

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

IN THE MATTER OF THE CLAIM OF

JUDITH S. KESTENBERG

Claim No. CU -3487

Decision No. CU 1843

Under the International Claims Settlement
Act of 1949, as amended

Counsel for claimant:

Milton Kestenberg, Esquire

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 \$1,449.00, was presented by JUDITH S. KESTENBERG and is based upon the asserted loss of realty. Claimant has been a national of the United States since her naturalization in 1943.

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.

Claimant contends that she has suffered a loss of \$1,449.00, the amount of her investment in real property in Cuba. She has submitted deed No. 7, dated January 6, 1958, in which one Mrs. Roinette Rivers appears as grantor and one Mr. Benigno Joaquin de Trespacios as representative and Attorney for claimant, the grantee. Pursuant to this deed, the grantor conveyed to claimant Parcel No. 317, consisting of 10 acres and described as the Southeast 1/4 of lot 13, section 66, in the Division named East of McKinley, Santa Barbara Estate, Isle of Pines, for a total purchase price of \$1,200.00. There have also been submitted canceled checks and a receipt reflecting payment of the purchase price above, as well as taxes, sales commissions and transfer and recording fees in the amount of \$249.00 which were paid by claimant in the acquisition of the subject property.

Claimant asserts, and the Commission finds, based upon the evidence of record, that payments in the total amount of \$1,449.00 were made by claimant for the subject property.

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. (See Claim of Wallace Tabor and Catherine Tabor, Claim No. CU-0109, 25 FCSC Semiann. Rep. 53 [July-Dec. 1966]).

As the record shows, in 1961 claimant was residing in the State of New York. 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.

Based on the entire record, the Commission finds that the total value of claimant's investment in the subject property was \$1,449.00. Accordingly, the Commission concludes claimant suffered a loss in that amount within the meaning of Title V of the Act on December 6, 1961.

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.)

Accordingly, the Commission concludes that the amount of loss sustained by claimant 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 provisions are made for settlement thereof.

CERTIFICATION OF LOSS

The Commission certifies that JUDITH S. KESTENBERG 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 Four Hundred Forty-Nine Dollars (\$1,449.00) 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 Proposed
Decision of the Commission

MAY 15 1968

Leonard v. B. Sutton

Leonard v. B. Sutton, Chairman

Theodore Jaffe

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 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).)