

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

IN THE MATTER OF THE CLAIM OF

ROSALIE A. FINK, Individually,
and as Mother and Natural
Guardian of the Minor, JON D. FINK

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

Claim No. CU-3453

Decision No. CU -3253

AMENDED PROPOSED DECISION

On October 30, 1968 the Commission issued its Proposed Decision in this matter holding that the late husband of ROSALIE A. FINK had been the owner of a 50 per cent interest in "Stuartaire", a Cuban corporation, whose debtors were nationalized by the Government of Cuba on October 24, 1960 resulting in a loss to "Stuartaire" of \$16,029.01 of which \$8,014.51 inured to Herbert D. Fink, whose widow and son inherited his interest. Accordingly, the Commission certified a loss of \$4,007.62 to ROSALIE A. FINK, Individually, and \$4,007.62 to her as Mother and Natural Guardian of the Minor JON D. FINK. An item of claim based on a bank account of "Stuartaire" was denied as the record showed no specific action of the Government of Cuba in that respect. The decision became final on December 5, 1968.

Additional evidence having been discovered, and the matter having been reconsidered, the Final Decision is set aside and the Proposed Decision is amended herein.

The Commission now finds that "Stuartaire", a Cuban corporation, was wholly owned by Herbert D. Fink, now deceased, and Armand L. Cowan (Claim No. 3481), both of whom had ceased to reside in Cuba. "Stuartaire" had a bank account in Banco Financiero in the amount of \$5,104.43.

On December 6, 1961, the Government of Cuba published in its Official Gazette its Law 989 which effected confiscation of all assets, personal property, rights, shares, stocks, bonds and securities of those who left the country.

In the absence of evidence to the contrary, the Commission finds that the aforesaid bank account was taken by the Government of Cuba on December 6, 1961. As owner of a 50 per cent interest in "Stuartaire", the late Herbert D. Fink suffered a loss in the amount of \$2,552.22 within the meaning of Title V of the Act, to which his widow and son succeeded, in equal parts.

The interest to be allowed on the claimants' total losses is as follows:

	<u>FROM</u>	<u>ON</u>
ROSALIE A. FINK	October 24, 1960	\$ 4,007.26
	December 6, 1961	<u>1,276.11</u>
		<u>\$ 5,283.37</u>
ROSALIE A. FINK, as Mother and Natural Guardian of the Minor, JON D. FINK	October 24, 1960	\$ 4,007.26
	December 6, 1961	<u>1,276.11</u>
		<u>\$ 5,283.37</u>

Accordingly, the Certifications of Loss, as restated below, will be entered and in all other respects the Proposed Decision is affirmed.

CERTIFICATIONS OF LOSS


The Commission certifies that ROSALIE A. FINK succeeded to 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 Five Thousand Two Hundred Eighty-three Dollars and Thirty-seven Cents (\$5,283.37) with interest thereon at 6% per annum from the aforesaid dates of loss to the date of settlement; and

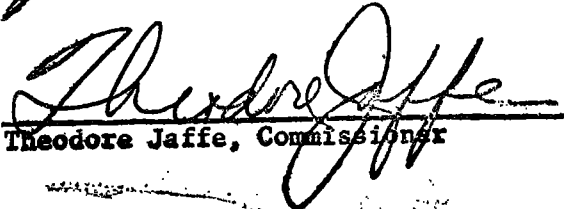
The Commission certifies that ROSALIE A. FINK as Mother and Natural Guardian of the Minor, JON D. FINK, succeeded to a loss as a result of

actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1948, as amended, in the amount of Five Thousand Two Hundred Eighty-three Dollars and Thirty-seven Cents (\$5,283.37) with interest thereon at 6% per annum from the aforesaid dates of loss to the date of settlement.

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

9 SEP 1970


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 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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OF THE UNITED STATES
WASHINGTON, D.C. 20579

IN THE MATTER OF THE CLAIM OF

ROSALIE A. FINK, Individually, and
as Mother and Natural Guardian of
the Minor, JON D. FINK

Claim No. CU -3453

Decision No. CU

253

Under the International Claims Settlement
Act of 1949, as amended

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 ROSALIE A. FINK, Individually, and as Mother and Natural Guardian of the Minor, JON D. FINK, and is based upon an asserted loss of \$20,000.00 sustained in connection with the ownership of a stockholder interest in Compania Aire Acondiciondo Stuart de Cuba, S.A. (hereinafter referred to as Stuartaire). ROSALIE A. FINK and JON D. FINK have been nationals 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.

