

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

IN THE MATTER OF THE CLAIM OF

MANUEL KAWKA

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -3441

Decision No. CU-763

AMENDED PROPOSED DECISION

On November 30, 1967, the Commission issued its Proposed Decision on this claim denying it for failure of proof. The decision was entered as final on January 11, 1968.

Thereafter additional evidence was received in this claim, and in the Claim of Edward Kay, Claim No. CU-3483, based on the same property. Accordingly, it is

ORDERED that the Final Decision in this matter be and it is hereby set aside and the Proposed Decision is hereby amended.

Claimant describes his loss as follows:

One-half of improved realty at	
Calle Santa Marta 17	\$27,500
Rentals	<u>19,200</u>
	\$46,700

The record in this case includes copies of letters, power of attorney, and of an assignment. The history of events concerning the property subject of this claim is set out in a letter of November 15, 1957 from a Cuban law firm. The contents of these documents are summarized below.

On April 1, 1953 one Saul Kawka (also known as Israel Kafka) brother of Edward Kay (CU-3483), purchased the improved real property at Calle Santa Marta 17, in Havana. Under the community property law of Cuba his wife Chawa (Eva) Kleiman Kawka had a one-half interest therein.

In May, 1953 Saul Kawka died. His one-half interest passed in equal parts to his sons Abraham Jacob Kawka and Manuel Menajem Mendel Kafka Kleiman, known as MANUEL KAWKA, his widow, however, having a usufruct in 1/3 of this half. On August 5, 1953 MANUEL KAWKA assigned his interest (1/4 of the whole property) to Edward Kay.

Thereafter Chawa (Eva) Kleiman Kawka died intestate. Her one-half interest passed in equal parts to the above-named two sons. An attempt to bequeath her usufructuary interest to Edward Kay was ineffective as it was extinguished upon her death. Thus the property was held as follows:

Jacobo Kawka	one-half
Manuel Kawka	one-quarter
Edward Kay	one-quarter

Jacobo Kawka is not a claimant before this Commission. It is to be noted that the assignment of August 5, 1953 did not include any interest MANUEL KAWKA later received from his mother.

Based upon the entire record the Commission finds that claimant MANUEL KAWKA owned a one-fourth interest in the improved real property at Calle Santa Marta 17, Havana, Cuba. The interest of Edward Kay will be treated in his claim, No. CU-3483.

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).

Based on the foregoing and the evidence of record, the Commission finds that claimant's one-fourth interest in the aforesaid real property 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 Gazette. (See Claim of Henry Lewis Slade, Claim No. CU-0183, 1967 FCSC Ann. Rep. 39.)

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 record before the Commission in this and related Claim No. CU-3483, includes, in support of the claimed value, a description of the property as a four-story building having thirteen apartments and three or four stores, the land measurement being 193 square meters. It is said that in the Deed of Purchase the property was evaluated at \$55,000.00 but that it was recorded in the Property Registry with a value of \$60,000.00. Nevertheless a report from sources abroad to the Commission reflects that the value is recorded as \$55,000.00. This is the value asserted by MANUEL KAWKA and Edward Kay, and this is the value ascribed to the property in considering the estate of Chawa (Eva) Kleiman Kawka. The Commission further takes note of the acceleration in value of such properties in contrast to usual depreciation.

Based on the entire record, the Commission finds that the subject improved real property had a value of \$55,000.00 on the date of loss. Accordingly, the Commission concludes that claimant MANUEL KAWKA suffered a loss in the amount of \$13,750.00 within the meaning of Title V of the Act, as the result of the taking of the property by the Government of Cuba on October 14, 1960.

Claim has also been made for rentals and interest on the subject property. The record contains no evidence that any rentals were due on the property and were taken by the Government of Cuba. Moreover, after October 14, 1960, the property belonged to Cuba. Nevertheless, 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 MANUEL KAWKA 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 Seven Hundred Fifty Dollars (\$13,750.00) with interest at 6% per annum from October 14, 1960 to the date of settlement.

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

SEP 11 1969

Leonard v. B. Sutton

Leonard v. B. Sutton, Chairman

Theodore Jarfe

Theodore Jarfe, 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 Amended 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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763

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 \$55,000.00 was presented by MANUEL KAWKA based upon the asserted loss of improved realty in Cuba. Claimant has been a national of the United States since his naturalization on June 11, 1956.

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 his own statements claimant has submitted no evidence in support of this claim. By Commission letter of August 24, 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 September 29, 1967, 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 interest 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

30 NOV 1967

Edward D. Re
Edward D. Re, Chairman

Theodore Jaffe
Theodore Jaffe, Commissioner

LaVern R. Dilweg
LaVern R. Dilweg, Commissioner

This is a true and correct copy of the decision
of the Commission which was entered as the final
decision on JAN 11 1968

Francis M. ...
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).)

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