

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

IN THE MATTER OF THE CLAIM OF

EARL W. SUNDERLIN

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -3400

Decision No. CU -1627

Counsel for claimant:

Alvin A. Neller, Esq.

AMENDED PROPOSED DECISION

Under date of April 10, 1968, this claim was denied for failure to sustain the burden of proof. Subsequently, additional supporting evidence was submitted. Upon consideration of the entire record, it is

ORDERED that the Proposed Decision be amended to read as follows:

This claim against the Government of Cuba, filed under Title V of the International Claims Settlement Act of 1949, as amended, was presented by EARL W. SUNDERLIN, for \$1,335.00.00 based upon the asserted ownership and loss of real property in Cuba. Claimant has been a national of the United States since his birth in the United States.

The record contains a copy of a purchase contract pursuant to which claimant acquired title to lots 33, 34 and 35 of Santa Rosalia Heights, Isle of Pines, Cuba, in 1959; copies of cancelled checks evidencing full payment of the purchase price of \$1,335.00; and a corroborating affidavit from the seller. The Commission finds that claimant owned the said lots 33, 34 and 35 of Santa Rosalia Heights, Isle of Pines, Cuba.

On December 6, 1961 the Cuban Government published its Law 989 (Official Gazette, XXIII, No. 237, p.23705) which confiscated all assets, personal property and real estate, rights, shares, stocks, bonds and securities of persons who had left the country.

At the time Law 989 was published, claimant was a resident in the United States. The Commission finds, in the absence of evidence to the contrary, that the subject real 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].)

Based on the entire record, the Commission finds that the value of claimant's property was \$1,335.00, and concludes that claimant suffered a loss in the amount of \$1,335.00 within the meaning of Title V of the Act. Further, the Commission finds that the amount of loss sustained shall be increased by interest thereon at the rate of 6% per annum from December 6, 1961, the date of loss, to the date on which provision is made for the settlement thereof. (See Tabor, supra.)

Accordingly, the following Certification of Loss will be entered and the remainder of the Proposed Decision is affirmed.

CERTIFICATION OF LOSS

The Commission certifies that EARL W. SUNDERLIN 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 One Thousand Three Hundred Thirty-Five Dollars (\$1,335.00) 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 Proposed
Decision of the Commission.

OCT 2 1968

Leonard v. B. Sutton

Leonard v. B. Sutton, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

Sidney H. Goldberg

Sidney H. Goldberg, 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).)

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

IN THE MATTER OF THE CLAIM OF

EARL WAYNE SUNDERLIN

Claim No. CU-3400

Decision No. CU

1627

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 \$1,335.00, was presented by EARL WAYNE SUNDERLIN and is based upon the asserted loss of real property in Cuba. Claimant has been a national of the United States since his birth in the United States.

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).)

Other than a copy of a notarized letter from one Robert L. Howard and a copy of claimant's certificate of birth, no evidence has been submitted to support this claim. By Commission letter of December 19, 1967, claimant was advised as to the type of evidence proper for submission to establish this claim under the Act. However, no evidence in response to this correspondence has been received to date.

On January 4, 1968, claimant 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. No evidence has since been submitted.

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

APR 10 1968

Leonard v. B. Sutton

Leonard v. B. Sutton, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

CERTIFICATION

This is a true and correct copy of the decision
of the Commission which was entered as the final
decision on MAY 17 1968

Francis H. Coleman

Clerk of the Commission

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).)

CU- 3400