

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

IN THE MATTER OF THE CLAIM OF

MARTIN G. MISSIR
and
REGINA S. MISSIR

Claim No. CU-0406

Decision No. CU-5992

Under the International Claims Settlement
Act of 1949, as amended

Counsel for claimants:

Robert C. Salisbury, Esq. and
Rufus King, Esq.

Appeal and objections from a Proposed Decision entered December 16, 1970.

Oral hearing requested and held January 13, 1971.
Argument by counsel Rufus King, Esq.

FINAL DECISION

By Proposed Decision issued on December 16, 1970, the Commission certified losses to each claimant in the amount of \$15,165.00 for personal property and denied for lack of evidence that portion of the claim based upon an apartment, coin collection, money in a safe deposit box, club memberships, Austrian bonds and Inversiones Petroleras Versailles, S.A. stock.


Objections were entered and Mr. King presented an oral argument at a hearing held on January 13, 1971. No testimony was received at the hearing but the Commission granted claimants sixty days in which to submit further evidence. No evidence has been received.

Full consideration having been given to the objections of the claimants and argument of counsel, and the entire record having been reviewed, it is

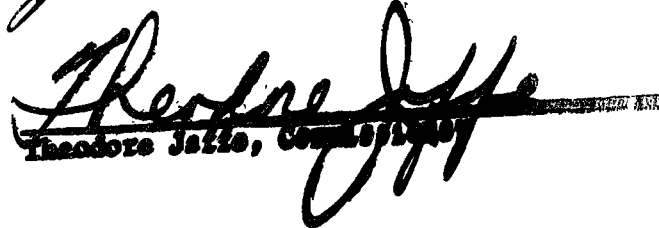
ORDERED that the Proposed Decision be and the same is hereby entered as the Final Decision of the Commission on this claim.

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

JUN 30 1971



Kyle S. Garlock, Chairman



Theodore Jaffe, Commissioner

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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 G. MISSIR for \$483,030.00 based on real and personal property, and stock interests in Cuba. Inasmuch as it appeared that REGINA S. MISSIR would have an interest in some of the properties subject of the claim she has been joined as claimant herein. Claimants have been nationals of the United States at all times pertinent to this claim.

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.

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) (1969).)

The claimed losses have been described as follows:

| | |
|--|------------------|
| 1) An apartment at 4606 3rd Avenue A, Miramar | \$ 14,000.00 |
| 2) Personal property in the apartment | 75,000.00 |
| 3) Gold coin collection | 228,930.00 |
| 4) Hand-painted china and crystal glassware | 40,000.00 |
| 5) 2 candelabras of 5 candles each and silver tableware | 9,000.00 |
| 6) 1958 Cadillac | 7,000.00 |
| 7) Money in safe deposit vault of Royal Bank of Canada in Havana and at home | 45,000.00 |
| 8) Refundable fees paid to certain clubs | 5,100.00 |
| 9) About 55,000 shares of Inversiones Petroleras Versailles, S.A. | 14,000.00 |
| 10) 50 Austrian Government \$1000 4-1/4 per cent bonds due in 1980 | <u>45,000.00</u> |
| | \$483,030.00 |

Based upon evidence of record including affidavits of MARTIN G. MISSIR and others, and a listing of the personal property, the Commission finds that claimants did own certain personal property in an apartment where they resided in Cuba, and a Cadillac automobile.

On December 6, 1961, the Cuban Government published its Law 989 which effectively confiscated all assets, personal property and real estate, rights, shares, stocks, bonds and securities of those who left the country.

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

December 6, 1961, pursuant to the provisions of Law 989. (See Claim of Wallace Tabor and Catherine Tabor, Claim No. CU-0109, 25 FCSC Semiann. Rep. 53 [July-Dec. 1966].)

The Act provides in Section 503(a) that in making determinations with respect to the validity and amount of claims and value of properties, rights, or interests taken, the Commission shall take into account the basis of valuation most appropriate to the property and equitable to the claimant, including but not limited to fair market value, book value, going concern value or cost of replacement.

In support of the claimed values, claimant has submitted a list of the personalty which is not completely itemized, several affidavits and a letter from an automobile dealer.

With respect to the furniture, furnishings and fixtures, and personal effects, which claimant has valued at \$75,000.00 the Commission has examined the list and is not convinced that the listing permits a finding of a value of \$75,000.00 but in comparison with values of similar properties, and probable numbers of items, the Commission finds that this property had a value of \$25,000.00 on the date of loss.

