

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

IN THE MATTER OF THE CLAIM OF

FRANK J. CARBON
LOUISE H. CARBON

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-0172

Decision No. CU-4550

Counsel for claimants:

Leo J. Fox, Esq.

FINAL DECISION

Under date of March 4, 1970, the Commission issued its Proposed Decision on this claim certifying losses in the amounts of \$55,833.26 and \$55,833.27 in favor of FRANK J. CARBON and LOUISE H. CARBON, respectively. The certifications of loss included, inter alia, \$8,848.28 and \$1,685.76 for 41 shares of stock and 108 shares of stock, respectively, in Crusellas y Cia., S.A. (Crusellas), and in Detergentes Cubanos, S.A. (Detergentes), all of which stock was jointly owned by the claimants. No objections to the Proposed Decision were filed by or on behalf of claimants.

The Commission's determinations concerning the values of the said stock interests on October 13, 1960, the date of loss, followed the findings in the Claim of Colgate-Palmolive Company, Claim No. CU-0730, which also involved stock interests in Crusellas and Detergentes. The Commission in its Final Decision on Claim No. CU-0730 after an oral hearing, found that the values of each share of stock in Crusellas and Detergentes were \$334.0179 and \$25.5116, respectively.

Accordingly, the Commission finds that the values of claimants' 41 shares of stock in Crusellas and their 108 shares of stock in Detergentes were \$13,694.73 and \$2,755.25, respectively. Therefore, FRANK J. CARBON

and LOUISE H. CARBON sustained losses of \$6,847.37 and \$6,847.36, respectively, on account of Crusellas, and \$1,377.62 and \$1,377.63, respectively, on account of Detergentes.

The Certification of Loss in the Proposed Decision is set aside and the following Certifications of Loss will be entered, and the Proposed Decision is affirmed in all other respects.

CERTIFICATIONS OF LOSS

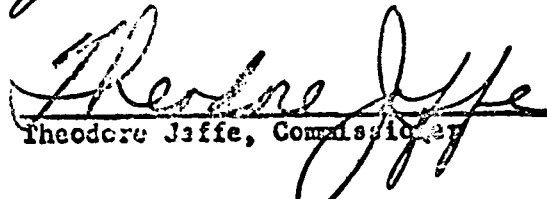
The Commission certifies that FRANK J. CARBON sustained a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Fifty-Eight Thousand Seven Hundred Ninety-One Dollars and Twenty-Three Cents (\$58,791.23) with interest thereon at 6% per annum from the respective dates of loss to the date of settlement; and

The Commission certifies that LOUISE H. CARBON sustained 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 Fifty-Eight Thousand Seven Hundred Ninety-One Dollars and Twenty-Four Cents (\$58,791.24) with interest thereon at 6% per annum from the respective dates of loss to the date of settlement.

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

FEB 3 1971


Lyle S. Carlock, Chairman


Theodore Jaffe, Commissioner

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

IN THE MATTER OF THE CLAIM OF

FRANK J. CARBON
LOUISE H. CARBON

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-0172

Decision No. CU 4550

Counsel for claimants:

Leo J. Fox, Esq.

PROPOSED DECISION

This claim against the Government of Cuba, filed under Title V of the International Claims Settlement Act of 1949, as amended, was presented by FRANK J. CARBON, and is based upon the asserted loss of \$119,192.49 sustained in connection with the ownership of stock and bond interests in Cuban corporations, improved real property, personal property, a bank account and cash. Claimant, FRANK J. CARBON, has been a national of the United States since birth. Subsequently, LOUISE H. CARBON petitioned to join as a co-claimant. This matter having been considered, it is so ordered and LOUISE H. CARBON, a national of the United States since birth, is joined as claimant herein.

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 502(1)(B) of the Act defines the term "national of the United States" as a corporation or other legal entity which is organized under the laws of the United States, or of any State, the District of Columbia, or the Commonwealth of Puerto Rico, if natural persons who are citizens of the United States own, directly or indirectly, 50 per centum or more of the outstanding capital stock or other beneficial interest of such corporation or entity.

