

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

IN THE MATTER OF THE CLAIM OF

JEROME D. COHEN

Claim No. CU-0480

Decision No. CU -5909

Under the International Claims Settlement
Act of 1949, as amended

Appeal and objections from a Proposed Decision entered October 14, 1970; no hearing requested.

Hearing on the record held September 30, 1971.

FINAL DECISION

By Proposed Decision entered October 14, 1970, the Commission certified a loss to claimant in the total amount of \$100,926.89 for his interests in real and personal property and certain stock interests.

Claimant contends that the land had a value in excess of \$22,000.00; that his wife, whom he states became a national of the United States on August 16, 1963 had, at the time of their marriage in 1954, renounced any interests she might acquire in claimant's property; and that an allowance should be made for his exterminating business.

The Commission has considered the entire record including the assertions as to appreciation of land values; and the description of some of the assets of the exterminating company.

On the basis of the record and evidence available to the Commission as to similar real property in Cuba, the Commission finds that the land had a value of \$49,110.00 rather than \$22,000.00 and that claimant is entitled to an increase of \$13,555.00 in his certification of loss for his one-half interest therein. The Commission finds it not established that claimant's spouse had no interest in this property.

With respect to the claimant's exterminating business, the record reflects that on a number of occasions suggestions were made to him as to the type of evidence appropriate to establish the value thereof. Such evidence has not been received. The Commission considered in the Proposed Decision the affidavits of persons interested in the business at one time, but who did not follow through on their potential offers. In his letter of October 27, 1970, claimant describes the purchase of a lease in 1945, improvements made to the premises thereafter, and major improvements in 1958, including a sliding glass door, mezzanine, air conditioning, tile floor, warehouse space, new plumbing and showers, two automobiles, ten motorcycles with cars, \$25,000.00 in chemicals and an asserted value of \$50,000.00 for the lease.

On the basis of this record the Commission finds that the ascertainable assets of claimant's exterminating business had a value of \$40,000.00 on July 6, 1963, the date of loss and that he suffered a loss in that amount.

Claimant's losses are restated as follows:

<u>Item</u>	<u>Date of Loss</u>	<u>Amount</u>
Improved realty and personalty	November 20, 1961	\$72,162.50
Cutelco stock	August 6, 1960	41,401.29
Minimax stock	September 1, 1960	918.10
Exterminadores	July 6, 1963	<u>40,000.00</u>
		<u>\$154,481.89</u>

It may be noted, however, that upon receipt of evidence warranting a change in this matter, the Commission will reopen the claim provided, however, that such evidence is received by May 1, 1972, in order that it may be considered prior to the close of the program on June 30, 1972.

Accordingly, the Certification of Loss in the Proposed Decision is set aside, the following Certification of Loss will be entered, and the remainder of the Proposed Decision, as amended herein, is affirmed.

CERTIFICATION OF LOSS

The Commission certifies that JEROME D. COHEN 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 One Hundred Fifty-Four Thousand Four Hundred Eighty-One Dollars and Eighty-Nine Cents (\$154,481.89) 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

SEP 30 1971


Lyle S. Garlock, Chairman


Theodore Jaffe, Commissioner

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

IN THE MATTER OF THE CLAIM OF

JEROME D. COHEN

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-0480

Decision No. CU 5909

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 \$642,500.00, was presented by JEROME D. COHEN based on the asserted loss of certain real and personal property in Cuba, and stock interests. Claimant has been a national of the United States since birth.

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 asserts the following losses:

1) Land	\$ 99,000
2) Buildings	128,300
3) Personalty	120,200
4) Cuban Telephone Stock: 450 shares	47,000
5) Minimax Super-Mercados, S.A.: 3,000 shares	6,000
6) Cuban Electric Co. bonds	1,000
7) Vertientes Camaguey Sugar Company: 1,000 shares	16,000
8) Servicios Exterminadores, S.A.	<u>225,000</u>
Total	<u>\$642,500</u>

The record includes certain supporting evidence, discussed in detail below. On the basis thereof, the Commission finds that claimant owned certain items of real and personal property in Cuba. Pursuant to the community property laws of Cuba, all property acquired by either spouse during coverture is owned in equal shares by both spouses, except property acquired by gift or inheritance. (See Claim of Robert L. Cheaney and Marjorie L. Cheaney, Claim No. CU-0915.) Based upon the evidence of record, the Commission finds that claimant and his wife each owned a one-half interest in the properties herein as indicated hereafter. No claim has been filed by claimant's wife or on her behalf, nor is she shown to hold United States nationality as required by the terms of Section 504 which provides as follows:

(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.

