

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

IN THE MATTER OF THE CLAIM OF

THOMAS S. ROSENBERG

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -2772

Decision No. CU **5911**

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 \$109,417.00, was presented by THOMAS S. ROSENBERG based upon the asserted loss of certain real and personal property in Cuba. 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.

Claimant asserts the following losses:

| | |
|---|------------------|
| 675 shares of stock in Consolidated Textile Mills, Inc. | \$ 67,500.00 |
| 150 shares of stock in Tiendas Delta, S.A. | 15,000.00 |
| 1 lot on Isle of Pines, Cuba | 1,512.00 |
| 1 lot in Havana Province, Cuba | 8,500.00 |
| Personal belongings | <u>16,905.00</u> |
| | \$109,417.00 |

Sole ownership of the foregoing items of property is claimed. However, claimant's itemized list of the personal property in question includes a portrait of his wife. It therefore appeared that claimant may have been married on the asserted dates when said properties were acquired.

Pursuant to the community property laws of Cuba, all properties acquired during coverture, except properties acquired by gift or inheritance, are owned in equal shares by both spouses. (See Claim of Robert L. Cheaney and Marjorie L. Cheaney, Claim No. CU-0915.)

Accordingly, the Commission directed an inquiry to claimant under date of December 17, 1969 concerning, inter alia, his marital status on the asserted dates of acquisition of the properties. Contemplating the possibility of an affirmative response, the Commission suggested in that event that the interests of his wife may be considered upon written request accompanied by proof of her United States nationality at all pertinent times. Further inquiries in this respect were addressed to claimant on January 27, 1970, March 5, 1970, July 22, 1970 and September 1, 1970. Claimant has failed to respond to those inquiries.

Claimant, however, did address the Commission under date of March 2, 1970, and his request for an extension of time to obtain certain documentary

evidence suggested by the Commission was duly granted. Apart from the fact that claimant has failed to submit any such evidence, he has not advised the Commission as to his marital status. As stated above, the record appears to indicate that the community property law of Cuba did apply to claimant's properties.

Upon consideration of the entire record and in the absence of evidence to the contrary, the Commission finds that claimant owned a one-half interest in the properties allowed herein, as indicated in detail below.

Consolidated Textile Mills, Inc.

The record includes stock certificates evidencing that claimant acquired in 1954, 1955 and 1956, 675 shares of stock in Consolidated Textile Mills, Inc. (Consolidated). On the basis thereof and in the light of the community property laws of Cuba, the Commission finds that claimant owned a one-half interest in the said 675 shares of stock.

On October 24, 1960, the Cuban Government published in its Official Gazette Resolution No. 3 listing Consolidated as nationalized pursuant to Law 851.

Since Consolidated was organized under the laws of Cuba it does not qualify as a corporate "national of the United States" defined under Section 502(1)(B) of the Act as a corporation or other legal entity organized under the laws of the United States, or any State, the District of Columbia, or the Commonwealth of Puerto Rico, whose ownership is vested to the extent of 50 per centum or more in natural persons who are citizens of the United States. In this type of situation, it has been held that an American stockholder is entitled to file a claim for the value of his ownership interest. (See Claim of Parke, Davis & Company, Claim No. CU-0180, 1967 FCSC Ann. Rep. 33.)

Claimant asserts a loss of \$67,500.00 for the 675 shares of stock, based apparently upon cost, the par value of \$100.00 per share as shown by the stock certificates. The record in another case, Claim of Howard W. Heiman,

Claim No. CU-3321, based on a stock interest in Consolidated, includes copies of an audited balance sheet, profit and loss statement and supporting schedules for Consolidated covering the fiscal year, July 1, 1959 to June 30, 1960.

An examination of the balance sheet shows that Consolidated had assets aggregating \$395,047.12, the peso being on a par with the United States dollar. Included in the assets is the item, merchandise in transit, in the amount of \$1,144.55. In the absence of evidence to the contrary, the Commission finds that this item did not constitute an asset of Consolidated that was taken by Cuba. However, its inclusion in the audited balance sheet means that a corresponding credit in the form of a reduction of cash or an increase in accounts payable had been entered on Consolidated's books. Therefore the result would be the same whether this asset and its corresponding credit were deleted or allowed to stand.