On the basis of evidence of record herein and in the Claim of Armand L. Cowan, Claim No. CU-3481, which also is based upon a stockholder interest in Stuartaire, the Commission finds that Herbert D. Fink, late husband of ROSALIE A. FINK and a national of the United States since birth, was the owner of a 50% interest in Stuartaire from the time of its incorporation under the laws of Cuba in 1956 until his death on August 3, 1963. The corporation does not qualify 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 previously that a stockholder in such a corporation is entitled to file a claim based upon his ownership interest therein. (See Claim of Parke, Davis & Company, Claim No. CU-0180, 1967 FCSC Ann. Rep. 33.)

Evidence of record in this claim and in Claim No. CU-3481 includes a bank statement of March 16, 1961 from Banco Financiero in Cuba, a check stub of July 9, 1959 from Hotel Havana Riviera, a duplicate deposit slip of Banco Financiero dated July 16, 1959, a returned check notice of August 19, 1959 from the Chemical Corn Exchange Bank of New York, an unaudited balance sheet of Stuartaire as of December 31, 1958, affidavits of Earl V. Hagood and Mortimer Feldman, and claimant's own affidavits, letters, and statements and those of claimant Armand L. Cowan. On the basis of the entire record, the Commission finds that Stuartaire maintained no offices in Cuba and conducted no operations there after 1958;

that as of December 31, 1958 it had no liabilities, and its sole assets in Cuba were a bank account in Banco Financiero, and accounts receivable from Hotel Havana Riviera and Casino de Capri in the amounts of \$18,008.87 and \$520.14, respectively; that a payment of \$2,500.00 was made by Hotel Havana Riviera in July 1959 and deposited in Stuartaire's account in Banco Financiero, increasing the balance in that account to \$5,104.43, and decreasing the hotel's indebtedness to \$15,508.87; and that no further payments were received from the debtors or withdrawals made from the bank account.

The Commission further finds that Hotel Havana Riviera and Casino de Capri, both of which enterprises were organized under the laws of Cuba, were nationalized by the Government of Cuba on October 24, 1960 under Resolution No. 3 published on that date in the Official Gazette pursuant to Law 851. The Commission concludes that Stuartaire, as owner of debts owed by enterprises nationalized by the Government of Cuba, thereby suffered a loss in the amount of \$16,029.01. As owner of a 50% interest in Stuartaire, the late Herbert D. Fink suffered a loss in the amount of \$8,014.51 within the meaning of Title V of the International Claims Settlement Act of 1949, as amended.

A different situation exists with respect to the bank account. Law 891, published in the Official Gazette on October 13, 1960, made banking a public function to be carried on by the National Bank of Cuba which succeeded to all assets and liabilities of Cuban banks. However, this action did not nullify the debts of banks to depositors. Under Article 9 of the law, the National Bank of Cuba assumed responsibility for deposits and guaranteed their owners "normal conduct of the operations related with them, in accordance with the nature of each deposit and the legislation in force." Accounts of business

enterprises may have been taken as a concomitant of the nationalization of the enterprises themselves; but there is no evidence of record and nothing in information available to the Commission to indicate that Stuartaire, as an entity, was nationalized or otherwise taken by the Government of Cuba. Although the transfer of funds abroad has been forbidden since publication in the Official Gazette of Law 568 on September 29, 1959, there is nothing to indicate that the bank account of Stuartaire has been nationalized or otherwise taken by the Government of Cuba and is not available for use within Cuba. Accordingly, this portion of the claim is denied.

The Commission further finds that Herbert D. Fink died intestate in the State of Florida; and that, under the applicable law of descent and distribution, his widow, ROSALIE A. FINK, and his son, JON D. FINK, each inherited a one-half interest in his claim against the Government of Cuba, so that each succeeded to a loss in the amount of \$4,007.26 within the meaning of Title V of the Act.

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 ROSALIE A. FINK succeeded to 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 Four Thousand Seven Dollars and Twenty-six Cents (\$4,007.26) with interest thereon at 6% per annum from October 24, 1960 to the date of settlement; and

the Commission certifies that ROSALIE A. FINK as Mother and Natural Guardian of the Minor, JON D. FINK, succeeded to 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 Four Thousand Seven Dollars and Twenty-six Cents (\$4,007.26) with interest thereon at 6% per annum from October 24, 1960 to the date of settlement.

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

OCT 30 1968

Leonard v. B. Sutton

Leonard v. B. Sutton, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

Sidney Freidberg

Sidney Freidberg, Commissioner

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