

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

IN THE MATTER OF THE CLAIM OF

HERMAN BRILL

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -1772

Decision No. CU -1821

AMENDED PROPOSED DECISION

By Proposed Decision issued May 8, 1968, this claim was denied for failure of proof. Claimant thereafter submitted additional evidence. The matter having been considered, it is

ORDERED that the Proposed Decision be and it is hereby amended.

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, was presented by HERMAN BRILL, for \$26,000.00 based upon the asserted ownership and loss of improved realty 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.

Claimant contends he has lost an investment in real property in Cuba valued at \$26,000.00. He has submitted a document entitled "Contract of Sale", dated July 8, 1961, between Dr. Raul Shelton y Ovich for Cia. Panamericana de Finanzas, S.A. and himself. The document provided for the sale of the property in Calzada de Guines for \$26,000.00.

On the basis of the entire record, the Commission finds that claimant became the owner of the aforesaid real property in Cuba.

On December 6, 1961 the Cuban Government published its Law 989 (Official Gazette, XXIII, No. 237, p. 23705) which confiscated all assets, personal property and real estate, rights, shares, stocks, bonds and securities of persons who had left the country.

The Commission finds, in the absence of evidence to the contrary, that the subject real property was taken by the Government of Cuba on December 6, 1961 pursuant to the provisions of Law 989.

Based on the entire record the Commission finds that the land, including improvements, had a value of \$26,000.00 and the Commission concludes that claimant suffered a loss in that amount within the meaning of Title V of the Act.

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), and in the instant case it is so ordered.

Accordingly, the following Certification of Loss will be entered and in all other respects the Proposed Decision is affirmed.

CERTIFICATION OF LOSS

The Commission certifies that HERMAN BRILL 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 Twenty-six Thousand Dollars (\$26,000.00) with interest at 6% per annum from December 6, 1961 to the date of settlement.

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

FEB 5 1969

Leonard v. B. Sutton

Leonard v. B. Sutton, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

Sidney Freidberg

Sidney Freidberg, 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 Amended 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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Claim No. CU -1772

Decision No. CU 1821

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 \$26,000.00, was presented by HERMAN BRILL and is based upon the asserted loss of improved real property located in Calzada de Guines on the Carretera Central, No. 64, Havana, Cuba. Claimant states that he has been a national of the United States since his birth but has not submitted evidence to establish his nationality.

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

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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).)

In support of this claim, claimant has submitted a photostatic copy of Deed No. 189 of Contract of Buying and Selling, with an English language translation. This document reflects that HERMAN BRILL purchased the subject matter herein claimed for the sum of twenty-six thousand (26,000) pesos.

On July 31, 1967 and August 29, 1967, claimant was advised as to the type of evidence proper for submission to establish this claim under the Act. Specifically, claimant was advised that it would be necessary for him to submit evidence to establish that he is a national of the United States. Thereafter, by letter of September 7, 1967, the Commission made additional suggestions to claimant, concerning the submission of supporting evidence in this matter. However, evidence in response to this correspondence has not been received to date.

On September 26, 1967, claimant was invited to submit any evidence available to him within 45 days from that date, and he was informed that, absent such evidence, it might become necessary to determine the claim on the basis of the existing record. Evidence has not been submitted which establishes that claimant has been a national of the United States at all times pertinent to this claim.

The Commission finds that claimant has not met the burden of proof, in that he has failed to establish ownership by a national or nationals of the United States of rights and interests in property which was nationalized, expropriated or otherwise taken by the Government of Cuba. Accordingly, this claim is 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

8 MAY 1968

Leonard v. B. Sutton

Leonard v. B. Sutton, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

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