

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

IN THE MATTER OF THE CLAIM OF

EDELMIRA F. SCHENCK

Under the International Claims Settlement  
Act of 1949, as amended

Claim No. CU-0184

Decision No. CU 3717

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, for \$40,669.00 was presented by EDELMIRA F. SCHENCK based upon her asserted interest in an apartment building, a bank account and certain bonds. Claimant has been a national of the United States since her naturalization in 1949.

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 she has lost a 2/5 interest in these properties:

- (1) An apartment building Nos. 1015 and 1017, fronting on 19th Street in Vedado, Havana.
- (2) A current account No. 11883 in Agency 4-10-01 of the National Bank of Cuba.
- (3) 26 First Mortgage bonds of the Cia. Cubana de Electricidad.

The record contains a detailed affidavit of the Executor of the will of Jose Manuel Florencio Nunez y Rodriguez, claimant's predecessor in interest, who died on September 17, 1961.

#### REAL PROPERTY

According to the aforesaid affidavit, the building had been acquired by Jose Manuel Florencio Nunez y Rodriguez, before enactment of the Cuban Reform Law by a deed of award executed on March 7, 1957.

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). The law further provided that if a tenant did not occupy the property, or had subleased or transferred its use to another, the property could be sold to the occupant; and further, that an occupant, whether a tenant or subtenant, or not, could purchase the property in the manner outlined (Article 9). Article 21 of the law provided that present owners of urban buildings sold under the law should receive the assigned price; however, under Article 25 ownership of so-called tenement houses would be transferred to the State without compensation to the erstwhile owners. Moreover, Article 30 provided that if urban buildings transferred under the law were mortgaged, execution of the contract of sale should have the effect of canceling the mortgage. Following Chapter VI of

the law appears a section entitled "Temporary Provisions" and the third paragraph thereof provides that citizens of foreign countries who do not have the status of legal residents shall be excluded from the rights and benefits conferred by this law. The Commission has found this law effective as of October 14, 1960, the date of publication. (See Claim of Henry Lewis Slade, Claim No. CU-0183, 1967 FCSC Ann. Rep. 39.)

The affiant continues, however, to say that after the enactment of the Urban Reform Law, and during the life of the decedent, the ownership of the said building, under the said Law, was transferred to the tenants; and the decedent was granted an indemnity payable in 88 monthly installments, of which he received 11 during his lifetime.

Subsequently, by an Urban Reform Resolution No. 2344 of June 5, 1963, the death of Jose Manuel Florencio Nunez y Rodriguez having been ascertained, it was resolved that checks in his name were to be cancelled and that new checks for 3/5 of the amount would go to the three Cuban nationals holding a 3/5 interest in the proceeds of the taking of the apartment building. Claimant's 2/5 interest was not included in this resolution and according to the affidavit of the Executor above mentioned, this resulted from the fact that she was not resident in Cuba.

The Commission holds that the claim in this matter arose when the apartment building was taken from Jose Manuel Florencio Nunez y Rodriguez during his lifetime.

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.

Thus, in order for the Commission to favorably consider claims under Section 503(a) of Title V of the Act, it must be established (1) that the subject property was owned in whole or in part by a national of the United States on the date of nationalization or other taking; and (2) that the

claim arising as a result of such nationalization or other taking has been continuously owned thereafter in whole or in part by a national or nationals of the United States to the date of filing with the Commission. (See Claim of Joseph Dallos Hollo, Claim No. CU-0101, 25 FCSC Semiann. Rep. 46 [July-Dec. 1966]; and Claim of Sigridur Einarisdottir, Claim No. CU-0728, 25 FCSC Semiann. Rep. 45 [July-Dec. 1966].)

According to the record, Jose Manuel Florencio Nunez y Rodriguez was a Cuban national when the building was taken from him and given into the ownership of the tenants. It is clear, therefore, that the claim for the taking of the apartment building was not owned by a national of the United States on the date of taking. Accordingly, so much of the claim as is based on the asserted 2/5 interest in the property, is denied.

#### BONDS

It appears from the record, including the aforesaid affidavit, that the bonds of the Cia. Cubana de Electricidad were also part of the estate of claimant's predecessor. This company, which was organized in Florida, was listed as nationalized by the Government of Cuba on August 6, 1960, in its Resolution 1, pursuant to its Law 851. If, as it appears, this had the effect of taking the properties of the company securing the bonds, then the claim against the Government of Cuba, in this respect, also arose during the lifetime of the decedent. Thus, this part of the claim must also be and it is denied for the reasons given above.

#### BANK ACCOUNT

Claimant also contends that she has lost an interest in a bank account in Cuba, her 2/5 interest being equivalent to 268.76 pesos. The record establishes that claimant had an interest in Cuban pesos on deposit with the National Bank of Cuba in favor of the decedent.

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 claimant's interest in the above-described bank account, totalling 268.76 pesos, 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].)

Further, the Commission finds that on December 6, 1961, claimant's 268.76 pesos had a value of \$268.76 and that she suffered a loss in that amount within the meaning of Title V of the Act, as the result of the taking of her interest in the bank account by the Government of Cuba as of 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), and in the instant case it is so ordered.

#### CERTIFICATION OF LOSS

The Commission certifies that EDELMIRA F. SCHENCK 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 Two Hundred Sixty-eight Dollars and Seventy-six Cents (\$268.76) 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

JUL 2 1969

*Leonard v. B. Sutton*

Leonard v. B. Sutton, Chairman

*Theodore Jaffe*

Theodore Jaffe, Commissioner

*Sidney Feidberg*

Sidney Feidberg, 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).)