

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

IN THE MATTER OF THE CLAIM OF

MICHAEL JACOBS
ADELINE JACOBS

Claim No. CU - 3001

Decision No. CU - 4064

Under the International Claims Settlement
Act of 1949, as amended

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, for \$15,700 was presented by MICHAEL JACOBS and ADELINE JACOBS based upon the asserted loss of an apartment house and mortgage interests secured by real property in Cuba. Claimant MICHAEL JACOBS has been a national of the United States since his naturalization on January 24, 1938, and claimant ADELINE JACOBS 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 503(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.

Apartment House

Claimants contend that they lost an apartment house located on 13th Street, Lidice, Havana comprising 4 houses or apartments, and valued at \$9,200.00.

The record establishes that the property is recorded in the name of MICHAEL JACOBS. Pursuant to the community property law of Cuba, ADELINE JACOBS had a one-half interest therein.

On October 14, 1960, the Government of Cuba published in its Official Gazette, Special Edition, its Urban Reform Law. Under this law the renting of urban properties, and all other transactions or contracts involving transfer of the total or partial use of urban properties was outlawed (Article 2). The law covered residential, commercial, industrial and business office properties (Article 15). The law further provided that if a tenant did not occupy the property, or had subleased or transferred its use to another, the property could be sold to the occupant; and further, that an occupant, whether a tenant or subtenant, or not, could purchase the property in the manner outlined (Article 9). Article 21 of the law provided that present owners of urban buildings sold under the law should receive the assigned price; however, under Article 25 ownership of so-called tenement houses would be transferred to the State without compensation to the erstwhile owners. Moreover, Article 30 provided that if urban buildings transferred under the law were mortgaged, execution of the contract of sale

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should have the effect of canceling the mortgage. Following Chapter VI of the law appears a section entitled "Temporary Provisions" and the third paragraph thereof provides that citizens of foreign countries who do not have the status of legal residents shall be excluded from the rights and benefits conferred by this law.

Based on the foregoing and the evidence of record including a report from abroad, the Commission finds that claimants' real property in Havana, Cuba, was taken by the Government of Cuba pursuant to the provisions of the Urban Reform Law; and, in the absence of evidence to the contrary, that the taking occurred on October 14, 1960, the date on which the law was published in the Cuban Official Gazette.

Accordingly, the Commission concludes that claimants suffered a loss of their real property within the meaning of Title V of the Act.

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.

Claimant MICHAEL JACOBS states that he acquired the property in 1957 for \$9,200.00.

Based on the entire record including a report from abroad, the Commission finds that the land, including improvements, had a value of \$9,200. Accordingly, the Commission concludes that claimants suffered a loss in the amount of \$9,200 within the meaning of Title V of the Act, as the result of the taking of Their realty by the Government of Cuba as of October 14, 1960.

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Mortgages

Claimants also contend that they lost mortgage interests of \$1,500 secured by a house in Calabazar, Havana and of \$5,000 secured by a lot in Capdevila, Havana, Cuba. As stated above, the Government of Cuba, on October 14, 1960 published its Urban Reform Law, Article 30 of which provided for the cancellation of mortgages of aliens.

Based on the entire record including a report from abroad, the Commission finds that claimants owned a mortgage of \$1,400 secured by a house in Calabazar, Havana, that this mortgage interest was cancelled by the Government of Cuba on October 14, 1960, and that they suffered a loss in the amount of \$1,400 on that date, within the scope of Title V.

Concerning the portion of the claim based on the loss of a mortgage interest secured by a lot in Capdevila, Havana, Cuba, claimant, MICHAEL JACOBS stated that it was for \$5,000. Subsequently he stated he did not remember the street, lot, or block numbers. Later, by letter dated September 2, 1969, he stated that he now recalled that the mortgage was in the amount of \$2,100.00 and recited other details including the names of the mortgagors and information regarding the notarization and registry of the mortgage.

Although the Commission has attempted to obtain information with respect to this item, none has been forthcoming. In the absence of more specific evidence to support this portion of the claim, the Commission is constrained to hold that claimants have not established their loss or the extent thereof with respect to the mortgage secured by a lot in Capdevila, Havana. Accordingly this portion of the claim is denied for failure to meet the burden of proof.

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, FCSC Claim No. CU-0644), and in the instant case it is so ordered.

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CERTIFICATION OF LOSS

The Commission certifies that MICHAEL JACOBS and ADELINE JACOBS 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 Ten Thousand Six Hundred Dollars (\$10,600.00) with interest thereon at 6% per annum from October 14, 1960, the date of taking to the date of settlement.

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

OCT 15 1969

Leonard v. B. Sutton

Leonard v. B. Sutton, Chairman

Theodore Jarfe

Theodore Jarfe, Commissioner

Sidney Feidberg

Sidney Feidberg, 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. 531.5(e) and (g), as amended, 32 Fed. Reg. 412-13 (1967).)