The balance sheet also shows that Consolidated had liabilities aggregating \$271,807.26. The Commission therefore finds that the net worth of Consolidated or the excess of its assets over its liabilities on October 24, 1960, the date of loss, was \$123,239.86. Since Consolidated had 1,500 shares of outstanding capital stock, each share had a value of \$82.1599. Therefore 675 shares had a value of \$55,457.93, and claimant's one-half interest therein had a value of \$27,728.97.

Tiendas Delta, S.A.

On the basis of affidavits from individuals having personal knowledge of the facts, the Commission finds that claimant acquired a one-third stock interest in Tiendas Delta, S.A. (Tiendas), a Cuban corporation. On the basis thereof and in the light of the community property laws of Cuba, the Commission finds that claimant owned a one-sixth stock interest in Tiendas.

The Commission has found that Tiendas was nationalized by the Government of Cuba on December 5, 1962, and that the value of a one-third stock interest therein on the date of loss was \$14,000.00. (See Claim of James S. Knopke, et al., Claim No. CU-2390.) Accordingly, the Commission finds that claimant's one-sixth interest therein had a value of \$7,000.00.

Real Property

Claimant asserts the loss of \$10,012.00 based upon one lot on the Isle of Pines and one lot in Havana Province allegedly acquired in 1959. There is no evidence of record to support claimant's assertions. To the contrary, a report from abroad written in Spanish relating to the property in Havana Province appears to indicate that one Moises Rosenberg owned said property. Although the Commission directed pertinent inquiries to claimant on several occasions, claimant has failed to either translate the document or explain the discrepancy between his assertion and the report. In a further effort to assist claimant in documenting his claim, the Commission suggested the submission of copies of his income tax returns and related material since he stated in his official claim form that he had been allowed a tax deduction on account of his Cuban losses. No such evidence has been filed to date.

Upon consideration of the entire record, the Commission finds that claimant has failed to sustain the burden of proof with respect to the portion of his claim based upon the said lots. Accordingly, this portion of the claim is denied.

Personal Belongings

On the basis of affidavits from individuals having personal knowledge of the facts and other evidence of record, the Commission finds that claimant owned furniture, household furnishings and other items of personal property maintained at his residence in Marianao, Havana, Cuba, as well as an automobile that was also situated at his residence. In the light of the community property laws of Cuba, the Commission finds that claimant owned a one-half interest in said personal property.

On December 6, 1961, the Cuban Government published Law 989, which confiscated 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 claimant who had left Cuba prior to

that date, and that his personal property in Marianao was 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].)

Claimant asserts the loss of \$16,905.00 on account of his personal property. In support thereof, he has submitted an itemized list of the property indicating with respect to most of the items the years of purchase, the costs and the asserted values. The record also includes affidavits from individuals who had visited claimant at his residence in Cuba. Those affiants confirm ownership of the listed items of personal property, and state that claimant's asserted valuations are the reasonable market values. That list shows the following:

| <u>Item</u> | <u>Cost</u> | <u>Asserted Value</u> |
|---|-------------|-----------------------|
| 1958 Oldsmobile - Super 88 with air conditioning, etc. | \$5,600.00 | \$ 4,480.00 |
| Furniture - purchased 1957 | 7,000.00 | 5,950.00 |
| Dishes, fine crystal, silverware, etc. | 1,300.00 | 1,300.00 |
| Washer and dryer - purchased 1958 | 560.00 | 460.00 |
| Refrigerator - purchased 1957 | 535.00 | 455.00 |
| 3 air conditioners - purchased 1958 and 1959 | 660.00 | 550.00 |
| Paintings (several, including portrait of "my wife") | 500.00 | 500.00 |
| Upright piano - purchased 1957 | 1,000.00 | 850.00 |
| "Hi-Fi" - purchased 1958 | 450.00 | 360.00 |
| Clothing and other personal items | | 1,000.00 |
| Miscellaneous, including stove, golf clubs, TV sets, radios, etc. | | <u>1,000.00</u> |
| Total claimed | | <u>\$16,905.00</u> |

The Commission concludes that except for the crystal, silverware and paintings, the personal properties were subject to reductions in value on account of depreciation as follows:

| | |
|---|--------------|
| Automobile and golf clubs | 15% per year |
| Furniture, refrigerator, air conditioners, piano, hi-fi and stove | 5% per year |
| Dishes, washer and dryer, TV sets and radios | 10% per year |
| Clothing | 20% per year |

