

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

IN THE MATTER OF THE CLAIM OF

HERMAN CHRISTIAN FLIERL
ERNESTINE LOUISE FLIERL

Claim No. CU -3034

Decision No. CU -1088

Under the International Claims Settlement
Act of 1949, as amended

Counsel for claimants:

O'Connell & Cooper
by F. Martin Perry, Esq.

AMENDED PROPOSED DECISION

By Proposed Decision of January 31, 1968, the Commission denied this claim for the reason that claimant HERMAN CHRISTIAN FLIERL had failed to establish ownership, by a national of the United States, of property which had been nationalized, expropriated or otherwise taken by the Government of Cuba. Claimant objected to the Proposed Decision, and submitted both new evidence in support of the claim and a petition executed by ERNESTINE LOUISE FLIERL to be joined as a claimant herein. Upon due consideration of all the evidence of record, it is

ORDERED, that ERNESTINE LOUISE FLIERL be joined as a claimant herein, and it is further

ORDERED, that the Proposed Decision be amended to read as follows:

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, in the amount of \$57,250.00, was presented by HERMAN CHRISTIAN FLIERL and ERNESTINE LOUISE FLIERL and is based on the asserted loss of real and personal property situated in Cuba. Each claimant has been a national of the United States since birth.

Evidence of record establishes that claimants owned realty consisting of approximately 16.1 acres, known as Section 29, Registry 155 of

"La Hacienda Santa Fe", Town of Jucaro, Isle of Pines, Cuba. Claimants' ownership of this property is substantiated by a copy of the purchase contract, which is of record (Escritura No. 155 of December 29, 1951), and a copy of a Cuban tax assessment notice dated April 12, 1960, naming claimants as owners of the subject property.

Additional evidence establishes that claimants owned an adjoining parcel of land, consisting of approximately 300 square meters and described as bounded on the north and west by the road from Santa Fe to Jucaro, on the south by (proposed) 5th Street, and on the east by (proposed) 7th Avenue. Claimants have submitted a copy of a tax assessment notice dated April 12, 1960, relating to this parcel, and also a copy of the purchase contract for the 300 square meter property.

The Commission appreciates the fact that there may be instances wherein primary evidence in support of a claim may not be available due to its loss or destruction during years between the taking of a claimant's property and the filing of claim under Title V of the International Claims Settlement Act of 1949, as amended. Also, the Commission notes that due to the political conditions which now exist in Cuba claimants have no direct access to the primary evidence which is obtainable only in said country. In addition, the Commission takes administrative notice that, in some instances, there was no decree, law or order issued under which the present Government of Cuba nationalized or otherwise took the property of nationals of the United States. In the absence of said decrees, laws and orders the Commission will examine the specific actions of agents of the Cuban Government which resulted in loss of a claimant's property.

Claimants assert that they were compelled to leave Cuba on April 25, 1960, after armed Cuban soldiers had been stationed upon their land. This assertion is reinforced, among other things, by an affidavit of Mrs. Elmar F. Taylor, which incorporates a color snapshot of two armed and uniformed men of the Cuban army assertedly assigned to and located on the land of the claimants.

On the basis of the evidence of record, and in the absence of additional or contrary evidence, the Commission finds that claimants were the

owners of the land hereinbefore described, and that they suffered the loss of their property on April 25, 1960, when they were compelled by the Government of Cuba to leave the Isle of Pines. (See Claim of Jack Moss, Claim No. CU-0225, 25 FCSC Semiann. Rep. 52 [July-Dec. 1966].)

As evidence of the value of the property thus taken, claimants have submitted sworn declarations listing in detail the cost of the property, and the value of the many improvements and the personalty thereon. It appears from the record that the property was used as a resort for vacationers from the United States and elsewhere, and as claimants' permanent residence.

The record contains affidavits from parties who had stayed as paying guests on the property, subject of this claim. In substance, these affidavits, taken together with claimants' statements, disclose that the property was improved as follows:

1. Lodge, furnished
2. Two guest houses, furnished
3. Claimants' family dwelling, furnished
4. Utility building and water tower
5. Boat house and two boat docks with boats,
and beach house
6. Paved road, sewage, electricity and other
amenities
7. Tools and maintenance equipment, such as
gas pumps, lawn mowers, etc.

