

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

IN THE MATTER OF THE CLAIM OF

EDWARD DESSAU CLARKSON

**Under the International Claims Settlement
Act of 1949, as amended**

Claim No. CU -3352

Decision No. CU-1396

Counsel for claimant:

Dessau Clarkson, Esq.

Appeal and objections with respect to an Amended Proposed Decision entered on February 26, 1968. No oral hearing requested.

Hearing on the record held on August 4, 1971

FINAL DECISION

By Proposed Decision issued February 26, 1968 the Commission denied this claim based on interest on a judgment entered against the Government of Cuba on November 3, 1931 since said claim had not arisen since January 1, 1959 as required by Title V of the Act.

Claimant, through counsel, objected to the Proposed Decision and submitted a brief in support of the objections. Counsel argues that as of November 3, 1931, the date of the aforementioned judgment, claimant had a vested property right in funds held by the then Cuban Government. Upon the advent of the Castro Government the old Government of Cuba was overthrown and its assets seized by the Castro regime. Accordingly, it is asserted claimant's vested property rights were taken by the present Cuban Government and the rights were then reduced to a claim against that Government, thus making the subject claim one that arose after January 1, 1959, and certifiable under the Act.

Full consideration has been given to the record including the correspondence in the files of the Department of State and counsel's brief. The Commission finds that the evidence does not warrant the conclusion urged

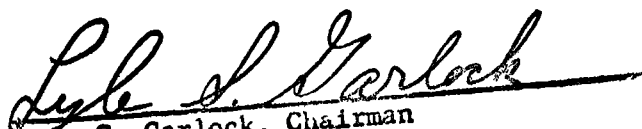
by counsel as to the existence of a vested property right that developed into a claim against the present Government of Cuba. Indeed, there is a dearth of probative evidence that the pre-Castro Cuban Government ever acknowledged that it was liable for any interest sum on the judgment.


The Commission is bound by the intent of Congress as set out in the legislative history of Title V; the express words of the statute itself and previous Commission decisions on this matter.

The Commission reaffirms its finding that the subject claim is not a claim arising since January 1, 1959 for losses resulting from nationalization, expropriation, intervention or other taking of, or special measures directed against, property owned by United States nationals. Accordingly, the denial of this claim is affirmed.

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

AUG 11 1971


Lyle S. Garlock, Chairman


Theodore Jaffe, Commissioner

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PROPOSED DECISION

This claim against the Government of Cuba, presented under Title V of the International Claims Settlement Act of 1949, as amended, in the amount of \$905,200.76, was presented by EDWARD DESSAU CLARKSON, and is based upon the asserted loss of accrued interest on a judgment against the Cuban Government. 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.

In 1928, the Cuban Government then in power seized land which was 90% owned by Frederick A. Morris, a United States national, and 10% owned by Cia. Reparto de las Alturas de la Universidad, S.A., a Cuban corporation. Claimant has certified that in 1928 and at all times thereafter, more than 50% of the stock in the Cuban corporation was owned by United States nationals.

In 1931, after protracted litigation, the Supreme Court of Cuba awarded judgment for Frederick A. Morris and the corporation, against the Cuban Government, in the amount of \$318,251.41. On November 3, 1931 the Cuban Government paid \$67,010.90 on the judgment, leaving an unpaid balance of \$251,240.51. On May 16, 1942 the Cuban Government paid the balance of the judgment, \$251,240.51, to the judgment creditors. Claimant asserts that interest is due him, as agent for the judgment creditors, on the balance of the judgment which remained unpaid from 1931 until 1942, and that interest is also due on the amount of interest which had accrued as of May 16, 1942.

By a deed executed in 1938, Frederick A. Morris transferred his interest in the Cuban judgment to William A. West, an American citizen. In 1956, and again in 1957 and 1960, West and the corporation authorized claimant to represent them and to accept payment or settlement in their behalf. The 1960 authorization, a copy of which is of record with the Commission, granted claimant an unlimited extension of time in which to represent the grantors in this matter.

The record contains a translation of a letter addressed to the United States Charge d'Affairs in Cuba, which is dated February 17, 1942, and is

signed by J. M. Cortina, then Cuban Minister of State. In essence, this letter states that the outstanding principal amount of the 1931 judgment would be paid and that the question of interest would be left open. As previously stated, the balance was tendered and accepted on May 16, 1942. Since that date, claimant and his principals, acting on their own behalf and through various instrumentalities of the United States Government, have attempted to obtain satisfaction for the interest assertedly due them. Claimant states that no funds have been received since 1942.

