

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

IN THE MATTER OF THE CLAIM OF

MARTIN CUSHMAN

Under the International Claims Settlement  
Act of 1949, as amended

Claim No. CU -0262

Decision No. CU 1956

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 MARTIN CUSHMAN for \$2,630.00 based upon the asserted ownership and loss of interests in land. Claimant has been a national of the United States since his birth in the United States.

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 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.

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 states that he has lost real property in Cuba valued at \$2,600.00. He has submitted a copy of a deed, dated March 21, 1959, between one Frank Cooper as grantor, and claimant as grantee. Pursuant to said deed, the grantor conveyed to claimant the North 1/2 Lot 9, Section 10, Reparto Hacienda Santa Rosalia, Sierra de Caballos, Isle of Pines, Cuba.

Claimant has also submitted a copy of a contract of option, dated December 22, 1958, to buy the above-described property from Mr. Frank Cooper for a total purchase price of \$2,400.00. In addition thereto, claimant has submitted his affidavit as well as the affidavit of one Henry Gruen, former manager of this property, affirming that the purchase price of \$2,400.00 plus closing costs and costs of improvements in the amount of \$200.00 was paid.

On the basis of evidence of record, the Commission finds that claimant was the owner of the above-described property.

On December 6, 1961 the Cuban Government published its Law 989 (Official Gazette, XXIII, No. 237, p. 23705) which confiscated all assets, personal property and real estate, rights, shares, stocks, bonds and securities of persons who had left the country. (See Claim of Wallace Tabor and Catherine Tabor, Claim No. CU-0109, 25 FCSC Semiann. Rep. 53 [July-Dec. 1966]).

As the record shows, in 1961 claimant was residing in New York. The Commission finds, in the absence of evidence to the contrary, that the subject real property was taken by the Government of Cuba on December 6, 1961 pursuant to the provisions of Law 989.

Based on the entire record, the Commission finds that the total value of the claimant's investment in the subject real property was \$2,600.00. Accordingly, the Commission concludes that claimant suffered a loss in the amount of \$2,600.00 within the meaning of Title V of the Act on December 6, 1961.

A portion of this claim, in the amount of \$30.00, is based upon asserted expenses incurred in preparing this claim. No specific provision is made in the Act for the inclusion in the certification of loss of such expenses. After consideration of the Act and its legislative history, the Commission finds that such expenses were not intended by Congress to constitute a loss of "property" within the meaning of Section 502(3) of the Act. (See Claim of Mary Pauline Seal, Claim No. CU-0059). Accordingly, that portion of the claim 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).

Accordingly, the Commission concludes that the amount of the loss sustained by claimant shall be increased by interest thereon at the rate of 6% per annum from December 6, 1961, the date on which the loss occurred, to the date on which provisions are made for the settlement thereof.

CERTIFICATION OF LOSS

The Commission certifies that MARTIN CUSHMAN 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 Thousand Six Hundred Dollars (\$2,600.00) 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

JUN 13 1968

*Leonard v. B. Sutton*

Leonard v. B. Sutton, Chairman

*Theodore Jaffe*

Theodore Jaffe, 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).)