

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

IN THE MATTER OF THE CLAIM OF

CHARLES T. SCOTT
and
MARTHA J. SCOTT

Claim No CU-2533

Decision No. CU 6111

Under the International Claims Settlement
Act of 1949, as amended

Counsel for claimants:

Neill Griffin & Jeffries
By Chester B. Griffin, Esq.

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 \$58,385.00, was presented by CHARLES T. SCOTT and MARTHA J. SCOTT based upon the asserted ownership and loss of certain 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.

Claimants assert the following losses:

Leasehold Interests	\$ 5,000.00
Office and Packing	
House Building	10,000.00
Personal Property	<u>43,385.00</u>
Total	<u>\$58,385.00</u>

The record shows that in 1956 CHARLES T. SCOTT commenced farming operations in Nueva Gerona, Isle of Pines, Cuba. In 1958, the operations were removed to the Province of Havana, Cuba. In connection with those operations, Mr. SCOTT acquired certain property, discussed in detail below. He decided to incorporate his farming operations under the name of Agricola Arcadia, S.A., a Cuban entity.

The evidence includes a copy of the articles of incorporation showing the formation of the Cuban entity on December 8, 1959. Pursuant to Article Sixteen thereof, Mr. SCOTT promised to transfer to the Cuban corporation his agricultural property valued at \$23,400.00, the Cuban peso being on a par with the United States dollar. However, no such transfer was ever effected, and Mr. SCOTT continued his farming operations as an individual.

The record also includes copies of bills, invoices and cancelled checks evidencing the acquisition of property appurtenant to the farming operations in Cuba. In addition Mr. SCOTT's statement of his assets and liabilities as of December 8, 1959 is set forth in an attachment to the articles of incorporation of the Cuban entity. On the basis of the entire record and pursuant to the community property laws of Cuba, the Commission finds that claimants each owned a 1/2 interest in the properties involved in Mr. SCOTT's farming operations. (See Claim of Robert L. Cheaney and Marjorie L. Cheaney, Claim No. CU-0915.)

On December 6, 1961, the Cuban Government published Law 989, which effected confiscation of all real property, personal property, rights,

shares, stocks, bonds, securities and bank accounts of persons who had left the country. The Commission finds that this law applied to claimants who had left Cuba on July 15, 1960, and that their properties in Cuba were taken by the Government of Cuba on December 6, 1961 pursuant to Law 989 (See Claim of Wallace Tabor and Catherine Tabor, Claim No. CU-0109, 25 FCSC Semiann. Rep. 53 [July-Dec. 1966].)

Leasehold Interests

Claimants assert that they owned leasehold interests covering the Cervantes Farm and the El Fenix Farm in Cuba, valued by them at \$5,000.00. The evidence includes a letter of December 21, 1958 from one Eugenio O. Llano concerning his El Fenix Farm. In that letter, Mr. Llano offered to lease his farm to Mr. SCOTT for one year ending June 30, 1960 at a rental of \$2,400.00, and to extend the lease for another year at a rental of \$1,600.00.

Mr. SCOTT's statement of assets and liabilities as of December 8, 1959, attached to the said articles of incorporation, lists "Rent, packing house" at \$300.00, and "Rent, land" at \$1,200.00. That statement also shows losses of \$6,501.09 from Mr. SCOTT's farming operations. A copy of a letter of February 10, 1970 from a firm of accountants indicates with respect to claimants' Cuban farming operations that for the fiscal year ending June 30, 1960 their expenses aggregated \$94,249.94. That letter also recites that the accountants were unable to locate any records showing income for that year, except for sales of vegetables of \$22,739.33 which included some sales of vegetables produced in the United States. With respect to the fiscal year ending June 30, 1961, the letter indicates that claimants' expenses were \$2,000.00 and that they had no income.

It appears that the El Fenix Farm was rented for only about one year since the record shows that Mr. SCOTT left Cuba about July 15, 1960 when his personal safety was threatened. No evidence has been submitted to establish that claimants had also leased the Cervantes Farm, as asserted

by them. Moreover, the record clearly shows that claimants' farming operations in Cuba were not profitable.

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).)

On the basis of the entire record, the Commission finds that claimants have failed to sustain the burden of proof with respect to the portion of the claim based on leasehold interests. The evidence does not establish that claimants owned leaseholds having any value on December 6, 1961, the date of loss. Even if it were shown that the lease of the El Fenix Farm had been extended for a second year, which is not established by the record, the lease would have terminated on June 30, 1961, long before the date of loss. Accordingly, the portion of the claim based on leasehold interests is denied.

Office and Packing House Building

Claimants state that they owned a building in Baino, Havana, Cuba, in which their office and packing house was located. However, they have submitted no evidence to support their assertions. To the contrary, the said statement of Mr. SCOTT's assets and liabilities as of December 8, 1959 shows "Rent, packing house" at \$300.00. That entry indicates that Mr. SCOTT was the tenant of the premises, not the owner, particularly since the entry immediately below is "Rent, land" at \$1,200.00, which is established by the record as land that had been leased to Mr. SCOTT. In response to Commission suggestions for the submission of proof that claimants owned the building, counsel stated that no documentary evidence was available, having been left in Cuba.