Stock and Bond Interest

The evidence establishes and the Commission finds that claimants jointly owned 41 shares of stock in Crusellas y Cia., S.A., 108 shares of stock in Detergentes Cubanos, S.A., and a bond of the Mothers Club of Havana. Since the Cuban firms were organized under the laws of Cuba, they do not qualify as corporate "nationals of the United States" within the meaning of Section 502(1)(B) of the Act, supra. In this type of situation, it has been held that a stockholder is entitled to file a claim for the value of his ownership interest. (See Claim of Parke, Davis & Company, Claim No. CU-0180, 1967 FCSC Ann. Rep. 33.)

In our decision entitled the Claim of Colgate-Palmolive Company (Claim No. CU-0730 which we incorporate herein by reference), we held that the Cuban corporations Crusellas y Cia., S.A., and Detergentes Cubanos, S.A., were nationalized by the Government of Cuba on October 13, 1960, and that this type of claim is compensable to an American national under the facts and

conditions set forth therein. We need not again detail here the reasons or method used in determining that one share of stock of Crusellas y Cia., S.A., and of Detergentes Cubanos, S.A., had the value of \$215.8119 and \$15.6088, respectively, on October 13, 1960, the date of loss.

Law 989, published in the Official Gazette on December 6, 1961, in its terms nationalized by confiscation all goods and chattels, rights, shares, stocks, bonds and other securities of persons who left the country of Cuba. In the absence of evidence to the contrary, the Commission finds that claimants' interest in the above-mentioned bond of the Mothers Club of Havana was taken by the Government of Cuba on December 6, 1961. (See Claim of Floyd W. Auld, Claim No. CU-0020, 25 FCSC Semiann. Rep. 55 [July-Dec. 1966].)

On the basis of evidence of record, the Commission finds that claimants each owned a one-half interest in property which was taken by the Government of Cuba on October 13, 1960, and December 6, 1961, thereby causing losses to claimants, the peso being at par with the United States dollar, as follows:

| <u>Property</u> | <u>Value Thereof</u> | <u>One-half Interest</u> |
|-------------------------------------------------------------------|--------------------------|------------------------------|
| 41 shares of Crusellas y Cia., S.A. at \$215.8119 per share | \$8,848.29 | \$4,424.14 |
| 108 shares of Detergentes Cubanos, S.A. at \$15.6088 per share | 1,685.75 | 842.88 |
| 1 Mothers Club 4% bond, having the face value of 300 pesos | <u>300.00</u> | <u>150.00</u> |
| | \$10,834.04 | \$5,417.02 |

Improved Real Property and Personal Property

Claimants further state that they owned improved real property valued at \$71,379.49; and personal property, including a 1955 Oldsmobile, food and liquor, valued at \$29,250.00.

The record contains several affidavits, cancelled checks, an itemized list of the personal property, several pictures of the improved real property and a photocopy of a Federal Income Tax Report of Individual Income Tax Audit Changes.

It further appears that for income tax purposes the values as previously stated above were accepted by the United States Treasury Department, Internal Revenue Service, in connection with claimants' joint return for the year of 1960.

Based upon the entire record, the Commission finds that the claimants each owned a one-half interest in the following:

- 1) A house at 134th Avenue No. 2110, Country Club Park Reparto, Marianao, Cuba;
- 2) Personal property, consisting of household furnishings, clothing, a 1955 Oldsmobile, food and liquor.

On October 14, 1960, the Government of Cuba published in its Official Gazette, Special Edition, its Urban Reform Law. Under this law the renting of urban properties, and all other transactions or contracts involving transfer of the total or partial use of urban properties was outlawed (Article 2). The law covered residential, commercial, industrial and business office properties (Article 15).

Based on the foregoing and the evidence of record, the Commission finds that claimants' real property in Marianao was taken by the Government of Cuba pursuant to the provisions of the Urban Reform Law; and, in the absence of evidence to the contrary, that the taking occurred on October 14, 1960, the date on which the law was published in the Cuban Gazette. (See Claim of Henry Lewis Slade, Claim No. CU-0183, 1967 FCSC Ann. Rep. 39.)

The Commission further finds, in the absence of evidence to the contrary, that the subject personal property was taken by the Government of Cuba on October 14, 1960.

In arriving at the value of the property in question, consideration was given to all of the evidence of record, including photographs of the property, detailed descriptions, Internal Revenue Service Audit and Allowances report, affidavits, itemized list of personalty and the National Automobile Dealers Official Used Car Guide.

