

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

IN THE MATTER OF THE CLAIM OF

HERBERT S. SHAPIRO, ADMINISTRATOR  
OF THE ESTATE OF ISIDORE WENGLINSKY,  
A/K/A ISIDORE WENDELL, DECEASED,  
AND SHIRLEY WENDELL

Claim No. CU-3036

Decision No. CU 1739

Under the International Claims Settlement  
Act of 1949, as amended

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 \$12,500.00, was presented by HERBERT S. SHAPIRO, ADMINISTRATOR OF THE ESTATE OF ISIDORE WENGLINSKY, A/K/A ISIDORE WENDELL, DECEASED, AND SHIRLEY WENDELL; and is based upon the asserted loss of a mortgage interest in certain property located in Marianao, Havana, Cuba. Claimant SHIRLEY WENDELL stated that she has been a national of the United States at all times pertinent to this claim. Decedent ISIDORE WENDELL had been a national of the United States at all times pertinent to this claim.

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)]<sup>7</sup>, 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).)

The claimants herein assert that the late ISIDORE WENGLINSKY, also known as ISIDORE WENDELL, held a mortgage on certain property located in Marianao, Havana, Cuba, and submitted a document dated February 19, 1958, indicating that the decedent held such mortgage against property assertedly owned by one Jose Sarosa. By Commission letter of June 26, 1967, claimants were advised, through counsel, as to the type of evidence proper for submission to establish this claim under the Act. Specifically, it was suggested that claimants submit evidence pertaining to ownership of the mortgage interest at time of the asserted loss and ownership of the claim therefor until filing this claim, as well as data with respect to any payments made and balance due under the mortgage when the property was assertedly taken. Further, the Commission suggested that claimants submit data concerning the distribution of the estate of decedent and information on the identity and nationality of his heirs.

Thereafter, on October 20, 1967, and December 28, 1967, the Commission made additional suggestions to claimants, through counsel, concerning the submission of supporting evidence in this matter. However, no evidence in response to these suggestions has been received to date.

By Commission letter of February 19, 1968, counsel was invited to submit any evidence available to him within twenty (20) days from that date, and he 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 claimants have not met the burden of proof in that they have failed to establish ownership by a national or nationals 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

APR 24 1968

*Leonard v. B. Sutton*

Leonard v. B. Sutton, Chairman

*Theodore Jaffe*

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).)

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