Evidence has been submitted which indicates that during the year immediately preceding the date of taking and loss, claimants' neighbor assertedly sold similar property for an amount in excess of \$100,000.00. In addition, an affidavit executed by William Holden, a vacationer at claimants' property, states that claimants had offered the entire property for \$90,000.00 to a group for use as a hunting or fishing lodge. This offer was made in January, 1960, and was not accepted. Similar affidavits

as to the offer and asserted value of the property were executed by C. P. Edel and Henry A. Onofrio. As other evidence of value, claimants have submitted 12 photographs showing the buildings, shoreline, lawns and roads, and other improvements upon their land.

On the basis of the evidence of record, the Commission finds that the total value of claimants' improved real property and personal property was \$56,750.00, as of April 25, 1960, the date of loss. This evaluation is based on the following recapitulation:

Land	\$ 5,000.00
Buildings, with utilities	36,000.00
Other improvements	6,000.00
Personal properties	<u>9,750.00</u>
Total	\$56,750.00

Accordingly, it is concluded that claimants suffered a loss, in the total amount of \$56,750.00 within the meaning of Title V of the Act, as a result of the actions of the Government of Cuba.

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 loss sustained by claimants shall be increased by interest thereon at the rate of 6% per annum on \$56,750.00 from April 25, 1960, to the date on which provision is made for settlement thereof.

CERTIFICATION OF LOSS

The Commission certifies that HERMAN CHRISTIAN FLIERL and ERNESTINE LOUISE FLIERL 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 Fifty-Six Thousand Seven Hundred Fifty Dollars (\$56,750.00) with interest at 6% per annum from April 25, 1960 to the date of settlement,

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

OCT 2 1968

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

Theodore Jaffe

Theodore Jaffe, Commissioner

Sidney Freidberg

Sidney Freidberg, 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 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).)

CU- 3034

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

IN THE MATTER OF THE CLAIM OF

HERMAN CHRISTIAN FLIERL

Claim No. CU- 3034

Decision No. CU
1088

Under the International Claims Settlement
Act of 1949, as amended

Counsel for claimant:

O'Connell and Cooper

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 \$57,250.00, was presented by HERMAN CHRISTIAN FLIERL and is based upon the asserted loss of real and personal property located in Cuba. Claimant stated that he has been a national of the United States since his birth in the United States.

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:

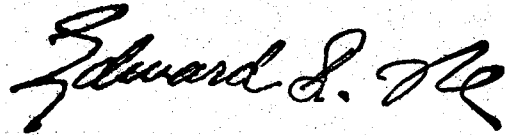
The claimant shall be the moving party and shall have the burden of proof on all issues involved in the determination of his claim. (FCSC Reg., 45 C.F.R. §531.6(d) (Supp. 1967).)

Claimant filed his claim on April 28, 1967. Accompanying the claim form was the original copy of a sales contract for realty dated January 11, 1952, two copies of the English translation thereof, twelve photographs of the property in question, and an itemized list of the improvements to the realty and of claimant's personal property. By Commission letter of July 28, 1967, claimant was advised, through counsel, as to the type of evidence proper for submission to establish this claim under the Act. There was no response to this letter. Thereafter, by letter of September 8, 1967, the Commission made additional suggestions to claimant, through counsel, concerning the submission of supporting evidence in this matter, and counsel was invited to submit any evidence available to him within 45 days from that date. Counsel was informed, that, absent such evidence, it might become necessary to determine the claim on the basis of the existing record. No evidence has since been submitted.

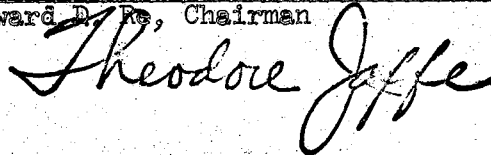
The Commission finds that claimant has not met the burden of proof in that he has failed to establish ownership by a national of the United States of rights and interests in property which was nationalized, expropriated or otherwise taken by the Government of Cuba. Thus, the Commission is constrained 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

JAN 31 1968



Edward D. Re, Chairman



Theodore Jaffe, Commissioner

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).)

CU- 3034