The Commission finds that at the time of loss the property had the following values:

- | | |
|------------------------------------------------------------------------------------|--------------|
| 1) House at 134th Avenue No. 2110, Country Club Park Reparto, Marianao, Cuba | \$ 71,379.49 |
| 2) Personal property | 28,990.00 |

Bank Account

Claimants also contend that they lost a bank account in Cuba having a balance of 463.00 pesos. The record establishes that claimants had a balance of 463.00 Cuban pesos on deposit with The First National City Bank of New York and The Trust Company of Cuba, and the Commission finds that it was taken by the Government of Cuba on December 6, 1961. (See Auld, supra.)

Further, the Commission finds that on December 6, 1961, claimants' 463.00 pesos had a value of \$463.00 and that they suffered a loss in that amount within the meaning of Title V of the Act, as the result of the taking of their bank account by the Government of Cuba as of December 6, 1961.

Cash

Claimants state that they lost cash in Cuba totalling \$9,550.00.

In support of this claim, the claimants submitted a photocopy of a letter from Fernando G. Macio to claimant FRANK J. CARBON dated August 23, 1963, wherein it appears that the sum of \$9,550.00 was either personally owed to claimants by certain residents of Cuba or was being held by them for the claimants. In either case there is no evidence that this loss "resulted from the nationalization, expropriation, intervention, or other taking of, or special measures directed against, property" by the Government of Cuba, as provided in Section 503(a) of the Act. This portion of the claim is accordingly denied. (See Claim of W. H. Schaum, et al, Claim No. CU-2331.)

Claimants' compensable losses may be summarized as follows:

| <u>Property</u> | <u>FRANK J. CARBON</u> <u>One-half Interest</u> | <u>LOUISE H. CARBON</u> <u>One-half Interest</u> |
|-----------------------------------------------|----------------------------------------------------|-----------------------------------------------------|
| 41 shares of Crusellas y Cia., S.A. | \$ 4,424.14 | \$4,424.14 |
| 108 shares of Detergentes Cubanos, S.A. | 842.88 | 842.88 |
| Mothers Club 4% bond | 150.00 | 150.00 |
| House at 134th Avenue No. 2110 in Marianao | 35,689.74 | 35,689.75 |
| Personal property | 14,495.00 | 14,495.00 |
| Bank account | <u>231.50</u> | <u>231.50</u> |
| | \$55,833.26 | \$55,833.27 |

In view of the foregoing, the Commission concludes that the claimants sustained a loss within the purview of Title V of the International Claims Settlement Act of 1949, as amended, in the foregoing amounts.

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 as follows:

| | <u>FROM</u> | <u>ON</u> |
|------------------|------------------|---------------|
| FRANK J. CARBON | October 13, 1960 | \$ 5,267.02 |
| | October 14, 1960 | 50,184.74 |
| | December 6, 1961 | <u>381.50</u> |
| | | \$55,833.26 |
| LOUISE H. CARBON | October 13, 1960 | \$ 5,267.02 |
| | October 14, 1960 | 50,184.75 |
| | December 6, 1961 | <u>381.50</u> |
| | | \$55,833.27 |

CERTIFICATION OF LOSS

The Commission certifies that FRANK J. CARBON sustained 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


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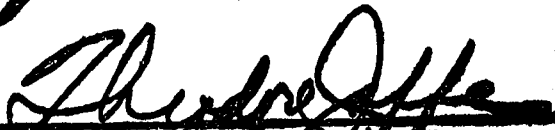
Fifty-five Thousand Eight Hundred Thirty-three Dollars and Twenty-six Cents (\$55,833.26) with interest thereon at 6% per annum from the respective dates of loss to the date of settlement; and

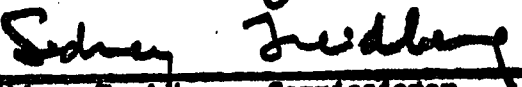
The Commission certifies that LOUISE H. CARBON sustained a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Fifty-five Thousand Eight Hundred Thirty-three Dollars and Twenty-seven Cents (\$55,833.27) with interest thereon at 6% per annum from the respective dates of loss to the date of settlement.

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

MAR 4 1970


Lytle S. Carlisle, Chairman


Theodore Jaffe, Commissioner


Sidney Freidberg, 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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