

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

IN THE MATTER OF THE CLAIM OF

GOTTFRIED K. SMITH  
ROSARIO de BLANCK SMITH

Claim No. CU-3349

Decision No. CU-4509

Under the International Claims Settlement  
Act of 1949, as amended

Counsel for claimants:

Rufus King, Esq.

Petition to reopen; Proposed Decision dated and entered February 2, 1970;  
Final Decision entered March 16, 1970.

AMENDED FINAL DECISION

Under date of March 16, 1970, the Commission entered its Final Decision denying this claim for lack of proof.

Subsequently, evidence was submitted to establish that the original claimant's wife, Rosario de Blanck Smith, who owned an interest in the claim was a United States national at all pertinent times, and to prove the validity of the claim under Title V of the Act.

Upon consideration of the new evidence in light of the entire record, the original claimant's wife is added as party claimant, and the Commission amends the decision in this matter as follows:

The Commission now finds that claimants each owned 1/2 interests in certain items of household possessions and other personal property in Cuba. The Commission further finds that said properties were taken by the Government of Cuba on December 6, 1961 pursuant to Law 989, which effected the confiscation of all properties of persons who left Cuba.

The record includes a list of the items of personal property and asserted costs of \$38,200 and estimated valuations at time of loss aggregating \$42,000. An examination of the record shows that all of the items were subject to annual depreciation, except for the antiques.

On the basis of the entire record, the Commission finds that the properties had an original value of \$38,200 and that at the date of loss the valuation most appropriate to the properties and equitable to the claimants is the result obtained by reducing the asserted valuation (except for antiques) by 1/3 to arrive at the depreciated value on December 6, 1961, the date of loss. The Commission therefore finds that the properties had an aggregate value of \$26,844.00 on December 6, 1961, and that each claimant's interest had a value of \$13,422.00.

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.

Accordingly, the following Certification of Loss will be entered, and in all other respects the Final Decision of March 16, 1970, as amended herein, is affirmed.

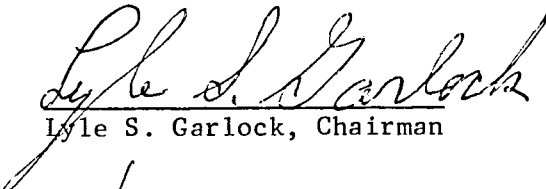
CERTIFICATIONS OF LOSS

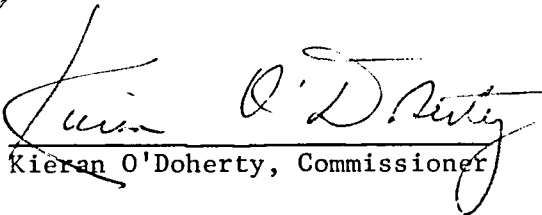
The Commission certifies that GOTTFRIED K. SMITH suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Thirteen Thousand Four Hundred Twenty-Two Dollars (\$13,422.00) with interest thereon at 6% per annum from December 6, 1961 to the date of settlement; and

The Commission certifies that ROSARIO de BLANCK SMITH 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 Twenty-Two Dollars (\$13,422.00) 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 Amended Final  
Decision of the Commission

JUN 30 1972

  
Lyle S. Garlock, Chairman

  
Kieran O'Doherty, 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.

CU-3349

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

IN THE MATTER OF THE CLAIM OF

GOTTFRIED K. SMITH

Claim No. CU-3349

Decision No. CU 4509

Under the International Claims Settlement  
Act of 1949, as amended

Counsel for claimant:

Richard C. Allison, Esq.

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 \$26,000.00, was presented by GOTTFRIED K. SMITH and is based upon the asserted loss of personalty in Cuba. 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) (Supp. 1967).)

Claimant states the claim arose on October 21, 1960 when he left Cuba.

He described his loss as follows:

Household furniture, linens, clothing, personal effects	\$15,000.00
Chinaware, silverware, crystal, paintings, electrical appliances	4,500.00
Fishing boat, gear and tackle	3,500.00
Speedboat and outboard motor	1,500.00
Automobile - 1957 Oldsmobile	1,500.00

The file also includes a listing of electrical equipment, and furniture and household items, said to have been left in a house in Havana, which list contains no asserted values as of any date.

By Commission letter of July 3, 1967, claimant was advised, through counsel, as to the type of evidence proper for submission to establish this claim under the Act.

On October 27, 1967, counsel was invited to submit any evidence available to him within 45 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.

Counsel replied on November 6, 1967 that the claimant was travelling, but it was expected the evidence would be submitted. On October 7, 1968, the Commission again addressed counsel, informing him of the Commission's

reduced staff, and providing suggestions and a form appropriate for claimant's affidavit.

No evidence, however, has been submitted in response to the Commission's suggestions.

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 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

12 FEB 1970

*Theodore Jaffe*

Theodore Jaffe, Commissioner

*Sidney Freidberg*

Sidney Freidberg, 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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