

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

IN THE MATTER OF THE CLAIM OF

JAMES J. O'MAILIA

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU - 1656

Decision No. CU 5382

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 JAMES J. O'MAILIA for \$25,511.39 based upon the asserted ownership and loss of certain real property in 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.

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).)

Claimant asserts that he owned two lots of about 3240 varas each, located in Marianao, Havana, which he purchased in 1955 or 1956.

By Commission letters of June 22, 1967, April 3, 1968 and June 24, 1968, claimant was advised in detail regarding the evidence and information suggested to establish his claim under the Act.

On September 26, 1968 claimant was informed of the reduction in the Commission's staff and again reminded of the elements to be established.

On July 31, 1969 claimant was sent a copy of a report in Spanish received from abroad, and invited to comment thereon. In response claimant on August 14, 1969 stated that he was aware of the fact that he was not the owner of record of the property in question. In this connection he then submitted affidavits from the record owner and from the salesman who sold him the 2 lots. These affidavits state that the 2 lots in question comprising about a total of 6387 varas were sold to claimant in 1955 at \$1.80 per vara and that the purchase price was paid in full after 48 monthly payments.

On April 6, 1970 it was suggested that claimant submit additional supporting evidence, explain why he was not the owner of record, and clarify the apparent discrepancy between the amount of his asserted loss and the purchase price stated by the 2 affidavits. He was informed that absent the suggested evidence within 30 days, it might be necessary to determine the claim on the basis of the existing record. No reply has been received.

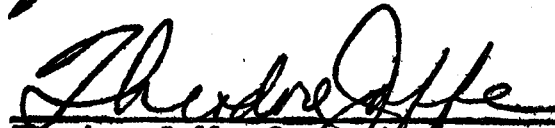
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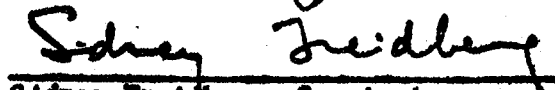
The Commission finds that claimant has not met the burden of proof in that he has failed to establish ownership of rights and interests in property which was nationalized, expropriated or otherwise taken by the Government of Cuba. Thus, the Commission is constrained to deny this claim and it is hereby denied. The Commission deems it unnecessary to make determinations with respect to other elements of the claim.

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

JUL 29 1970


Lytle S. Garlock, Chairman


Theodore Jaffe, Commissioner


Sidney Freidberg, 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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