

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

IN THE MATTER OF THE CLAIM OF

ROY F. PAINTER
and
IRENE PAINTER

Claim No. CU -2523

Decision No. CU 4777

Under the International Claims Settlement
Act of 1949, as amended

PROPOSED DECISION

This claim against the Government of Cuba, filed under Title V of the International Claims Settlement Act of 1949, as amended, in the amount of \$9,211.57, was presented by ROY F. PAINTER and IRENE PAINTER and is based upon the asserted loss of real and personal property in Cuba. 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) (Supp. 1967).)

Claimants assert that they owned certain real and personal property located on the Isle of Pines which was taken by the Cuban Government.

In support of their claim, claimants submitted copies of portions of three documents with reference to the Department of Administration of Taxes, Board of Assessment Rural, two of which indicate Roy F. Painter may be the owner of two parcels and the other indicates that he is the agent and an Arthur W. Trush is owner of the third parcel. They also included a list of their losses including items of personalty.

By Commission letter of December 11, 1967, claimants were advised as to the type of evidence proper for submission to establish this claim under the Act.

On January 24, 1968, claimants were invited to submit any evidence available to them within 45 days from that date, and were informed that, absent such evidence, it might become necessary to determine the claim on the basis of the existing record. On October 10, 1968 they were informed of the reduction in the Commission's staff and reminded of the elements to be established. On March 13, 1969 further suggestions were offered as to the evidence desired. On September 19, 1969 claimants were reminded that no reply had been received to its letter of March 13, 1969 and were informed that absent the evidence within 45 days it might become necessary to determine the claim on the basis of the existing record. On January 20, 1970 they were

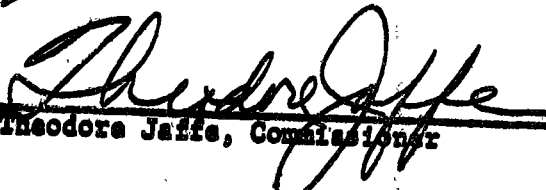
reminded that no replies had been received to the last 5 letters of the Commission, and it was also suggested that they submit evidence that the Internal Revenue Service had allowed a tax reduction which they claimed for the asserted loss. No replies to any of these letters have been received.

The Commission finds that claimants have not met the burden of proof that they have failed to establish ownership of rights and interests in property which was nationalized, expropriated or otherwise taken by the Government of Cuba. Thus, the Commission is constrained to deny this claim and it is hereby denied. The Commission deems it unnecessary to make determinations with respect to other elements of the claim.

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

APR 22 1970


Lyde S. Garlock, Chairman


Theodore Jaffe, Commissioner


Sidney Freidberg, 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).)

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