

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

IN THE MATTER OF THE CLAIM OF

LOUIE BANDEL

Under the International Claims Settlement  
Act of 1949, as amended

Claim No. CU-2845

Decision No. CU 6160

Counsel for claimant:

H. S. Wood and H. L. Wood

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, was presented by LOUIE BANDEL for \$160,000.00 based upon the asserted loss of stock interests in a Cuban corporation. Claimant has been a national of the United States since his 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 502(1)(B) of the Act defines the term "national of the United States" as a corporation or other legal entity which is organized under the laws of the United States, or of any State, the District of Columbia, or the Commonwealth of Puerto Rico, if natural persons who are citizens of the United States own, directly or indirectly, 50 per centum or more of the outstanding capital stock or other beneficial interest of such corporation or entity.

The record discloses that Club de Perros Biltmore, S.A., hereinafter referred to as Biltmore Kennel Club, S.A., was organized under the laws of Cuba and does not qualify as a corporate "national of the United States", within the meaning of Section 502(1)(B) of the Act, supra. In this type of situation, however, it has been held previously that an American stockholder in such a corporation 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.)

The evidence of record includes a report from abroad, stock certificates, affidavits, United States income tax returns, pictures of the Biltmore Kennel Club facilities, and evidence submitted by other claimants in their claims based on a loss of stock interests in the subject entity.

The record establishes that claimant LOUIE BANDEL was the owner of 20,721 shares of the Biltmore Kennel Club, S.A.

Based on the entire record, the Commission finds that on August 13, 1959 the Biltmore Kennel Club, S.A., as lessee, entered into a fifteen-year lease with Cia. de Terrenos del Cinodroma, S.A. for the management and maintenance of a dog track in Havana, Cuba. Cia. de Terrenos del Cinodroma, S.A. was nationalized by the Government of Cuba pursuant to Resolution 665 published in the Official Gazette on October 12, 1960. The Commission finds that the Biltmore Kennel Club, S.A. was also taken on that date.

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.

Claimant had originally asserted a loss in the amount of \$160,000.00 based on his ownership of 80,000 shares of stock of Biltmore Kennel Club, S.A. He further asserted that the market value at the time of loss was \$5.00 per share. In the absence of proof, he has amended his claim to limit his loss based on the aforementioned 20,721 shares, and to a value of \$2.20 per share. The value is predicated upon a value which was allowed as a loss by the United States Internal Revenue Service in the matter of another stockholder (Claim of Charles B. Selden, Claim No. CU-2846). The Commission has examined this evidence of value and it finds that, in the absence of evidence to the contrary, a value of \$2.20 per share of stock is the most equitable to the claimant.

The Commission concludes that claimant suffered a loss in the amount of \$45,586.20 within the meaning of Title V of the Act.

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.

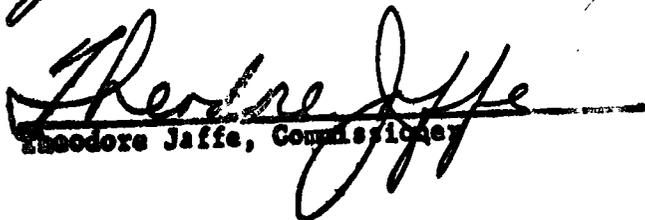
CERTIFICATION OF LOSS

The Commission certifies that LOUIE BANDEL 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 Forty-five Thousand Five Hundred Eighty-six Dollars and Twenty Cents (\$45,586.20) with interest at 6% per annum from October 12, 1960 to the date of settlement.

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

APR 14 1971

  
Lyle S. Carlock, 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. 531.5(e) and (g), as amended, (1970).)