

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

IN THE MATTER OF THE CLAIM OF

ALEXANDER S. RITTER

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-1081

Decision No. CU - 6140

Counsel for claimant:

Freed & Stewart
By Owen S. Freed, Esquire

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, for \$617,250.00 was presented by ALEXANDER S. RITTER, based upon the asserted loss of real and personal property. 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.

Section 502(1)(B) of the Act defines the term "national of the United States" as a corporation or other legal entity which is organized under the laws of the United States, or of any State, the District of Columbia, or the Commonwealth of Puerto Rico, if natural persons who are citizens of the United States own, directly or indirectly, 50 per centum or more of the outstanding capital stock or other beneficial interest of such corporation or entity.

Claimant states that he was the sole owner of all the shares of stock of a corporation, organized in 1957 in Cuba under the name of "Jardines Elisa S.A."; that the corporation owned a 330-acre farm near the town of Guanajay in the Province of Pinar del Rio; that the farm contained, in addition to the land, farm buildings, a modern packing house, a cooling and refrigeration plant, and an aluminum pipe irrigation system covering 300 of the 330 acres. Claimant further states that he was the owner, individually, of several tractors, spray machines, trucks, trailers and other equipment purchased by him with his own funds in the United States and shipped to the farm in Cuba. Claimant finally states that he resided, at all times pertinent to this claim, in the United States and that he had appointed a manager of the farm by the name of Gonzalo Vieta; that this manager was physically removed from the premises on January 22, 1960; and that on February 1, 1960 the Cuban Government confiscated the farm.

Claimant asserts that as the result of the confiscation he suffered the following losses:

A. Equity in farm property	\$ 42,000.00
B. Aluminum pipe irrigation system	150,000.00
C. Packing plant	12,000.00
D. Cold storage and refrigeration plant	35,000.00
E. Supply of seed, insecticides and fertilizers, on the premises at the time of taking	105,000.00
F. Crops under cultivation	<u>273,250.00</u>
Total	\$617,250.00

Claimant has failed to submit to the Commission primary evidence of ownership of the shares of stock of "Jardines Elisa S.A.". The Commission has, however, reviewed the evidence claimant has submitted to the Circuit Court of the Eleventh Judicial Circuit of Florida and for Dade County, Florida, in the case of Alexander S. Ritter vs. Republic of Cuba and Banco Nacional de Cuba, No. 60-L 2357-A, and based upon the evidence filed with the Commission and the evidence presented to the aforementioned court, the Commission finds:

"Jardines Elisa S.A." was a corporation organized under the laws of Cuba by Charter dated July 30, 1957, with an authorized capital of 300,000 Pesos, and claimant was the owner of all shares of stock of that company. Such a corporation does not qualify as a corporate "national of the United States" defined under Section 502(1)(B) of the Act. In this type of situation, it has been held that an American stockholder is entitled to file a claim for the value of his ownership interest (See Claim of Parke, Davis & Company, Claim No. CU-0180, 1967 FCSC Ann. Rep. 33). It is therefore, concluded that the claimant herein, a national of the United States, is the proper party claimant before the Commission for the claim which relates to the loss of the corporate assets owned by "Jardines Elisa S.A."

The Commission further finds that "Jardines Elisa S.A." owned land measuring approximately 330 acres (10 Cuban caballerias) located within the municipality of Guanajay, Pinar del Rio, Province, formerly known as "Finca Patricia"; that claimant through the corporation made substantial improvements on the land constructing farm buildings, introducing an extensive pipe irrigation system that covered almost 90% of the land; erecting a modern packing house and a cooling and refrigerating plant; and by purchasing seeds, insecticides and fertilizers for the purpose of producing on the premises tomatoes, eggplants, bananas, flowers, foliage plants and nursery stock. All these products were raised for the year-round domestic Cuban and for the so called "winter market" in the United States.

The Commission further finds that the aforesaid land with all the appurtenances was within the purview of the Cuban Agrarian Reform Law of

June 3, 1959 and that the entire property of the corporation was effectively taken by the Government of Cuba on February 1, 1960.

The value of the corporate assets remains to be determined.

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.

Claimant has failed to submit any balance sheets, profit and loss statements, or other records in support of his estimate of losses. Based upon the record available to the Commission, including affidavits executed on December 21, 1961 by the claimant and by Francisco Juarrero, former Executive Vice-President and General Manager of Banco Pedroso of Havana, the bank that handled claimant's financial affairs in Cuba, the Commission finds that claimant invested \$42,000.00 in cash for the land, and additional \$300,000.00 for improvements of the land.

In the absence of any other evidence of probative value, the Commission further finds that claimant's interest in the corporation "Jardines Elisa S.A." at the time of taking was worth \$342,000.00.

The Commission is aware of the fact that claimant asserted that he also owned individually certain personal property on the farm which he purchased in the United States and shipped to Cuba. Claimant, however, in his affidavit executed on February 28, 1967, and submitted to the Commission in support of this claim, clearly stated that the loss of this equipment is

not included in the instant claim; moreover no evidence of ownership nor any estimate of value was submitted to substantiate this element of the claim and the Commission finds that it need not be considered here.

The Commission is also aware of the fact that claimant has collected through Final Judgment of the Circuit Court of the Eleventh Judicial Circuit of Florida, and for Dade County, Florida, Case No. 60-L 2357 of January 16, 1962, the sum of \$62,814.10 for a claim based upon a bank account on deposit with the Banco Nacional de Cuba in Havana. Since this collection was made for an item not included in the present claim before the Commission, this collection is deemed not to be for losses determined here and therefore not within the purview of Section 506 of the Act.

Summarizing, claimant suffered losses, within the scope of Title V of the Act, in the amount of \$342,000.00.

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) (1970).)

The Commission finds that claimant has failed to meet the burden of proving losses in excess of \$342,000.00 and the claim for the value of the corporate assets in excess of \$342,000.00 is accordingly denied.

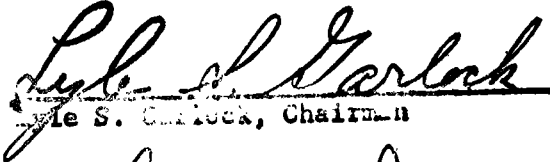
The Commission has decided that in certifications of loss on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be included at the rate of 6% per annum from the date of loss to the date of settlement (see Claim of Lisle Corporation, Claim No. CU-0644) and in the instant case it is so ordered.

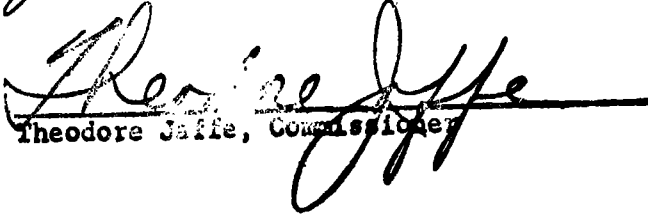
CERTIFICATION OF LOSS

The Commission certifies that ALEXANDER S. RITTER 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 Three Hundred Forty-Two Thousand Dollars (\$342,000.00) with interest thereon at 6% per annum from February 1, 1960 to the date of settlement.

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

MAR 31 1971


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 of notice, unless the Commission otherwise orders. (FCSC Reg., 45 C.F.R. 502.5(e) and (g), as amended (1970).)

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