Claimant states that at the time of their marriage in 1954 she renounced all rights which might be due her. This document has not been submitted, however.

Accordingly so much of the claim as is based on the one-half which would normally accrue to claimant's spouse is hereby denied.

"Finca Little America"

The evidence establishes and the Commission finds that claimant and his wife each owned a one-half interest in improved realty at Guatao, Punta Brava, Bauta, Marianao, Havana, Cuba, known as "Finca Little America".

It appears from the evidence of record that while claimant was visiting in the United States, and the estate was occupied by his brother-in-law, Cuban militia seized it on November 20, 1961. In the absence of evidence to the contrary, the Commission finds that this estate was taken by Cuba on November 20, 1961.

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.

The question, in all cases, will be to determine the basis of valuation which, under the particular circumstances, is "most appropriate to the property and equitable to the claimant". This phraseology does not differ from the international legal standard that would normally prevail in the evaluation of nationalized property. It is designed to strengthen that standard by giving specific bases of valuation that the Commission shall consider.

The record includes a copy of the sales contract of December 30, 1954 pursuant to which claimant and his spouse acquired the real property consisting of 49,110.03 square meters and several small houses for a price of \$22,000.

Thereafter claimant built a residence of approximately ten rooms, with baths, patios, and usual utilities, and a 4-car garage. The property was further enhanced by air conditioning, a swimming pool, a screened patio, improvements to the old houses, a water system and several wells, driveway, statuary, fencing and trees. Additionally there was some livestock and poultry and facilities for their maintenance, as well as equipage used with the horses. Further the estate was covered by a communications system. Claimant has submitted affidavits and photographs in support.

On the basis of the record the Commission finds that this part of the claim had the following values on the date of loss:

Land and new residence with solar system and air conditioning	\$57,000
Swimming pool, screened patio and garage	10,000
Several older houses and improvements	9,750
Water system, driveway and statuary	6,700
Livestock, pens, fencing and equipage	6,500
Trees and landscaping	4,000
Communications system	<u>2,000</u>
	\$95,950

Moreover, although claimant has been unable to supply itemized lists of the personalty in the residence, the Commission finds that claimant and his wife owned the furnishings of the house including china, glassware, and the like, which in relation to the house had a value of \$3,500 on the date of loss; custom built furniture having a value of \$15,000; television sets and radios having a value of \$800; an automobile having a depreciated value of \$1,465; and clothing valued at \$500, a total of \$21,265.

Accordingly, the Commission finds that claimant suffered a loss regarding this part of his claim, within the scope of Title V of the Act, in the amount of \$58,607.50.

Securities

Claimant has submitted evidence of his ownership of stock interests in Minimax Super-Mercados, S.A., as follows:

582 shares issued to claimant and/or Jeronimo Guardarrama Deresa
1,250 shares issued to claimant and/or Dulce Guardarrama de Cohen
1,832 shares

As it is not shown that either Jeronimo Guardarrama Deresa or Dulce Guardarrama de Cohen are qualified within the meaning of Title V of the Act, the Commission holds that only the value of a one-half interest in the 1,832 shares may be certified as a loss of claimant.

In our decision entitled Claim of Libby Holman Reynolds (Claim No. CU-1384 which we incorporate herein by reference), we held that the properties owned by the Company were intervened by the Government of Cuba on September 1, 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 the method used in determining the value per share of \$1.0023.

Accordingly, the Commission finds that claimant suffered a loss of \$918.10 as a result of the loss of his interest in Minimax on September 1, 1960.

Based upon copies of stock certificates submitted, the Commission finds that claimant owned 450 shares of common stock of the Cuban Telephone Company.

