

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

IN THE MATTER OF THE CLAIM OF

FRANK J. ENGLERT

Claim No. CU-3044

Decision No. CU-4363

Under the International Claims Settlement  
Act of 1949, as amended

Counsel for claimant:

Walton and Garrick  
By Edward L. Walton, Esq.

Appeal and objections from a Proposed Decision entered on January 7, 1970; no oral hearing requested.

Hearing on the record held on October 7, 1971.

FINAL DECISION

Under date of January 7, 1970, the Commission issued its Proposed Decision certifying a loss in favor of claimant in the amount of \$9,361.79 plus interest. Portions of the claim for debts due with respect to an aircraft and aircraft parts were denied for lack of proof. Subsequently, claimant objected to the Proposed Decision and submitted additional supporting evidence, including proof that the Internal Revenue Service had allowed claimant and his wife, apparently a nonnational of the United States, tax deductions for their Cuban losses.

Upon consideration of the new evidence in light of the entire record, the Commission now makes the following findings:

1. The Commission finds that claimant owned a 1/2 interest in a debt of \$7,666.67 from an American concern, which debt was secured by an aircraft. The Commission further finds that the aircraft was flown to Havana, Cuba in

October 1960 where it was seized by Cuban military authorities. In the absence of evidence to the contrary, the Commission finds that the seizure occurred on October 15, 1960. Therefore, claimant sustained a loss on October 15, 1960 in the amount of \$3,833.34.

2. The Commission finds that claimant owned a 1/2 interest in certain aircraft parts which he had sold and shipped to Expreso Aereo Interamericano, S.A., a Cuban corporation, in Cuba for \$600.00, and for which he never received payment. In the Claim of Harry Koltz, Claim No. CU-3611, the Commission found that this Cuban corporation was intervened by the Government of Cuba on May 27, 1959.

The Commission has held that debts of an intervened Cuban enterprise constitute a loss within the meaning of Title V of the Act. (See Claim of Kramer, Marx, Greenlee and Backus, Claim No. CU-0105, 25 FCSC Semiann. Rep. 62 [July-Dec. 1966].) The Commission therefore finds that claimant sustained a loss on May 27, 1959 in the amount of \$300.00.

Claimant's losses are restated as follows:

<u>Item</u>	<u>Date of Loss</u>	<u>Amount of Loss</u>
Debt	May 27, 1959	\$ 300.00
Secured Debt	October 15, 1960	3,833.34
Improved realty	October 24, 1960	8,125.58
Personalty	October 24, 1960	730.00
Bank account	December 6, 1961	<u>506.21</u>
		\$13,495.13

The Commission reaffirms that interest shall be allowed and it is so ordered as follows:

<u>FROM</u>	<u>ON</u>
May 27, 1959	\$ 300.00
October 15, 1960	3,833.34
October 24, 1960	8,855.58
December 6, 1961	<u>506.21</u>
Total	\$13,495.13

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Accordingly, the Certification of Loss in the Proposed Decision of January 7, 1970 is set aside and the following Certification of Loss will be entered, and in all other respects the Proposed Decision is affirmed.

CERTIFICATION OF LOSS

The Commission certifies that FRANK J. ENGLERT 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 Thirteen Thousand Four Hundred Ninety-Five Dollars and Thirteen Cents (\$13,495.13) with interest thereon at 6% per annum from the respective dates of taking to the date of settlement.

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

OCT 7 1971

  
Lyle S. Garlock, Chairman

  
Theodore Jaffe, Commissioner

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PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, for \$27,010.59 was presented by FRANK J. ENGLERT based upon the asserted loss of improved realty, personal property and a bank account in Cuba. 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.

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 has described his claim as follows:

(1) Real property	\$27,000	
Less mortgage	<u>10,748.84</u>	\$16,251.16
(2) Furnishings and appliances		1,480.00
(3) Bank account		1,012.43
(4) One-third interest in aircraft		7,667.00
(5) Aircraft parts		<u>600.00</u>
		\$27,010.59

Real Property

The record establishes that claimant owned a one-half interest in improved real property at Calle 218 #2109 esq. Ave. 21A, Nuevo Biltmore, Mariano, Cuba.

