

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

IN THE MATTER OF THE CLAIM OF

JACK W. HALPERN

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-0082

Decision No. CU 5216

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 JACK W. HALPERN for \$28,000.00 based upon the asserted loss of certain personal property in Cuba, and for an unstated amount based upon asserted personal injuries. Claimant has been a national of the United States at all pertinent times.

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.

Personal Property

The record shows that claimant was doing business in Miami, Florida under the trade name, Halpern Sales Company. His business consisted of selling reconditioned refrigerators, stoves, washing machines and other electric appliances. On the basis of the evidence of record, including an exchange of contemporary letters with Cuban authorities and the United States Department of State, the Commission finds that claimant shipped such appliances to consignees in Cuba between October and December, 1959. Subsequently, claimant learned upon inquiry that the consignees had not received the appliances, and that Cuba had taken his property. In the absence of evidence to the contrary, the Commission finds that claimant's property was taken by the Government of Cuba on December 15, 1959, and concludes that claimant thereby sustained a loss within the meaning of Title V of the Act.

Claimant asserts that the cost of the property was \$15,000 and that he expended an additional \$13,000 for insurance, shipping and related charges, thereby aggregating a loss of \$28,000.00. The record includes a copy of a letter, dated July 15, 1960, from claimant to Cuban authorities, in which he stated that his loss was "the exact figure of \$12,840.68." In a letter to the United States Department of State, dated December 26, 1962, claimant stated that the Internal Revenue Service had allowed him a tax deduction of "about \$13,000.00".

On the basis of the entire record and in the absence of more convincing evidence, the Commission finds that the value of claimant's property on December 15, 1959, the date of loss, was \$12,840.68.

Personal Injuries

Section 503(b) of the Act provides as follows:

The Commission shall receive and determine in accordance with applicable substantive law, including international law, the amount and validity of claims of nationals of the United States against the Government of Cuba . . . arising since January 1, 1959 . . . for disability or death resulting from actions taken by or under the authority of the Government of Cuba . . .

In his official claim form, claimant stated that he retired from business in September 1960 due to a stroke and illness brought about by "Pro Castro hoodlums in an assault and intent to kill." However, in a letter to the Commission, dated March 10, 1968, claimant stated that the attack occurred on November 28, 1961 in Miami, Florida near his place of business; and he added the following: "I cannot categorically state that this was activated by the Cuban Government." Responding to Commission requests for evidence in support of his claim for personal injuries, he stated that he had no further proof.

The Commission has held that in a disability claim under Section 503(b) of the Act, it must be established, inter alia, that the person in question suffered a disability and that the disability was the proximate result of actions of the Government of Cuba in violation of international law. (See Claim of Julio Lopez, Claim No. CU-3259.)

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).)

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 his claim for personal injuries. The evidence does not establish that claimant sustained a disability as a result of actions of the Government of Cuba in violation of international law. Accordingly, the portion of the claim for personal injuries is denied.

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 JACK W. HALPERN 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 Twelve Thousand Eight Hundred Forty Dollars and Sixty-eight Cents (\$12,840.68) with interest at 6% per annum from December 15, 1959 to the date of settlement.

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

JUL 22 1970


Lyle S. Garlock, Chairman


Theodore Jaffe, Commissioner


Sidney Freiberg, 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).)

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