The Commission has held that a claim based upon stock of the Cuban Telephone Company is within the purview of Title V of the Act because, although the Cuban Telephone Company was a national of the United States at all pertinent times, it is now defunct. (See Claim of International Telephone and Telegraph Company, Claim No. CU-2615.) In that claim, the Commission found that the assets of the Cuban Telephone Company had been taken by the Government of Cuba on August 6, 1960.

The record in that case shows that each share of Cotelco common stock had a value of \$184.0057. The Commission, therefore, finds that on August 6, 1960, the date of loss, the claimant's interest in 450 shares had a value of \$41,401.29 and that he sustained a loss in that amount on August 6, 1960.

Claimant also asserted losses in connection with bonds of the Cuban Electric Company (a Florida corporation) and stock of Vertientes Camaguey Sugar Co., but there is no evidence of record in support of this asserted ownership. Accordingly, these items of claim are denied.

Moreover, claimant has asserted loss of his wholly owned company, Servicios Exterminadores, S.A., a Cuban corporation organized in 1945, which he states was taken by the Government of Cuba in July of 1963. The record includes claimant's letter to the State Department, dated July 13, 1963 in which he reported that the company having an office, laboratory and working headquarters was taken over the preceding week; that he had been negotiating to sell the company; that he had asked \$350,000, was offered \$250,000, and thought \$300,000 a fair figure.

The record includes the affidavit executed on May 21, 1968 by one Jacques J. Hess of New York, an officer of a pest control company, who states that his duties include exploring possible acquisition of other pest control companies. Thus he states he is familiar with the operation and valuation of Servicios Exterminadores, S.A., which he examined into in 1958. He continues that because of the political situation his company deferred expansion activities, but that in his opinion a conservative appraisal of the entity would be a value of \$225,000 to \$250,000.

Additionally the record includes the affidavit of David Oliver of Puerto Rico who affirms that in 1958 he offered the claimant, for his business, between \$225,000 and \$250,000 based, he states, on the norms of the pest control industry at that time, which were 10 to 12 times the monthly billing of an organization, plus its assets and less its liabilities. He continues that the reason for the spread between \$225,000 and \$250,000 was due to the fact that a fair appraisal had to be made on the equipment,

chemicals, and other assets. He added that the company received a considerable amount of advertising in return for services. As claimant has stated that all papers were left in Cuba, it was suggested on August 11, 1969 that he submit for consideration a reconstructed balance sheet. Claimant has not done this but feels his entire claim is conservative.

Even though claimant may have been the sole owner of Servicios Exterminadores, S.A. which may have been taken by the Government of Cuba in July 1963, the evidence as to possible value is found in affidavits which speak of a time five years earlier and in each case the potential offer was not in fact carried through. The record is devoid of such evidence as would permit the Commission to make other than a speculative finding of value.

In the absence of such evidence, the Commission is constrained to and does deny this part of the claim.

Recapitulation

Claimant's losses are summarized as follows:

<u>Item of Property</u>	<u>Date of Loss</u>	<u>Amount</u>
"Finca Little America" including personalty	November 20, 1961	\$ 58,607.50
Cutelco stock	August 6, 1960	41,401.29
Minimax stock	September 1, 1960	<u>918.10</u>
	Total	<u>\$100,926.89</u>

The Commission has decided that in certifications of loss or 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.

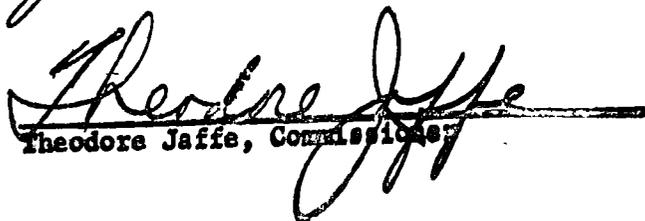
CERTIFICATION OF LOSS

The Commission certifies that JEROME D. COHEN 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 One Hundred Thousand Nine Hundred Twenty-six Dollars and Eighty-nine Cents (\$100,926.89) 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

OCT 14 1970


Lyle S. Garlock, Chairman


Theodore Jaffe, 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 determinations 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).)