

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

IN THE MATTER OF THE CLAIM OF

NICOLAS FERNANDEZ

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -0427

Decision No. CU -2029

AMENDED PROPOSED DECISION

By Proposed Decision issued June 26, 1968, the Commission denied this claim for failure of proof. The Commission has since received additional evidence and having reconsidered the matter, it is

ORDERED that the Proposed Decision be and it is hereby amended.

On the basis of evidence received from abroad the Commission finds that claimant, a national of the United States since 1947, purchased improved real property at Calle Lanuza 407 near Avenida de Colombia y Calle Buena Vista, Marianao, Havana, on July 26, 1951. Under the Civil Code of Cuba such property acquired during the marriage, belonged to both spouses.

The property is described as a building of two plants with apartments in the rear, having separate entrances.

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 transaction involving transfer of total or partial use of urban properties was allowed. The law further provided that citizens of foreign countries not having the status of legal residents shall be excluded from rights and benefits conferred by the law.

The Commission finds that claimant's interest in the above described real property was taken by the Government of Cuba on October 14, 1960 and that he thereby suffered a loss within the meaning of Title V of the Act.

Evidence of record discloses that the property was acquired for a consideration of \$19,000.00. The claimant asserts that \$1,177.00 was expended in related expenses, and the Commission finds that this is a reasonable figure for closing costs and related fees. Accordingly, the Commission concludes that claimant suffered a loss in the amount of \$10,088.50.

The record does not disclose that Maria Francisca Martinez Fernandez was a United States national on the date of loss, and accordingly, her loss cannot be certified.

The Commission has decided that in certification 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 the Claim of Lisle Corporation, FCSC Claim No. CU-0644), and in the instant case, it is so ordered.

Accordingly, the following certification of loss will be entered.

CU-0427

CERTIFICATION OF LOSS

The Commission certifies that NICOLAS FERNANDEZ 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 Ten Thousand Eighty-Eight Dollars and Fifty Cents (\$10,088.50) with interest at 6% per annum from October 14, 1960 to the date of settlement.

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

FEB 19 1969

Leonard v. B. Sutton

Leonard v. B. Sutton, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

Sidney Freidberg

Sidney Freidberg, Commissioner

NOTICE TO TREASURY: The above-referenced securities may not have been submitted to the Commission or if submitted, may have been returned; accordingly, no payment should be made until claimant establishes retention of the securities or the loss here certified.

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 Amended 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).)

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

IN THE MATTER OF THE CLAIM OF

NICOLAS FERNANDEZ

Claim No. CU-0427

Decision No. CU 2029

Under the International Claims Settlement
Act of 1949, as amended

PROPOSED DECISION

This claim against the Government of Cuba, filed under Title V of the International Claims Settlement Act of 1949, as amended, in the amount of \$20,177.00, was presented by NICOLAS FERNANDEZ, and is based upon the asserted ownership and loss of certain real estate in Cuba. Claimant has been a national of the United States since his naturalization on November 13, 1947.

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 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.

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).)

Claimant asserts the ownership and loss of certain real estate located in Cuba, but has not submitted any evidence in support of the asserted ownership and value of the real estate. The only documentary evidence submitted in support of this claim relates to claimant's United States nationality.

By Commission letters of July 13, 1966 and May 15, 1968, claimant was advised as to the type of evidence proper for submission to establish this claim under the Act. Although claimant has responded to the correspondence of the Commission, he has advised that he has no documentary evidence available to support this claim.

By Commission letter of May 31, 1968, claimant was advised that a claimant has the burden of proof on all issues involved in the determination of his claim and that his claim would be determined on the basis of the then existing record. No evidence has since been received by the Commission.

CU-0427

The Commission finds that claimant has not met the burden of proof in that he has failed to establish ownership of rights and interests in property which was nationalized, expropriated or otherwise taken by the Government of Cuba. Accordingly, this claim is denied. The Commission deems it unnecessary to make determinations with respect to other elements of the claim.

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

20 JUN 1968

Leonard v. B. Sutton
Leonard v. B. Sutton, Chairman

Theodore Jaffe
Theodore Jaffe, Commissioner

Sidney Feidberg
Sidney Feidberg, Commissioner

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CU- 0427