

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

IN THE MATTER OF THE CLAIM OF

J. ALLAN LUSTMAN
and
LAWRENCE H. GORDON

Claim No. CU-1089

Decision No. CU-4410

Under the International Claims Settlement
Act of 1949, as amended

Appeal and objections with respect to a Proposed Decision entered on January 13, 1970.

Hearing on the record held on February 3, 1971.

FINAL DECISION

Under date of January 13, 1970, the Commission issued its Proposed Decision denying this claim for failure to sustain the burden of proof.

Subsequently, Mr. LUSTMAN, one of the claimants, filed objections to the Proposed Decision on behalf of both claimants, and requested an oral hearing. However, he failed to indicate the basis for his objections and submitted no further evidence in support of the claim.

The Commission responded to Mr. LUSTMAN's request by letter of February 27, 1970, in which it informed claimants that an oral hearing had been scheduled for April 2, 1970. Following customary practices in cases where oral hearings are scheduled, the Commission made extensive efforts to reach claimants by telephone on March 31, 1970 to ascertain whether they would be present on April 2, 1970. All such efforts were unsuccessful.

On April 9, 1970, the Commission received a letter from Mr. LUSTMAN from his address of record, in which he stated that he had not received the Commission's letter of February 27, 1970 until April 3, 1970. By letter of April 13, 1970, the Commission informed Mr. LUSTMAN that the oral hearing had been rescheduled for May 14, 1970. Mr. LUSTMAN's letter of May 1, 1970 requested an adjournment of the oral hearing until after

July 1, 1970. The Commission's attempt to communicate with Mr. LUSTMAN by letter of September 17, 1970 was unsuccessful. Inasmuch as Mr. LUSTMAN had previously informed the Commission that Mr. GORDON, the other claimant, was outside the United States without giving his address, there was no way to communicate with that claimant.

Under date of October 7, 1970 the Commission addressed another letter to Mr. LUSTMAN, advising him that the oral hearing would take place on November 18, 1970. To assure delivery to the claimant, the letter was sent by registered mail, return receipt requested, with the instruction to hold for addressee only. That letter was returned by the Post Office Department with the notation, "Unclaimed." It appears that the Post Office Department had left two notices at Mr. LUSTMAN's address and when he failed to appear to receive the registered letter, the Post Office Department returned the letter to the Commission. Since that time no word has been heard from either claimant.

Upon consideration of the entire record, the Commission finds no valid basis for altering the decision previously entered on this claim. Accordingly, the Proposed Decision of January 13, 1970 is affirmed in all respects.

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

FEB 17 1971


Lyle S. Garlock, Chairman


Theodore Jaffe, Commissioner

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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 \$2,066,253.00, was presented by J. ALLAN LUSTMAN and LAWRENCE H. GORDON based upon the asserted loss of stock interests in two Cuban corporations. J. ALLAN LUSTMAN has been a national of the United States since birth. No evidence has been submitted with respect to the nationality of LAWRENCE H. GORDON.

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.

Claimants have asserted the loss of stock interests in two Cuban corporations, C-A Construction Co., S.A. and C-A Development Co., S.A., hereafter referred to as Construction and Development, respectively. Their official claim form was accompanied by two unsigned documents, purporting to be balance sheets for Construction and for Development as of December 31, 1959; a statement from LAWRENCE H. GORDON to the effect that he owned 1,900 shares of stock in each of the two Cuban corporations and that J. ALLAN LUSTMAN owned 2,100 shares of stock in each; and a copy of the birth certificate for J. ALLAN LUSTMAN. The record also contains correspondence between claimants and the Department of State, including a letter, dated January 15, 1965, from Mr. Gordon indicating claimants' desire to assert a Federal tax deduction on account of losses in Cuba. Claimants' official claim form, however, indicates that as of March 1, 1967, the date thereof, no such tax deduction was claimed.

Initially, the Commission suggested in a letter of October 31, 1967 that claimants submit: the stock certificates as evidence of ownership; evidence of Mr. Gordon's United States nationality; and further supporting evidence concerning the value of Construction and of Development as well as proof that these corporations were nationalized or otherwise taken by Cuba. Mr. Lustman's response to that letter and to a subsequent one of July 9, 1968 was that Mr. Gordon had submitted proof of his United States nationality; that the stock certificates and all books and records relating to the two Cuban corporations had been left in Cuba; and that the balance sheets had been prepared from work sheets smuggled out of Cuba. Since Mr. Lustman stated that Mr. Gordon was outside the country, the Commission communicated with him with respect to both claimants.

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The Commission directed additional letters to claimants, dated July 25, 1968 and February 17, 1969, suggesting the submission of further supporting evidence. The letter of February 17, 1969 informed Mr. Lustman that proof of Mr. Gordon's United States nationality was not on file; and suggested the need for evidence in that respect as well as proof to substantiate the stock interests claimed. Mr. Lustman replied that since he owned the controlling interests in both Cuban corporations, only his nationality should be considered in determining the validity of this claim. The Commission, however, advised Mr. Lustman that the nationality prerequisite applied to each claimant, irrespective of the interests asserted.

In the meantime, the Commission had obtained a report from sources abroad, which indicated that Construction had been organized in 1942 and had issued shares of stock in the amount of \$3,000.00. Neither of the claimant's names appeared in the report. The Commission advised Mr. Lustman of these circumstances and again suggested the submission of further evidence, including proof of Mr. Gordon's United States nationality. The Commission also offered to make another inquiry abroad upon the receipt of a written request from the claimants. Since that time no such request was made and no further evidence was submitted. The Commission wrote a detailed letter to Mr. Lustman under date of September 19, 1969, suggesting the submission of: proof of Mr. Gordon's United States nationality; the original work sheets that had been smuggled out of Cuba; a detailed affidavit from either or both claimants concerning their Cuban operations and the values appearing in the balance sheets for Construction and for Development; evidence to support asserted debts due from the two Cuban corporations in the amount of \$300,000.00 to each of the claimants, as set forth in the said balance sheets; further proof of ownership of the stock interests asserted herein; and an explanation as to why no Federal tax deduction was asserted by claimants for the losses in Cuba.

To date, no additional evidence has been submitted.

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.

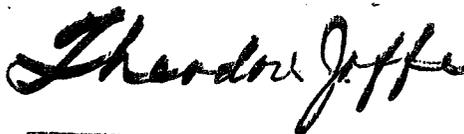
The Regulations of the Commission provide:

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).)

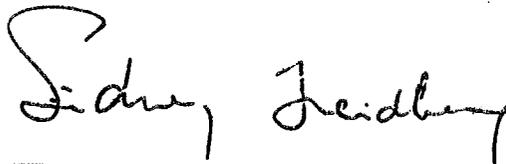
The Commission finds that claimants have failed to sustain the burden of proof in that they have not established that LAWRENCE H. GORDON is a national of the United States, as defined by Section 504(a) of the Act and have not established that they sustained losses within the meaning of Title V of the Act. Accordingly, this claim is denied in its entirety.

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

13 JAN 1970



Theodore Jaffe, Commissioner



Sidney Frøidberg, Commissioner

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).)

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