIEGFRIED BERENS, is based upon a one-half interest in the Cuban partnership Berens y Berens which in turn owned and operated a department store under the name of Berens Modas in Havana, Cuba.

Under Cuban law, a partnership is a legal entity. Accordingly, suggestions were made to claimants by letter of May 7, 1968, to submit balance sheets and other appropriate evidence to establish the net value of the partnership.

In reply, claimant submitted an affidavit by one Eugenio Sanson who states that he was the accountant of the business Berens Modas and that the statement and figures given by claimant to the American Embassy in Havana on August 17, 1960, are correct. In that letter ZUNDEL SIEGFRIED BERENS reported to the American Embassy, among other things, that the business in question had a book value of \$185,569.49, the "investment" amounted to \$159,494.91, the inventory had a value of \$133,157.25, and the goodwill and "key" is estimated at \$75,000.00. Claimant also submitted notarial document No. 138 of June 26, 1957, in which the terms of the partnership Berens y Berens were modified. However, no evidence has been submitted to date which would establish the net value of the partnership and the balance of claimant's capital account therein. Accordingly, the portion of the claim which is made by ZUNDEL SIEGFRIED BERENS for a one-half interest in the partnership Berens y Berens is denied for claimant's failure to establish the value of his ownership interest therein.

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.

CU-2313 CU-2314

CERTIFICATION OF LOSS

The Commission certifies that ETHEL H. BERENS 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 Four Thousand One Hundred Twelve Dollars and Thirty-Nine Cents (\$4,112.39) with interest thereon at 6% per annum from December 6, 1961 to the date of settlement; and

the Commission certifies that ZUNDEL SIEGFRIED BERENS 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 Four Thousand One Hundred Twelve Dollars and Thirty-Nine Cents (\$4,112.39) 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 Proposed
Decision of the Commission

MAR 4 1970

Lyle S. Garlock
Lyle S. Garlock, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

Sidney Freidberg

Sidney Freidberg, Commissioner

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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).)

CU-2313, CU-2314