

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

IN THE MATTER OF THE CLAIM OF

DIANE L. TARAN

Claim No CU -3124

Decision No. CU-6151

Under the International Claims Settlement
Act of 1949, as amended

Counsel for claimant:

Kovner, Mannheimer,
Greenfield & Cutler
By Alan E. Greenfield, Esq.

Appeal and objections from a Proposed Decision entered on April 7, 1971;
oral hearing requested.

Oral hearing held on June 16, 1971.

FINAL DECISION

Under date of April 7, 1971, the Commission issued its Proposed Decision certifying a loss in favor of claimant in the amount of \$41,000.00 plus interest. Portions of the claim based upon stock interests in two Cuban corporations, Distribuidora Musical del Caribe, S.A. (Caribe) and Western Hemisphere Importing Company, Inc. (Western), were denied for lack of proof.

Claimant objected to the Proposed Decision insofar as it denied portions of her claim, and she requested an oral hearing which was held on June 16, 1971. At that hearing, counsel for claimant offered oral argument and claimant's husband, a nonnational of the United States on the date of loss, testified on behalf of his wife. Subsequently, counsel submitted further supporting evidence.

Upon consideration of the entire record, including the evidence presented at the oral hearing and subsequently, the Commission amends the decision in this matter as follows:

The Commission finds on the basis of copies of stock certificates, affidavits and testimony at the oral hearing, and taking into consideration

the community property laws of Cuba, that claimant and her husband jointly owned all of the outstanding capital stock of Caribe. (See Claim of Robert L. Cheaney, et ux., Claim No. CU-0915.) The Commission further finds said stock interest was taken by the Government of Cuba on December 6, 1961 pursuant to Law 989.

Based on the evidence of record, the Commission finds that claimant and her husband jointly owned a 50% stock interest in Western, the stock certificates having been left in Cuba. The Commission further finds that said stock interest was also taken by the Government of Cuba on December 6, 1961 pursuant to Law 989.

Since Caribe and Western were organized under the laws of Cuba, neither qualifies as a corporate "national of the United States", defined under Section 502(1)(B) of the Act as a corporation or other legal entity organized under the laws of the United States, or any State, the District of Columbia or the Commonwealth of Puerto Rico, whose ownership is vested to the extent of 50 per centum or more in natural persons who are citizens of the United States. In this type of situation it has been held that an American stockholder 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.)

However, since claimant's husband was a nonnational of the United States on December 6, 1961, the date of loss, his claim may not be considered under Title V of the Act. (See Claim of Sigridur Einarsdottir, Claim No. CU-0728, 25 FCSC Semiann. Rep. 45 [July-Dec. 1966].)

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.

Upon consideration of the entire record, the Commission finds that the valuations most appropriate in this case and equitable to the claimant are those shown by the last available balance sheets for Caribe and Western.

The balance sheet for Caribe as of December 31, 1959 shows assets aggregating \$396,723.06. Of that amount, \$733.09 represents goods in transit which could not have been taken by Cuba. Therefore, Caribe's assets are found as \$395,989.97. Since Caribe's liabilities aggregated \$143,023.38, the net worth of Caribe was \$252,966.59 on December 6, 1961. Therefore, claimant's one-half interest therein had a value of \$126,483.30.

That balance sheet also shows that Caribe was indebted to claimant in the amount of \$15,033.13. The Commission has held that debts of nationalized Cuban corporations constitute losses 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].) Accordingly, the Commission finds that claimant sustained a loss of \$7,516.56 for her one-half interest in the debt.

The balance sheet for Western as of December 31, 1958 shows assets aggregating \$415,210.09. Of that amount, \$6,137.37 was owed by officers and other persons affiliated with Western, which amount could not have been taken by Cuba. Therefore, Western's assets are found as \$409,072.72. Since Western's liabilities aggregated \$10,691.26, the net worth of Western was \$398,381.46 on December 6, 1961. Therefore, claimant's one-fourth interest therein had a value of \$99,595.36.

Claimant's losses on December 6, 1961 are now summarized as follows:

<u>Item of Property</u>	<u>Amount</u>
Real and personal property	\$ 41,000.00
Caribe-stock interest	126,483.30
Debt due from Caribe	7,516.56
Western-stock interest	<u>99,595.36</u>
Total	<u>\$274,595.22</u>

The Commission reaffirms its holding that interest shall be allowed, and it is so ordered.


Accordingly, the Certification of Loss in the Proposed Decision of April 7, 1971 is set aside and the following Certification of Loss will be entered, and the Proposed Decision as amended herein is affirmed in all other respects.

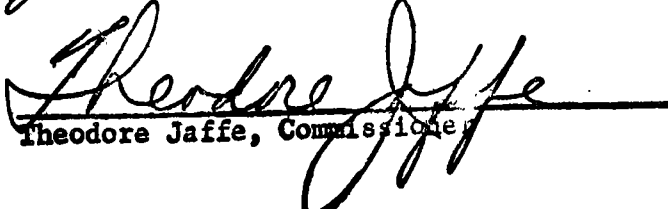
CERTIFICATION OF LOSS

The Commission certifies that DIANE L. TARAN 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 Two Hundred Seventy-four Thousand Five Hundred Ninety-five Dollars and Twenty-two Cents (\$274,595.22) with interest thereon at 6% per annum from December 6, 1961 to the date of settlement.

