

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

IN THE MATTER OF THE CLAIM OF

RAFAEL VICTOR BONILLA ATILES

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-3589

Decision No. CU 663

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 \$40,800.00, was presented by RAFAEL VICTOR BONILLA ATILES and is based upon the asserted ownership of stock in Myers Tire Supply de Cuba, S.A. Claimant has been a national of the United States since his naturalization on January 9, 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).)

This claim is based upon claimant's asserted ownership of 50% of the outstanding capital stock in Myers Tire Supply de Cuba, S.A. Claimant has submitted photocopies of stock certificates No. 1 (for 16 shares), No. 2 (for 16 shares), and No. 3 (for 18 shares) in Compañia de Equipos para Recapar Myers de Cuba, S.A. Rafael Antonio Bonilla Aybar is designated as the owner of the shares represented by certificate No. 1; Pedro Julian Bonilla Aybar is designated as the owner of the shares represented by certificate No. 2; and claimant, Rafael Victor Bonilla, is designated as the owner of the shares represented by certificate No. 3.

In addition, claimant has submitted a photocopy of a deposit receipt, indicating that 5,895.00 pesos were credited to the account of Pedro P. Bonilla in the Trust Company of Cuba as of March 3, 1960, and a photocopy of an unverified, unauthenticated "balance sheet," indicating the financial situation of Myers Tire Supply de Cuba, S.A. on May 31, 1959.

By Commission letter of July 24, 1967, claimant was advised as to the type of evidence proper for submission to establish this claim under the Act.

Thereafter, by letter of August 21, 1967, the Commission made additional suggestions to claimant concerning the submission of supporting evidence in this matter; claimant was advised that in the absence of the evidence suggested within 45 days from that date, it might become necessary to determine the claim on the basis of the existing record.

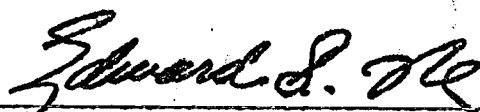
Claimant and his son have since communicated with the Commission. However, except as hereinabove mentioned, the suggested evidence has not been submitted.

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.

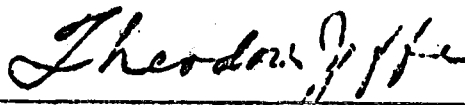
Thus, the Commission is constrained to deny this claim and it is hereby denied. The Commission deems it unnecessary to make determinations with respect to other elements of the claim.

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

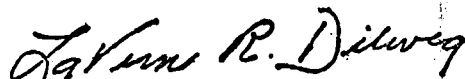
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Edward D. Re, Chairman



Theodore Jaffe, Commissioner



LaVern R. Dilweg, 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).)

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