Upon consideration of the entire record, the Commission finds that the values of the various items of personal property on December 6, 1961, the date of loss, were as follows:

| | |
|---|-------------|
| Automobile - 45% depreciation | \$ 3,080.00 |
| Furniture - 20% depreciation | 5,600.00 |
| Dishes (In the absence of evidence to the contrary, the Commission finds that dishes constituted one-third of the total cost of the items lumped together, or \$433.33. On the basis that the dishes were acquired about 1957, as in the case of the furniture, it is concluded that 40% depreciation is the appropriate rate.) | 260.00 |
| Washer and dryer - 30% depreciation | 392.00 |
| Refrigerator - 20% depreciation | 428.00 |
| Air conditioners (In the absence of evidence to the contrary, the Commission finds that the total cost of the air conditioners should be allocated in equal amounts to 1958 and 1959.) | |
| 15% depreciation (1958) | 280.50 |
| 10% depreciation (1959) | 297.00 |
| Piano - 20% depreciation | 800.00 |
| Hi-fi - 15% depreciation | 382.50 |
| Clothing (In the absence of evidence to show the date of purchase and cost of the clothing, and considering that clothing is subject to a 20% depreciation rate, it is concluded that the value of the clothing and the related items should be reduced by 40%.) | 600.00 |

| | |
|---|--------------------|
| Miscellaneous (In the absence of evidence to show the dates of purchase and costs of each item involved in this group, and considering the indicated depreciation rates for the stove (5%), golf clubs (15%), TV sets and radios (10%), it is concluded that the asserted valuation for this group should be reduced by 35%.) | 650.00 |
| Crystal and silverware (\$1,300.00 less \$433.33 allowed for dishes.) | 866.67 |
| Paintings | <u>500.00</u> |
| Total | <u>\$14,136.67</u> |

Claimant's one-half interest in the personal property therefore had a value of \$7,068.34.

Claimant's losses are summarized as follows:

| <u>Item of Property</u> | <u>Date of Loss</u> | <u>Amount</u> |
|---|---------------------|--------------------|
| Consolidated Textile Mills, Inc. - stock interest | October 24, 1960 | \$27,728.97 |
| Tiendas Delta, S.A. - stock interest | December 5, 1962 | 7,000.00 |
| Personal property | December 6, 1961 | <u>7,068.34</u> |
| Total | | <u>\$41,797.41</u> |

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 as follows:

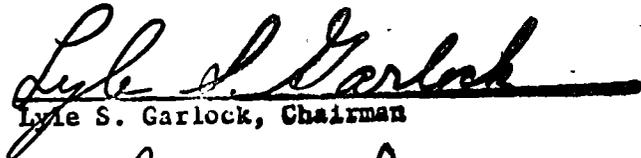
| <u>FROM</u> | <u>ON</u> |
|------------------|--------------------|
| October 24, 1960 | \$27,728.97 |
| December 6, 1961 | 7,068.34 |
| December 5, 1962 | <u>7,000.00</u> |
| Total | <u>\$41,797.41</u> |

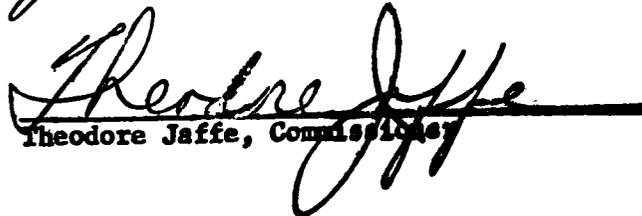
CERTIFICATION OF LOSS

The Commission certifies that THOMAS S. ROSENBERG suffered a loss, as a result of action 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 Forty-one Thousand Seven Hundred Ninety-seven Dollars and Forty-one Cents (\$41,797.41) with interest at 6% per annum from the respective dates of loss to the date of settlement.

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

OCT 21 1970


Lyle S. Garlock, Chairman


Theodore Jaffe, Commissioner

NOTICE TO TREASURY: The above-referenced securities 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 securities 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 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. 5(e) and (g), as amended, 32 Fed. Reg. 412-13 (1967).)