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

OCT 20 1971


Lyle S. Garlock, Chairman


Theodore Jaffe, Commissioner

NOTICE TO TREASURY: The stock certificates for Caribe 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.

CU-3124

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Claim No. CU-3124

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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, was presented by DIANE L. TARAN, in the total amount of \$702,756.19, based upon the asserted ownership and loss of real and personal property in Cuba, including certain furnished apartments and stock interests in Cuban corporations. Claimant 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 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) (1970).)

This claim is based upon the loss of real and personal property, including two furnished apartments, Nos. 21D and 25E, in the Focsa Building, Vedado, Havana, Cuba, with a total asserted value of \$41,000.00; and for the loss of stock interests in two Cuban corporations, Distribudora Musical del Caribe, S.A. and Importadora del Hemisferio Occidental, S.A., stated to have a total value of \$661,756.19 at the time of loss.

The claimant submitted copies of sales agreements executed on July 2, 1960, as well as affidavits and correspondence to establish that Barry Lee Taran, a national of the United States since birth, purchased apartments 21D and 25E, with household furnishings, in the Focsa Building, Vedado, Havana, Cuba, from Octavio and Regina Jordan. The Commission received reports concerning the ownership of the aforesaid real property units from sources abroad. The record also includes an assignment dated April 3, 1967, whereby Barry Lee Taran assigned and transferred his interests in the aforesaid contract and ownership of the claim for loss of the apartments, with furnishings, to the claimant, DIANE L. TARAN. Thus, on the basis of the entire record, the Commission finds that DIANE L. TARAN succeeded to and

became the owner of a claim for loss of the real property, with furnishings, as discussed hereafter.

On December 6, 1961, the Cuban Government published its Law 989 which effectively confiscated all assets, personal property and real estate, shares, stocks, bonds and securities of persons who had left the country. The record reflects that Barry Lee Taran left Cuba after purchase of the apartments in question or on or about the date of enactment of Law 989.

The Commission finds, in the absence of evidence to the contrary, that the subject real and personal property was taken by the Government of Cuba on December 6, 1961, pursuant to the provisions of Law 989. (See Claim of Wallace Tabor and Catherine Tabor, Claim No. CU-0109, 25 FCSC Semiann. Rep. 53 [July-Dec. 1966].)

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.

The claimant has submitted a detailed description of the real property, with affidavits, sales contracts and other material concerning the value of such property. Additionally, the record in a related claim includes a detailed list of the household furnishings and equipment situated in these apartments in the Focsa Building, including location, purchase prices and approximate dates of purchase. Based upon the entire record,

including evidence available to the Commission concerning the value of similar properties in Cuba, the Commission finds that the evaluation most appropriate to the subject real and personal property, is that given by claimant and the affiants and as shown in the sales contracts in July 1960; and that such evaluation is fair and reasonable, and is consistent with the evaluation of like properties in Vedado and other areas of Cuba. Accordingly, the Commission finds that on the date of loss the real and personal property had respective values of \$36,000.00 and \$5,000.00, or a total value of \$41,000.00; and the Commission concludes that claimant succeeded to and suffered a loss in that amount within the meaning of Title V of the Act.

With respect to the remaining portions of this claim, i.e., loss of stock interests in Distribudora Musical del Caribe, S.A. and Importadora del Hemisferio Occidental, S.A., claimant has submitted an affidavit and financial statements dated December 31, 1959, concerning Distribudora Musical del Caribe, S.A., and an affidavit concerning ownership of an unspecified number of shares of Importadora del Hemisferio Occidental, S.A. However, the record does not establish the number of shares outstanding or number owned by claimant in either corporation, or the value of such shares on the asserted date or dates of loss.

The Commission made suggestions in several letters to claimant, through counsel, as to the type of evidence proper for submission to establish the claim for loss of stock interests in the aforesaid corporations. While claimant has responded in part to the Commission correspondence, she has not submitted evidence of probative value which would establish that she owned stock interests in such corporations, the value of such shares, if any, or that the corporations were taken by the Government of Cuba within the meaning of Title V of the Act.

The Commission appreciates the difficulties encountered by the claimants in establishing their claims against the Government of Cuba. However, the Commission must be guided by the evidence of record pertaining to the

ownership, loss and value of the property included in each claim. The Commission is constrained to find that claimant herein has not met the burden of proof in that she has failed to establish the ownership and value of rights and interests in Cuban corporations which were nationalized, expropriated or otherwise taken by the Government of Cuba. Accordingly, these portions of the claim are hereby denied for the reasons stated. The Commission deems it unnecessary to make determinations with respect to other elements of this claim.


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 DIANE L. TARAN 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-One Thousand Dollars (\$41,000.00) with interest thereon at 6% per annum from December 6, 1961 to the date of settlement.

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

APR 7 1971


Lyle S. Garlock, Chairman


Theodore Jaffe, 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. 591.5(e) and (g), as amended (1970).)