

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

IN THE MATTER OF THE CLAIM OF

ALBERTA SCRIBNER

Claim No. CU-2505

Decision No. CU -6677

Under the International Claims Settlement
Act of 1949, as amended

Counsel for claimant:

Theodore Weiswasser, Esq.

Appeal and objections from a Proposed Decision entered on August 11, 1971. Oral hearing was scheduled for October 7, 1971, at 10:00 a.m. at the offices of the Commission, 1111-20th Street, Northwest, Washington, D.C. with due notice thereof given to counsel. No request for a continuance was made and claimant failed to appear in person or by attorney at the scheduled time.

FINAL DECISION

Full consideration having been given to objections of claimant, and submissions of counsel, and the entire record having been reviewed, and general notice of the Proposed Decision having been given by posting for thirty days, it is

ORDERED that the Proposed Decision be and the same is hereby affirmed as the Final Decision of the Commission in this claim.

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

OCT 20 1971


Lyle S. Garlock, Chairman


Theodore Jaffe, Commissioner

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PROPOSED DECISION

This claim against the Government of Cuba under Title V of the International Claims Settlement Act of 1949, as amended, in the revised amount of \$150,233.75, was presented by Luther Coleman, as asserted co-owner of an interest in the claim and as attorney-in-fact for ALBERTA SCRIBNER, based upon the asserted loss of real property on the Isle of Pines, Cuba. Claimant has been a national of the United States since birth. Luther Coleman has filed Claim No. CU-2508, individually.

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.

The claim is asserted for the loss of a one-half interest in the following properties on the Isle of Pines, originally owned by Otilie Schultz, who died in 1944:

(1) Landed estate, known as Celeste Esperanza, and Santa Isabel tracts of an area of approximately 1187 acres, valued	\$ 89,001.75
(2) Landed estate, known as Cayo Bonito, of an area of approximately 286 acres, valued	57,232.00
(3) Two lots of 10 acres each on the highway (calzada) to Santa Fe, valued	<u>4,000.00</u>
Total	\$ 150,233.75

In support of the claim, claimant has submitted a power of attorney for Luther Coleman, affidavits, statements, extracts from the Cuban Official Gazette, decisions of Cuban authorities and other documentation.

The documents contain a statement of Mamie Cook, claimant's mother, heiress of Otilie Schultz, dated April 21, 1967, in which she declared that she had conveyed to Luther Coleman a one-half interest in her rights and title to the landed estates on the Isle of Pines. Mamie Cook, who died on February 18, 1968, further declared that it was her understanding that Mr. Coleman would transfer one-half of the property to her only daughter, the claimant herein, and one-half to himself.

With respect to the lots mentioned above under (3), consisting of two land parcels on the highway (calzada) to Santa Fe, none could be identified as having been owned by Otilie Schultz, inasmuch as the ownership of these lots has not been substantiated by appropriate evidence before the Commission.

With respect to the property described above under (1), the record reveals that on June 6, 1951 the Celeste Esperanza and Santa Isabel tracts

then jointly owned by the heirs of Ottilie Schultz and the heirs of John Irvine Anderson, were placed for sale at public auction by the Municipality of the Isle of Pines for unpaid municipal taxes; that the properties were sold and acquired by one Julio Cagigas Garcia who organized a corporation by the name of Agro-Pecuaria San Juan, S.A.; that title to these properties was then transferred to the aforesaid corporation; and that by Resolution No. 3 of 1959 of the Cuban Ministry of Finance the entire property was confiscated and transferred to the State of Cuba.

With respect to the property described above under (2), the record discloses that on June 8, 1951 the property, known as Cayo Bonito owned by Ottilie Schultz, was placed for sale at public auction by the Municipality of the Isle of Pines for unpaid municipal taxes; that the property was sold and acquired by one Walter Benjamin Bowden, who, in turn, sold the property to Elsie Janet Lambertsen; that the property was then acquired by the Cayo Bonito Development Company, Inc.; and that in 1960 the entire property was nationalized by the Government of Cuba.

Claimant states that the sales for unpaid taxes were illegal and therefore null and void. There is evidence in the record which shows that after 1958 Luther Coleman instituted proceedings for the recovery of the properties, but such proceedings became moot when the properties were confiscated and nationalized by the Government of Cuba.

It appears that pursuant to Cuban law, under certain conditions and after payment of taxes and expenses, recovery of property sold at public auction for tax indebtedness may have been possible. The Commission, however, does not hold that title to the property after the sale remained in the former owner. If the former owner were to request that the property be returned and if this were approved by the appropriate authorities, title would revert to the former owner. Ottilie Schultz lost title in 1951 and recovery proceedings were not instituted until after 1958. The proceedings were never completed and title never returned to Ottilie Schultz or to her successors.

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The Commission finds it unnecessary to determine the validity of local tax proceedings. These actions occurred prior to the statutory date of January 1, 1959 and therefore are outside of the scope of Title V of the Act.

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).)

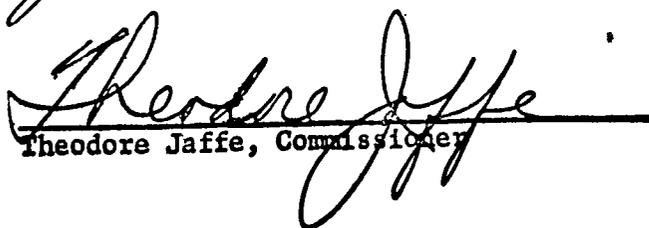
The Commission finds that claimant has not established that her predecessor in interest was the owner of the above properties in 1959 and 1960, at the time of their confiscation and nationalization by the Government of Cuba. The Commission is therefore constrained to dismiss the claim for lack of proof of ownership. Accordingly, the claim is denied.

The Commission deems it unnecessary to determine other elements of this claim.

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

AUG 11 1971


Lyle S. Garlock, Chairman


Theodore Jaffe, 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 (1970).)

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