

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

IN THE MATTER OF THE CLAIM OF

ALFRED XAVIER NAPOLES

Claim No. CU - 0722

Decision No. CU- 2048

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 amended amount of \$49,650.00, was presented by ALFRED XAVIER NAPOLES, based upon the asserted loss of his business and personal property in Cuba. Claimant has been a national of the United States since his 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 that he was the owner of a business, Castillo Vibora de Alfredo Javier Napoles, formerly known as Nuestra Senora de Lourdes, a service station, garage, and automobile accessories establishment located at 1125 (formerly 585) Calzada de Diez de Octubre, Vibora, Havana, Cuba.

The record contains a copy of Escritura No. 415, a sales contract executed in Havana, Cuba on September 6, 1947, by which instrument claimant acquired the aforementioned establishment together with all its merchandise, furniture, supplies, mechanical equipment, annexes and appurtenances, free of debts and encumbrances. The Commission finds that claimant was the owner of the service station described.

Evidence of record reflects that claimant left Cuba on or about March 30, 1961, and has resided in the United States ever since.

On August 1, 1961, the Ministry of Labor of the Government of Cuba announced its intention to intervene Castillo Vibora de Alfredo Javier Napoles five days thereafter. In the absence of evidence to the contrary, the Commission finds that the service station, Castillo Vibora de Alfredo Javier Napoles, was intervened on August 6, 1961, pursuant to the provisions of Cuban Law 647.

Based on the foregoing, the Commission finds that claimant was the owner of the business establishment, Castillo Servicio Vibora de Alfredo Javier Napoles, and that, in the absence of evidence to the contrary, the property was intervened by the Government of Cuba on August 6, 1961, pursuant to the provisions of Law 647 of November 24, 1959.

The record includes a purchase and sale document which reflects that claimant purchased subject business property in 1947 for a price of \$12,000.00. Also included in the record is a copy of a Dun and Bradstreet rating of claimant's business as of November 4, 1950, in which a balance sheet for claimant's business as of October 9, 1950, is recited as follows:

<u>Assets</u>		<u>Liabilities</u>	
Cash and Bank Account	\$ 1,221.12	Accounts Payable	\$ 600.00
Notes Receivable for Merchandise	625.56		
Merchandise in Stock	7,530.42		
2 Pontiac cars	2,800.00		
Current assets	\$12,177.10	Current Liabilities	600.00
Machinery and Equipment	8,848.13	Capital	20,425.23
Total Assets	\$21,025.23	Total Liabilities	\$21,025.23

The report goes on to state that claimant had 21 employees, had a good record for paying his debts and in repaying loans, that the business was being managed intelligently, that its potential was good, that claimant was of recognized ability, and that he carried insurance on his merchandise in the amount of \$12,000.00.

The record also contains several affidavits of persons who state they have known the claimant for a number of years and in which they give their opinions that the business and equipment had a value of \$25,000 to \$35,000 and again, of \$45,000 to \$50,000. In addition, claimant has submitted several photographs of his place of business.

The record contains claimant's own affidavit in which he lists, from memory, items making up a balance sheet of December 31, 1960, for his business, which he also exhibited in the American Embassy in Cuba. In substance, this balance sheet reflects the following:

Cash	\$ 3,200.00
Merchandise	2,315.00
Machinery and Equipment	23,100.00
Office Furniture and Equipment	1,300.00
Goodwill	5,000.00
	<u>\$34,915.00</u>
Less Liabilities	250.00
	<u>\$34,665.00</u>

After consideration of the above, the Commission finds that the Machinery and Equipment should be depreciated to \$20,790, and the Office Furniture and Equipment to \$1,170. Moreover, the Commission finds the item of Goodwill has not been established.

Based on the entire record, the Commission finds that the value of claimant's business on the date of loss was \$27,210.00 and that claimant suffered a loss in that amount within the meaning of Title V of the Act when his property was intervened by the Government of Cuba on August 6, 1961.

Claimant also asserts that he lost personal property of which he has submitted an itemized list. This property assertedly was located in claimant's apartment situated at Parraga and Vista Elegre Streets in the Vibora section of Havana, Cuba.

The record contains 5 affidavits in which the affiants testify as to their knowledge of claimant's personal property.

On the basis of evidence of record, the Commission finds that claimant was the owner of personal property located in his apartment at Parraga and Vista Alegre Streets in the Vibora section of Havana, Cuba.

On December 6, 1961, the Cuban Government published its Law 989. This law provided for the confiscation of the real and personal property of persons who had left the country. In the absence of evidence to the contrary, the Commission finds that claimant's personal property was taken by the Government of Cuba on December 6, 1961, pursuant to the provisions of Law 989.

Claimant asserts that the amount of loss sustained as a result of the taking of his personal property was \$14,985.00. It is noted that according to the list of items of personal property given in claimant's affidavit there is an item valued at \$3,000.00: a savings account in the Vibora branch of the Banco Nunez. No evidence of this item has been submitted. Accordingly, the Commission is constrained to find that insufficient evidence of this item has been submitted, and that therefore it must be and hereby is denied.

After consideration of all remaining items, and in view of evidence available to the Commission as to the value of similar properties, and allowance having been made for suitable depreciation, the Commission finds that the remaining personal property had a value of \$6,600.00. Accordingly, the Commission concludes that claimant sustained a loss in the amount of \$6,600.00 as a result of the confiscation of his personal property by the Government of Cuba on 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 Claim of Lisle Corporation, Claim No. CU-0644.)

Accordingly, the Commission concludes that the amount of loss sustained by claimant shall be increased by interest thereon at the rate of 6% per annum from the respective dates of loss to the date on which provisions are made for settlement thereof, as follows:

On \$27,210.00 from August 6, 1961 and

On \$ 6,600.00 from December 6, 1961

CERTIFICATION OF LOSS

The Commission certifies that ALFRED XAVIER NAPOLES 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 Thirty-Three Thousand Eight Hundred Ten Dollars (\$33,810.00) 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

3 JUL 1968

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

Theodore Jaffe
Theodore Jaffe, Commissioner

Sidney Freidberg
Sidney Freidberg, 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).)