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). Moreover, Article 30 provided that if urban buildings transferred under the law were mortgaged, execution of the contract of sale 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, the Commission finds that claimant's interest in 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 claimant suffered a loss of his interest in 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.

The real property is described as a two-story building of brick and plaster, erected in 1956 on 453 square meters; the first floor consisting of a porch, living room, dining room, studio, servants quarters, kitchen, bathrooms and closets; the second floor consisting of a terrace, three bedrooms, closets, vestibule and bathroom.

The evidence of record includes an affidavit of a former practicing Cuban attorney, familiar with real estate in Havana, and evidence that it was encumbered with a mortgage. Based on the entire record, the Commission finds that at the time of loss, the property had a value of \$27,000 but that it was encumbered by a mortgage of \$10,748.84. Accordingly, the equity in the property was \$16,251.16.

#### Personal Property

The Commission finds, on the basis of the record, that the aforesaid property contained certain furnishings, including an air conditioner, having an aggregate depreciated value of \$1,460 on October 24, 1960, and that such property was taken by the Government of Cuba on the said date, with the improved realty.

Accordingly, the Commission holds that claimant suffered a loss of his interest in this property within the meaning of Title V of the Act.

#### Bank Account

Claimant also contends that he has lost a bank account in Cuba having a balance of 1,012.43 pesos. The record establishes that on December 31, 1959 claimant and his wife had a balance of 1,012.43 Cuban pesos on deposit with The Trust Company of Cuba in Havana.

Law 989, published in the Official Gazette on December 6, 1961, in its terms nationalized by confiscation all goods and chattels, rights, shares, stocks, bonds and other securities of persons who left the country of Cuba. In the absence of evidence to the contrary, the Commission finds that the above-described bank account, totalling 1,012.43 pesos, was taken by the Government of Cuba on December 6, 1961. (See Claim of Floyd W. Auld, Claim No. CU-0020, 25 FCSC Semiann. Rep. 55 [July-Dec. 1966].)

Further, the Commission finds that on December 6, 1961, the 1,012.43 pesos had a value of \$1,012.43 and that claimant suffered a loss of his one-half interest therein, within the meaning of Title V of the Act, as the result of the taking of the bank account by the Government of Cuba as of December 6, 1961.

Aircraft and Parts

Claim has also been asserted for a one-third interest in an aircraft and in certain aircraft parts which claimant asserts he acquired in 1957 and thereafter.

By Commission letter of June 20, 1967, claimant was advised as to the type of evidence proper for submission to establish this item of claim under the Act. Thereafter, by letter of July 21, 1967, the Commission reminded claimant concerning the submission of supporting evidence in this matter. Suggestions were renewed by letter of November 13, 1967 and on various occasions thereafter through counsel who 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 in support of this item of claim.

The Commission finds that claimant has not met the burden of proof in that he has failed to establish ownership of rights and interests in an aircraft and aircraft parts which were nationalized, expropriated or otherwise taken by the Government of Cuba. Thus, the Commission is constrained to deny this part of claim and it is hereby denied.

SUMMARY

Claimant's losses may be summarized as follows:

<u>Item</u>	<u>Date of Loss</u>	<u>Amount of Loss</u>
Improved realty	October 24, 1960	\$ 8,125.58
Personalty	October 24, 1960	730.00
Bank account	December 6, 1961	<u>506.21</u>
		\$ 9,361.79

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), and in the instant case it is so ordered.



CERTIFICATION OF LOSS

The Commission certifies that FRANK J. ENGLERT 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 Nine Thousand Three Hundred Sixty-one Dollars and Seventy-nine Cents (\$9,361.79) with interest thereon at 6% per annum from the respective dates of taking to the date of settlement.

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

7 JAN 1970

*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 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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