

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

**IN THE MATTER OF THE CLAIM OF**

**WALTER H. SUTTER  
and  
MILDRED R. IMMEL**

**Claim No. CU -2399  
Claim No. CU-2421**

**Decision No. CU5857**

**Under the International Claims Settlement  
Act of 1949, as amended**

**PROPOSED DECISION**

These claims against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, in the amount of \$72,851.00 each, were presented by WALTER H. SUTTER and MILDRED R. IMMEL based upon the asserted loss of interests in certain improved real property in Cuba. Claimants, brother and sister, 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.

Based upon the evidence of record, the Commission finds that Walter Sutter, one of claimants' uncles, owned a 2/3 interest in certain improved real property at 309-313 Salud Street, Havana, Cuba. Walter Sutter died testate in Illinois on October 6, 1946. His will provided that his 2/3 interest in the property be devised in trust to one of his brothers, Raymond C. Sutter, father of claimants; and that Raymond C. Sutter and another brother, Clarence B. Sutter, be granted life estates in the property with the remainder interest in claimants in equal shares. Pursuant to those provisions, the executor of the estate of Walter Sutter executed a deed to the property on March 30, 1949 in favor of Raymond C. Sutter as trustee.

The record shows that Clarence B. Sutter, one of the life tenants, died on March 3, 1949. Raymond C. Sutter, the other life tenant, was a national of the United States from birth until death on November 30, 1962. Upon the intestate death of Raymond C. Sutter, his children, claimants herein, succeeded to his property. Inasmuch as the property in question had been taken by Cuba prior to the death of Raymond C. Sutter, as indicated below, claimants succeeded to equal interests in their father's claim against Cuba, so that the entire claim was owned by claimants in equal shares.

The Commission finds that the real property was within the purview of the Urban Reform Law, published in the Cuban Official Gazette on October 14, 1960. In the absence of evidence to the contrary, the Commission finds that the property was taken by the Government of Cuba on October 14, 1960. (See Claim of Henry Lewis Slade, Claim No. CU-0183, 1967 FCSC Ann. Rep. 39.)

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 evaluation of nationalized property. It is designed to strengthen that standard by giving specific bases of valuation that the Commission shall consider.

In the said deed to the property (2/3 interest) in favor of the late Raymond C. Sutter, it is indicated that the property consisted of two buildings, one at 309 Salud Street and the other at 313 Salud Street. Claimants' valuations are based upon an appraisal of the property in 1946.

A copy of the appraisal indicates that it was made after a thorough inspection of the premises. The appraiser set forth the following valuations:

309 Salud Street

|          |                 |              |
|----------|-----------------|--------------|
| Land     | \$ 16,107.00    |              |
| Building | <u>9,060.00</u> | \$ 25,167.00 |

313 Salud Street

|                                 |                   |                   |
|---------------------------------|-------------------|-------------------|
| Land                            | \$ 53,250.00      |                   |
| Building - old part<br>in front | 24,987.00         |                   |
| Building - new part<br>in rear  | <u>115,160.00</u> | <u>193,397.00</u> |

|       |  |                     |
|-------|--|---------------------|
| Total |  | <u>\$218,564.00</u> |
|-------|--|---------------------|

Upon consideration of the entire record, the Commission finds that the valuations most appropriate to the property and equitable to

the claimants are those appearing in the appraisal of 1946. Accordingly, the Commission finds that the aggregate value of the two buildings and the land was \$218,564.00 on October 14, 1960, the date of loss. Therefore a 2/3 interest therein had a value of \$145,709.34, and the value of each claimant's interest was \$72,854.67.

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.


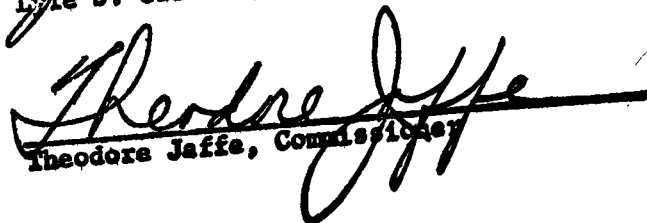
CERTIFICATIONS OF LOSS

The Commission certifies that WALTER H. SUTTER 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 Seventy-two Thousand Eight Hundred Fifty-four Dollars and Sixty-seven Cents (\$72,854.67) with interest thereon at 6% per annum from October 14, 1960 to the date of settlement; and

The Commission certifies that MILDRED R. IMMEL 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 Seventy-two Thousand Eight Hundred Fifty-four Dollars and Sixty-seven Cents (\$72,854.67) with interest thereon at 6% per annum from October 14, 1960 to the date of settlement.

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

SEP 23 1970

  
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. 531.5(e) and (g), as amended, 32 Fed. Reg. 412-13 (1967).)

CU-2399  
CU-2421