Under Cuban law, the laws of the country to which the interested party belongs applies in the case of personal property. (Article 10, Civil Code of Cuba.) A judgment, or interest due on a judgment, is considered to be personalty. (Articles 335, 336, Civil Code of Cuba.) In this country, it has been generally held that a judgment may constitute a vested right in property in the judgment creditor. (49 C.J.S. §2.) Further, a judgment which is valid by the laws and practice of the country where rendered is valid everywhere, Compania Mexicana Rediodifusora Franteriza v Spann, 41 F.Supp. 907, affirmed 131 F.2d 609.

The issue to be decided, therefore, is whether or not the loss asserted resulted from any act or failure to act by the Government of Cuba after January 1, 1959.

Section 503 of the International Claims Settlement Act of 1949, as amended, set out above, related to property taken by the Government of Cuba on or since January 1, 1959. In Report No. 706, 89th Congress, submitted to the House of Representatives from the Committee on Foreign Affairs on August 2, 1965, the following language may be found on page 3:

" . . . Claims by United States citizens against Cuban citizens and the Government of Cuba could date back as far as Cuban independence from Spain. Many of these claims are not related to the nationalization or confiscation of American-owned property in Cuba by the Castro Government on and after January 1, 1959."

In this same Report it is further stated:

"In short, pre- and post-Castro creditor interests of American nationals based on debts owed by the Government of Cuba . . . are eligible for consideration by the Foreign Claims Settlement Commission under this title—so long as the 'taking' (i.e., refusal to pay) of such property interests arose for the first time after January 1, 1959."

In Senate Report No. 1521, 88th Congress, which is the Report of the Committee on Foreign Relations concerning Title V of the Act, there is set out a letter to the Committee from the Department of State. Among other things, this letter requests that Sections 501 and 503 of the Act be amended to allow the filing of claims for debts arising prior to January 1, 1959 for merchandise shipped or services rendered. This proposed amendment was not incorporated into the final form of the Act. Senate Report No. 701, 89th Congress, contains the opinion of the Foreign Relations Committee on the proposed amendment:

"It is believed that the provision of Section 503(a) which authorizes the Commission to determine claims in accordance with applicable substantive law, including international law, is broad enough to include claims which accrued in the years immediately preceding January 1, 1959 . . ."

The Commission has previously construed Section 503(a) of the Act as requiring that the claimant establish that the loss of an ownership interest occurred since January 1, 1959, as the result of some measure applied by the Cuban Government subsequent to that date. (See the Claim of Louis P. Zinke, FCSC Claim No. CU-1857.) In yet another explanation of Section 503(a), the Commission stated "Title V of the Act pertains to claims of nationals of the United States against the Government of Cuba arising since January 1, 1959." (See the Claim of Emilio J. Pasarell, FCSC Claim No. CU-1585.)

Since the basis of this claim is the nonpayment of interest assertedly due on a judgment rendered against the Government of Cuba in 1931, it is not a claim arising since January 1, 1959 for losses resulting from nationalization, expropriation, intervention or other taking of, or special measures directed against, property owned by United States nationals and accordingly, the claim is denied.

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

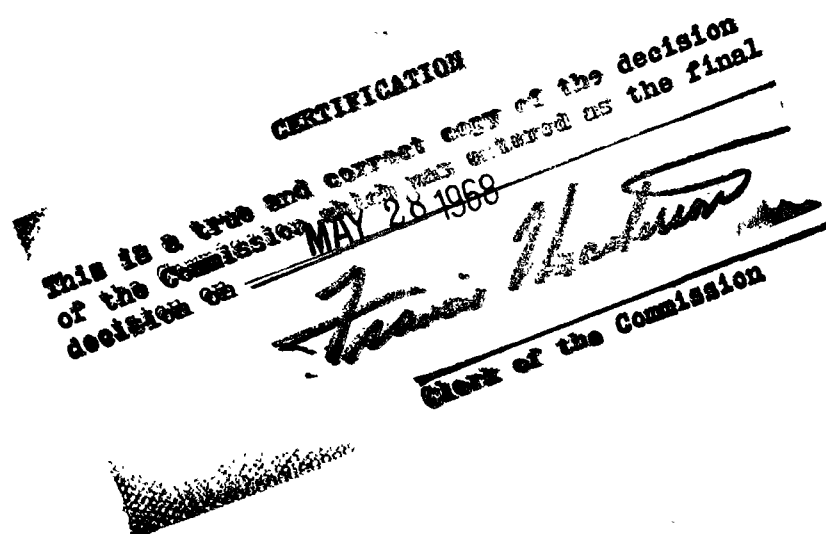
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Edward D. Re

Edward D. Re, 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).)

GU- 3352