As to the china and crystal-cut glassware, claimant asserts a price paid of \$3,500.00, but that he is informed it had a value of \$40,000.00 at the time of loss. The record, however, does not include substantiation of this asserted value. The Commission finds, however, that this personal property at the time of loss had a value of \$3,500.00.

As to the candelabra and table silver, which claimant values at \$9,000.00, the record contains no substantiation of this and the Commission finds, in comparison with other items of claim that it had a value of \$900.00 on the date of loss.

The record identifies the Cadillac car as a 1955 "62" series. On the basis of the 1961 guide of the National Automobile Dealers Association, the Commission finds that this automobile had a value of \$930.00 at the time of loss.

Claimant has asserted that the laws of Cuba provided that one paying rent on an apartment for twenty years was deemed to own the same; that he commenced paying rent on the apartment at 4606 3rd Avenue A, Miramar, in May, 1946, and had he not left Cuba would own it in May 1966. Nevertheless, claimant has not established occupancy of the apartment, the pertinent Cuban law, and in any event by his own statement, had not completed the 20-years rental payments and could not have acquired title.

Claimant MARTIN G. MISSIR states that the gold coin connection was given to him in 1924 by his father, and has submitted a partial list. He states the asserted value of \$228,930.00 is derived from gold coin catalogues. In support he has submitted the affidavit of R. E. Cavendish, now deceased, who stated he viewed the collection in company with the late Adolph Menjou who stated that the Missir collection was more valuable than his own, and added that the Menjou collection sold at auction for \$288,000.00. The record also includes the affidavit of A. Hector Rivero who recites that in 1957 he was an insurance broker, that he was to assist claimant in having the collection catalogued and appraised, but the matter was dropped with the advent of the Castro regime. This affiant expresses an opinion that the collection was worth in excess of \$250,000.00. The Commission finds, however, that even if the extent of the collection were established, that the asserted valuation is not substantiated.

As to the claim for \$45,000.00 which claimant stated was in a safe box at home, and later stated was in the safe box in the Royal Bank of Canada, the Commission finds that this item of claim has not been established. Similarly, the ownership and value of the Austrian Government bonds, said to have been left in the apartment, has not been established. Moreover, nothing of record establishes membership in the various clubs listed upon which the Commission could determine loss of a stock interest or membership privileges.

Further, with respect to the stock in the Inversiones Petroleras Versailles, S.A., of which claimant submitted certificates totalling 13,200 shares, he asserts that his ownership of about 55,000 shares had a value of \$14,000.00 in June, 1960. The certificates reflect an authorized capital of \$5,000,000.00, each share having a par value of \$.20. It has been said that this was a relatively new corporation prior to nationalization; that it had a very narrow stock distribution within Havana and, after having disposed of its capital stock, had obtained oil leases, etc., in Havana and was preparing to commence drilling for oil. A stockholders' meeting was never had and claimant does not have balance sheets or other evidence to establish the net value of the corporation. On the basis of this record the Commission finds that claimant has not established that the stock had any value at the time of the asserted loss.

The Commission appreciates the difficulties encountered by some claimants in establishing their claims against the Government of Cuba. However, the Commission must be guided by the evidence of record pertaining to the ownership, loss and value of the property included in each claim. Thus, the Commission finds that claimants herein have not met the burden of proof with respect to the apartment, gold coin collection, money in a safe deposit box, club memberships, Austrian bonds and value of the Versailles stock. Accordingly, the Commission is constrained to deny these portions of the claim and they are hereby denied.

The Commission concludes that claimants suffered losses in the aggregate amount of \$30,330.00 within the meaning of Title V of the Act, and that pursuant to the community property law of Cuba, the claimants owned equal interests in the property taken by the Government of Cuba.

The Commission has decided that in certifications of loss 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.

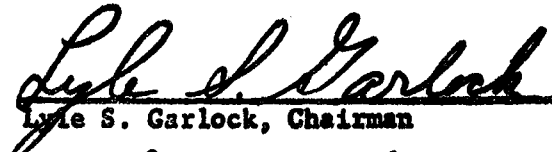
CERTIFICATIONS OF LOSS


The Commission certifies that MARTIN G. MISSIR 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 Fifteen Thousand One Hundred Sixty-five Dollars (\$15,165.00) with interest at 6% per annum from December 6, 1961 to the date of settlement; and

The Commission certifies that REGINA S. MISSIR 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 Fifteen Thousand One Hundred Sixty-five Dollars (\$15,165.00) with interest 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

DEC 16 1970


Lyle S. Garlock, Chairman


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 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).)

CU-0406