

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

IN THE MATTER OF THE CLAIM OF

JOSEPH RATH

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -0649

Decision No. CU 430

Counsel for claimant:

Casper & Nehrbas
by Montague Casper, Esq.

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 JOSEPH RATH for \$10,940.00 based upon the asserted ownership and loss of two bank accounts. Claimant, JOSEPH RATH, has been a national of the United States since his naturalization on February 11, 1946.

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.

Claimant alleges that since September 1958 he had 940.00 pesos in a business account and 10,000.00 pesos in a savings account with the La Lonja Branch of the First National City Bank of New York in Havana, Cuba.

On the basis of evidence of record, including a copy of a statement of the Bank dated May 29, 1959, the Commission finds that claimant had 826.23 pesos on deposit on that date.

As to the savings account, claimant alleged that he left the pass-book at the Bank on the advice of the assistant manager. In his own affidavit dated February 9, 1967, claimant states that he established a savings account with the Bank with a balance of 10,000.00 pesos in September 1958, when he was doing business in Cuba. In addition, claimant submitted copies of letters dated from February 3, 1959 to September 3, 1959, between himself, the bank and the Swiss Bank Corporation, regarding efforts to transfer 9,500.00 pesos from the 10,000.00 pesos on account with the La Lonja branch office of the Bank in Havana, Cuba, to the Swiss Bank Corporation in Zurich, Switzerland. Although no letter from the bank states the amount on deposit, a letter of August 14, 1959 reveals that the efforts to transfer the amount in question had been unsuccessful due to repeated requests from the Cuban Foreign Exchange Control Authority to

furnish additional information, and does not deny the existence of the account or a balance sufficient for the requested transfer. On the basis of the entire record, the Commission finds that the claimant, JOSEPH RATH, had an additional deposit with the La Lonja Branch Office of the First National City Bank of New York in Cuba in the amount of 10,000 pesos, as alleged.

A number of laws and resolutions were issued in Cuba affecting banks, bank accounts and currency. Not all of these things affected the accounts of the claimant in Claim No. CU-0649.

Law 568, published in the Cuban Official Gazette on September 29, 1959 forbade the transfer of funds abroad, and effectively operated to block the funds of anyone who left the country. Law 930, published in the Cuban Official Gazette on February 23, 1961 gave the National Bank the power to effect centralization of liquid assets "temporarily" taken from the people. In effect this froze or continued the blocking of bank accounts.

By Law 963, published in the Cuban Official Gazette on August 4, 1961, a currency exchange was effected. Currency was turned in at centers provided and a new currency was provided. There was no change in value. However, each person was to receive 200 pesos in new currency, and all over that amount was placed in a special account in his name. This did not affect bank accounts already in existence. By Law 964, published in the Cuban Official Gazette on August 9, 1961, it was provided that the owners of the deposits created under Law 963 could draw up to 1,000 pesos, the balance up to 10,000 remained in his special account, and all over 10,000 passed to the State Treasury. There were some minor exceptions.

However, Laws 963 and 964 do not affect this claim because the accounts in question did not arise from currency exchange.

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. This included such bank accounts as had not been established and confiscated by Laws 963 and 964, supra. In the absence of evidence to the contrary, the Commission finds that claimant's above described two bank accounts, in the amounts of 826.23 and 10,000.00 pesos, were taken by the Government of Cuba on December 6, 1961. (See the Claim of Floyd W. Auld, FCSC Claim No. CU-0020,)

Further, the Commission finds that on December 6, 1961, claimant's 10,826.23 pesos had a value of \$10,826.23, and that he suffered a loss in that amount within the meaning of Title V of the Act, as the result of the taking of his bank accounts 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 the Claim of Lisle Corporation, FCSC 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 JOSEPH RATH 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 Eight Hundred Twenty-Six Dollars and Twenty-Three Cents (\$10,826.23), 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

OCT 18 1967

Edward D. Re
Edward D. Re, Chairman

Theodore Jaffe
Theodore Jaffe, Commissioner

LaVern R. Dilweg
LaVern R. Dilweg, Commissioner

This is a true and correct copy of the decision of the Commission which was entered as the final decision on 9-1-1967
W. J. Jaffe
LaVern R. Dilweg
of the Commission

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).)