

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

IN THE MATTER OF THE CLAIM OF

JULIAN FERNANDEZ

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-1612

Decision No. CU **151**

Counsel for claimant:

Oscar A. White, Esq.

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, in the amount of \$140,667.00 was presented by JULIAN FERNANDEZ based upon the asserted ownership and loss of improved real property; personal property consisting of furniture, equipment, merchandise, household and other personal effects; and securities consisting of 10 shares of stock in Banco de los Colonos and 1 share in La Torre, S. A. Claimant, JULIAN FERNANDEZ, has been a national of the United States since his naturalization on February 18, 1966.

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 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 502(1) of the Act defines the term "national of the United States" as "(A) a natural person who is a citizen of the United States." The term does not include aliens.

Thus, in order for the Commission to favorably consider claims under section 503(a) of Title V of the Act, it must be established (1) that the subject property was owned in whole or in part by a national of the United States on the date of nationalization or other taking; and (2) that the claim arising as a result of such nationalization or other taking has been continuously owned thereafter in whole or in part by a national or nationals of the United States to the date of filing with the Commission.

Claimant states that in October of 1960 he became a resident alien in the United States and that on December 5, 1961 the Cuban Government enacted Law 989 which provided that all properties of Cuban nationals who have left Cuba be confiscated, and that indemnification would not be made to the owners of properties confiscated under this law.

The Commission finds it not established that claimant was the owner of property which was taken by the Government of Cuba. However, even if this were so, the Commission is constrained to deny the claim on other grounds.

Under the provisions of Sections 502(3), 503(a) and 504(a) of the Act, supra, not only should the claimant herein establish that he owned the subject matter claimed, he must also establish that some measure depriving him of his interest therein was applied by the Government of Cuba not only after January 1, 1959, but subsequent to February 18, 1966, the date he acquired citizenship of the United States. This he has not done.

Accordingly, for the reasons stated above, the Commission concludes that this claim is not one within the purview of Title V of the Act, supra, and it is denied.

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

JUL 26 1967

Edward D. Re

Edward D. Re, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

LaVern R. Dilweg

LaVern R. Dilweg, 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).)

CERTIFICATION

This is a true and correct copy of the decision of the Commission which was entered as the final decision on ~~-----~~ **AUG-25-1967** -----

CU-1612

Francis Macfarland

Clerk of the Commission