

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

IN THE MATTER OF THE CLAIM OF

CHARLES K. SELDIN

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-1234

Decision No. CU 2963

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 CHARLES K. SELDIN, and is based on the asserted loss of \$1,035.00, sustained in connection with the purchase of bonds of an issue known as 4 1/2% Bond of the External Debt of the Republic of Cuba. 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 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.

Section 507 of the Act provides, as to assignment of claims, that

(b) The amount determined to be due on any claim of an assignee who acquires the same by purchase shall not exceed (or, in the case of any such acquisition subsequent to the date of the determination, shall not be deemed to have exceeded) the amount of the actual consideration paid by such assignee, or in case of successive assignments of a claim by any assignee.

Claim is presented for an interest in two bonds of the issue known as 4-1/2% Bond of the External Debt of the Republic of Cuba, 1937-1977, bearing Nos. M 39947 and M 38955, each in the principal amount of \$1,000.00, with 34 interest coupons attached, each in the amount of \$22.50, payable semiannually, the earliest maturing on December 31, 1960, and the latest on June 30, 1977.

On the basis of evidence of record, the Commission finds that claimant acquired the above numbered securities by purchase on October 2, 1963 for a consideration of \$450.00. Such bonds, as a "debt owed by the Government of Cuba", clearly constitute property within the meaning of the term as defined in Section 502(3) of the Act, quoted above.

A study of the history of events with respect to bond obligations of the Republic of Cuba reveals that the Cuban Government defaulted on the payment of interest on bonds of this issue on December 31, 1960 (See Foreign Bondholders Protective Council, Inc., Annual Report 1958-1961, p. 52), but other than continued failure to make payments under

its obligations, has taken no positive action concerning the rights of bondholders. The question arises whether such nonpayment may be deemed a nationalization, expropriation, intervention, or other taking of, or special measures directed against the property of the bondholders within the meaning of Section 503(a) of the Act. This question has been affirmatively decided by the Commission. (See Claim of Clemens R. Maise, Claim No. CU-3191, 1967 FCSC Ann. Rep. 68), which determined that the failure of the Government of Cuba to make the obligated payment on December 31, 1960, even without express repudiation of the bonds, occurring as it did for the first time after January 1, 1959, constituted a taking on that date of the property of the bondholder within the meaning of the Act; and gives rise to a valid claim for the amount of the unpaid indebtedness as of that date. However, as noted above, claimant did not acquire these bonds until a date subsequent to the date on which the loss occurred.

Under the provisions of Section 504(a) of the Act, a claimant is required to establish that the claim for any loss has been continuously owned by a national or nationals of the United States from the date of loss to the date of filing with the Commission. The loss occurred on December 31, 1960. Claimant has been unable to obtain information or evidence to establish the nationality of the beneficial owner of the securities on the date of loss, and to establish continuous United States ownership of the securities until the date on which claimant acquired them. Claimant has only been able to submit evidence showing that the securities were physically within the United States on the date of loss and continuously thereafter.

Evidence of record before the Commission discloses that securities of the type subject of this claim were almost entirely owned and traded by persons or firms having addresses in the United States. The Commission

has considered whether an inference may be justified that the claimed securities were continuously owned by a national or nationals of the United States from the date of loss to the date on which purchased by the claimant, and, in the absence of evidence to the contrary, has concluded that the securities were continuously so owned. (See Claim of the Executors of the Estate of Julius S. Wikler, Deceased, Claim No. CU-2571).

The Commission finds that claimant, upon his purchase of the securities, succeeded to the loss sustained by the assignor of the claimed securities, and concludes that he succeeded to and suffered a loss in the total amount of \$450.00 (the price he paid) as a result of the failure of Government of Cuba to make the obligated payment of interest due December 31, 1960 on its debts represented by 4-1/2% Bonds of the External Debt of Republic of Cuba 1937-1977.

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.)

The Commission concludes, however, that the amount of loss sustained by claimant herein shall be increased by interest thereon at the rate of 6% per annum from October 2, 1963, the date on which claimant acquired this claim, to the date on which provisions are made for the settlement thereof.

CERTIFICATION OF LOSS

The Commission certifies that CHARLES K. SELDIN 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 Four Hundred Fifty Dollars (\$ 450.00) with interest at 6% per annum from October 2, 1963 to the date of settlement.

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

AUG 29 1968

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

Theodore Jaffe
Theodore Jaffe, Commissioner

Sidney Freidberg
Sidney Freidberg, 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 for 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 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).)