

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

IN THE MATTER OF THE CLAIM OF

PEARL TAUL FLAUMHAFT

Under the International Claims Settlement
Act of 1949, as amended

Claim No CU -8579

Decision No. CU 6772

Counsel for claimant:

Midlo & Lehmann
By Rene Lehmann

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 amended amount of \$2,760.60, was presented by PEARL TAUL FLAUMHAFT based upon the asserted loss of certain personal property in Cuba. Claimant has been a national 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 nationalized, 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.

It appears from the evidence of record that in 1951 claimant and her late husband jointly acquired 200 shares of stock in Guantanamo Sugar Company, (which does not qualify as a United States national) at a cost of \$2,671.04. In July 1960 they acquired an additional 200 shares of the same stock at a cost of \$669.15. On August 6, 1960, the properties of Guantanamo Sugar Company were taken by the Government of Cuba, and a claim arose against Cuba within the meaning of Title V of the Act in favor of all stockholders of the Company who were United States nationals on the date of loss. (See Claim of Henrietta Mae Siegel, Claim No. CU-3478.)

The record shows that on November 6, 1960, after the date of loss, claimant and her late husband sold the 200 shares of the stock which they had acquired in 1951. Since the sales price was \$579.59, it is asserted that they sustained a loss of the difference, \$2,091.45. In addition, claim is being made for the cost of the 200 shares of stock acquired in July 1960, prior to the date of loss.

It further appears that claimant's late husband died on February 19, 1967, and that claimant inherited his interest in the claim. Therefore claimant asserts sole ownership of the claim. The circumstances in this case present two issues.

The first issue involves the provisions of Section 504(a) of the Act. Inasmuch as claimant's late husband owned a 1/2 interest in the stock on

August 6, 1960, the date of loss, the Commission suggested the submission of appropriate evidence to establish his nationality. The only relevant information of record in this respect is contained in counsel's letter of May 10, 1971, in which it is stated that Harry Flaumhaft, claimant's late husband, was born in Europe and has no birth certificate.

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) (1970).)

The Commission finds that claimant has failed to sustain the burden of proof with respect to the portion of the claim inherited from her late husband. The record does not establish that the deceased's 1/2 interest in the claim was owned by a national of the United States on the date of loss and continuously thereafter until the date of filing with the Commission. Accordingly, that portion of the claim is denied. (See Claim of Sigridur Einarsdottir, Claim No. CU-0728, 25 FCSC Semmiann. Rep. 45 [July-Dec. 1966].)

The second issue herein involves the sale of the first 200 shares of the stock by claimant and her late husband on November 16, 1960. The Commission inquired concerning this matter since it appeared that the claim based upon those shares of stock had been transferred to the purchaser of the stock on November 16, 1960. Counsel contends in his letter of July 12, 1971 that the "purchaser only paid the then value of the stock, after the losses had been sustained." No evidence was submitted in support of counsel's contention.

Upon consideration of the entire record, the Commission finds that claimant has failed to sustain the burden of proof with respect to the portion of the claim based upon an asserted loss resulting from the sale of 200 shares of stock on November 16, 1960. The evidence does not establish that claimant and her late husband retained any interest in the claims based upon those 200 shares of stock after they had transferred title to the stock to the purchaser on November 16, 1960. Therefore, this portion of the claim is denied.

The Commission finds that claimant owned a 1/2 interest in the 200 shares of stock in the Company (equivalent to sole ownership by her of 100 shares) which she and her late husband had acquired in July 1960.

In our decision entitled the Claim of Henrietta Mae Siegel (Claim No. CU-3478 which we incorporate herein by reference), we held that the properties owned by the Company were nationalized or otherwise taken by the Government of Cuba on August 6, 1960, and that this type of claim is allowable to an American national under the facts and conditions set forth therein. We need not again detail here the reasons or the method used in determining the value per share of \$49.7856.

On the basis of evidence in the record in the instant case, the Commission finds that this claimant comes within the terms of the Siegel decision; that she was an American national at the requisite times; that she has been the owner of 100 shares of stock in the Guantanamo Sugar Company since prior to August 6, 1960; and that she suffered a loss in the amount of \$4,978.56 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 August 6, 1960, the date of loss, to the date on which provisions are made for the settlement thereof. (See Siegel, supra.)


It will be noted that the total amount of loss found herein is excess of the amount asserted by claimant. However, in determining the amount of loss sustained, the Commission is not bound by any lesser or greater amounts which may be asserted by claimant as the extent thereof.

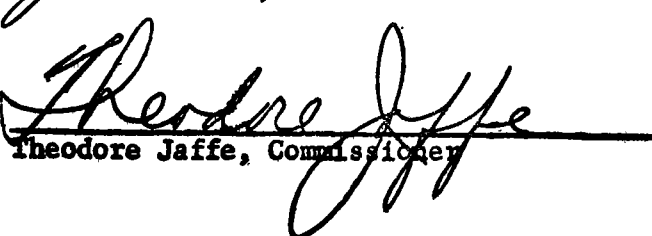
CERTIFICATION OF LOSS

The Commission certifies that PEARL TAUL FLAUMHAFT 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 Four Thousand Nine Hundred Seventy-Eight Dollars and Fifty-Six Cents (\$4,978.56) with interest at 6% per annum from August 6, 1960 to the date of settlement.

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

AUG 18 1971


Lyle S. Garlock, Chairman


Theodore Jaffe, Commissioner

NOTICE TO TREASURY: The above-referenced securities may not have been submitted to the Commission or if submitted, may have been returned; accordingly, no payment should be made until claimant establishes retention of the securities or the loss here certified.

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 (1970).)