

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

IN THE MATTER OF THE CLAIM OF:

GUSTAVE JOSEPH GUINCHARD

Claim No. CU-2575

Decision No. CU 1509

Under the International Claims Settlement
Act of 1949, as amended

Counsel for claimant:

Felix Savdie, Esq.

ORDER AND AMENDED PROPOSED DECISION

By Proposed Decision dated April 10, 1968, the Commission denied this claim for failure to sustain the burden of proof. The Proposed Decision was entered as the Commission's Final Decision on May 21, 1968. Upon reconsideration of this matter, it is

ORDERED that the Final Decision be and the same is vacated and set aside, and the Proposed Decision is hereby amended.

On the basis of evidence of record, the Commission finds that claimant is, and since prior to May 3, 1961, has been the owner of a bond in the original face amount of \$500.00 issued by the Association of the Religious Community of the Company of Jesus of Bethlehem College of Havana, and known as 5-1/4% First Mortgage Six Year Gold Bonds, due February 1, 1934, under an Agreement of May 22, 1928, with the Bankers Trust Company, Trustee. The bond was secured by all of the Association's property in Cuba. The bond in question is evidence by Deposit Receipt No. D120.

The record shows that the properties of the College were intervened by the Government of Cuba on May 3, 1961, by Resolution No. 4352 of the Directora Provincial de Educacion de la Havana (Provincial Educational Directors Office of Havana). Therefore, claimant is entitled to file this claim based upon the bond in question which represents a debt which was a charge upon intervened property as defined in Section 502(3) of the Act. (See Claim of Gustavus Basch, Claim No. CU-0972.)

The record reflects that on April 4, 1933, Cuba declared a moratorium on mortgage indebtedness, which was later extended to June 1942. On December 5, 1939, the maturity of the bonds was extended by the Association to February 1, 1944, and interest was reduced to 1-1/2% beginning February 1, 1939. On June 4, 1940, a new Cuban Constitution was adopted, having certain "Transitory Provisions" which extended the maturity date on mortgage indebtedness in excess of \$800,000 to June 30, 1970 and provided for interest at 1%, and amortization by certain annual installments.

On June 1, 1942, a "Procedure for Deposit" was entered into by the Association with Mississippi Valley Trust Company (now the Mercantile Trust Company) as Agent, and the bondholders. Those bondholders depositing their bonds under this Procedure received registered Deposit Receipts entitling them to payment of principal and interest according to the applicable schedule of the 1940 Transitory Provisions, without subsequent presentation of the bonds. The record shows that the last principal payment made was that due on June 30, 1958, leaving the principal due on such \$500.00 bonds as \$224.52; and the last interest payment made was that due on February 1, 1959. Thereafter, the Trustee declared the principal due and payable in accordance with the provisions of the Agreement of 1928.

The Commission finds that the amount of the unpaid indebtedness on claimant's bond on May 3, 1961, the date of loss, was \$229.59 including the principal amount of \$224.52 and the interest due on May 3, 1961, in the amount of \$5.07.

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.)

Accordingly, the Commission concludes that the amount of the loss sustained by claimant shall be increased by interest thereon at the rate of 6% per annum from the date on which the loss occurred, to the date on which provisions are made for the settlement thereof.

The following certification of loss will be entered, and in all other respects the Proposed Decision is affirmed.

CERTIFICATION OF LOSS

The Commission certifies that GUSTAVE JOSEPH GUINCHARD 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 Two Hundred Twenty-Nine Dollars and Fifty-Nine Cents (\$229.59) with interest thereon at 6% per annum from May 3, 1961 to the date of settlement.

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

26 JUL 1962

Leonard v. B. Sutton
Leonard v. B. Sutton, Chairman

Theodore Jaffe
Theodore Jaffe, Commissioner

Sidney Freidberg
Sidney Freidberg, Commissioner

NOTICE TO TREASURY: The above-referenced security may not have been submitted to the Commission or if submitted, may have been returned; accordingly, no payment should be made until claimant establishes retention of the security or the loss here certified.

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 Amended 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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Counsel for claimant:

Felix Savdie, Esquire

PROPOSED DECISION

This claim against the Government of Cuba, filed under Title V of the International Claims Settlement Act of 1949, as amended, for an unspecified amount, was presented by GUSTAVE GUINCHARD and is based upon the asserted loss of a bond issued by the Association of the Religious Community of the Company of Jesus of Bethlehem College of Havana. Claimant has been a national 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).)

Claim was filed on April 28, 1967 by GUSTAVE GUINCHARD based upon a bond issued by the Association of the Religious Community of the Company of Jesus of Bethlehem College of Havana. By Commission letter of August 4, 1967, claimant was advised, through counsel, as to the type of evidence proper for submission to establish this claim under the Act. Thereafter, by letter of August 21, 1967, the Commission made additional suggestions to claimant, through counsel, concerning the submission of supporting evidence in this matter. However, no evidence in response to this correspondence has been received to date.

On October 12, 1967, counsel and claimant were invited to submit any evidence available within 45 days from that date, and they were informed that, absent such evidence, it might become necessary to determine the claim on the basis of the existing record. On November 13, 1967 the Commission was advised by the claimant that he had neither evidence nor papers to substantiate his claim.

The Commission finds that claimant has not met the burden of proof in that he has 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 10 1968

Leonard v. B. Sutton

Leonard v. B. Sutton, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

COMMUNICATION
FILED
OF THE CLERK
MAY 21 1968
Clerk of the Commission

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