Upon consideration of the portion of the claim based on the said building, the Commission finds that claimants have failed to sustain the burden of proof. Accordingly, this portion of the claim is denied.

Personal Property

Based upon the evidence of record, the Commission finds that claimants each owned a 1/2 interest in certain personal property in Cuba, used in their farming operations. The Commission further finds that the personal property was taken by the Government of Cuba on December 6, 1961 pursuant to Law 989.

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.

Claimants have submitted a detailed list of the various items of personal property with valuations for each item indicated as those prevailing on the date of loss. Upon examination thereof, it appears that some of the items are shown at cost. Thus a Ford tractor and a grader are valued by claimants at \$3,250.00 and \$635.00, respectively, while a copy of an invoice of October 13, 1958 shows these amounts to be claimants' costs. A 1958 Jeep is listed by claimants at \$2,700.00, whereas information available to the Commission discloses that such a vehicle had a value of \$900.00 on December 6, 1961, the date of loss. On the other hand, if \$2,700.00 was the original cost in 1958, its value on December 6, 1961 would be \$1,485.00 after deduction for depreciation at the rate of 15% per year. Similarly, a 1956 Pontiac is listed at

\$1,100.00 and available information indicates a value of \$700.00 on the date of loss.

As already noted, the record includes a number of bills, invoices and cancelled checks showing the acquisition of personal properties by claimants. However, the items in claimants' list cannot be correlated to those represented by the bills, invoices and cancelled checks because of insufficient details. In any event, it is noted that the bills, invoices and cancelled checks bear dates in 1958 and early 1959.

Moreover, the said list of assets and liabilities of Mr. SCOTT as of December 8, 1959 include cash of \$565.03; accounts receivable of \$100.00; an inventory of \$5,144.04 and sundry and miscellaneous expenses of \$28,949.56, including salaries of \$24,077.74 and advanced salaries of \$290.00. Together with rent of \$1,500.00, as previously noted, the statement thus sets forth Mr. SCOTT's assets as aggregating \$36,258.63. His liabilities appear as \$12,628.72 for accounts payable and \$131.00 for taxes, aggregating \$12,759.72. Mr. SCOTT's capital of \$30,000.00 is shown as reduced to \$23,498.91 by reason of losses of \$6,501.09.

On the basis of the entire record the Commission finds that the valuations most appropriate to the items of personal property and equitable to the claimants are those set forth hereafter. In the absence of evidence to the contrary, the Commission finds that claimants' personal properties had the following values on December 6, 1961, after taking into consideration appropriate deductions for depreciation:

Household furniture of \$3,000.00, depreciated for 3 years at 5% per year	\$ 2,550.00
Spare grading machine parts, belts, gears, motor, etc.	1,000.00
Tomato, cucumber and pepper seeds	1,200.00
Packing supplies, wax, etc.	1,000.00
1958 Jeep of \$2,700.00, depreciated for 3 years at 15% per year	1,485.00

Ford tractor of \$3,250.00, depreciated for 3 years at 15% per year	\$ 1,787.50
Grader of \$635.00, depreciated for 3 years at 15% per year	349.25
Miscellaneous office and packing house equipment of \$12,000.00, depreciated for 3 years at 5% per year	10,200.00
1954 Chevrolet	500.00
6 horse-drawn wagons of \$2,400.00, depreciated for 3 years at 10% per year	1,680.00
40 tons of fertilizer	1,600.00
Various insecticides	1,000.00
Miscellaneous hand tools of \$1,000.00, depreciated for 3 years at 10% per year	700.00
Aluminum pipes, heads, motors and pumps for irrigation of \$6,000.00, depreciated for 3 years at 5% per year	5,100.00
Spray machines of \$5,000.00, depreciated for 3 years at 5% per year	4,250.00
1956 Pontiac	<u>700.00</u>
Total	<u>\$35,101.75</u>

Therefore, CHARLES T. SCOTT and MARTHA J. SCOTT sustained losses in the amounts of \$17,550.88 and \$17,550.87, respectively.

The Commission has decided that in certifications of loss 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 CHARLES T. SCOTT 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

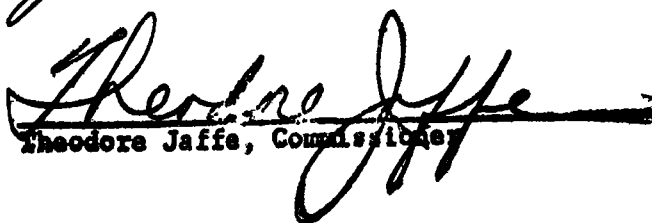
amount of Seventeen Thousand Five Hundred Fifty Dollars and Eighty-Eight Cents (\$17,550.88) with interest at 6% per annum from December 6, 1961 to the date of settlement; and

The Commission certifies that MARTHA J. SCOTT 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 Seventeen Thousand Five Hundred Fifty Dollars and Eighty-Seven Cents (\$17,550.87) with interest 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

MAK 17 19/1


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. 55.5(e) and (g), as amended (1970).)