

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

IN THE MATTER OF THE CLAIM OF

DAVID H. BRANDON
and
LOUISE MARIE BRANDON

Claim No. CU - 1935

Decision No. CU - 1641

Under the International Claims Settlement
Act of 1949, as amended

Counsel for claimants:

Spaulding, Reiter & Rose
By Robert H. Reiter, Esq.

Appeal and objections from a Proposed Decision entered on April 10, 1968;
oral hearing requested.

Oral hearing held on October 13, 1971.

FINAL DECISION

Under date of April 10, 1968, the Commission issued its Proposed Decision denying this claim, filed by DAVID H. BRANDON, for lack of proof. The original claimant filed objections to the Proposed Decision and requested an oral hearing which was held on October 13, 1971. Prior to the hearing certain supporting evidence was submitted.

At that hearing counsel for claimants presented oral argument, and introduced photographs of the real property in question and evidence concerning the United States nationality of DAVID H. BRANDON and his spouse, LOUISE MARIE BRANDON. Antonio Godinez testified concerning one of the items of real property. Since it now appears that the original claimant and his wife owned equal interests in the properties in question pursuant to the community property laws of Cuba, the spouse has been added as party claimant.

Upon consideration of the entire record, including the evidence submitted after issuance of the Proposed Decision and the argument and evidence introduced at the oral hearing, the Commission amends the decision in this matter as follows:

The Commission now finds that claimants, nationals of the United States since birth, jointly owned stock interests in the following Cuban corporations:

39,996 shares of common stock in Minimax Super-Mercados, S.A. (Minimax);

1,957 shares of common stock and 405 shares of preferred stock in Colon Independent Trading Corporation (Colon);

741 shares of common stock and 18,998 shares of preferred stock in Distribuidora de Fibra de Vidrio, S.A. (Fibra); and

67,968 shares of common stock and 312 shares of preferred stock in Cuban Independent Trading Corporation (Cuban).

In our decisions entitled Claim of Libby Holman Reynolds (Claim No. CU-1384); Claim of Executors of the Estate of Montgomery Clift, Deceased, Claim No. CU-1385); Claim of Helen Brandon, et al. (Claim No. CU-2175); and Claim of Benjamin Kovner (Claim No. CU-1015), which we incorporate herein by reference, we held that Minimax, Colon, Fibra and Cuban were intervened or otherwise taken by the Government of Cuba on September 1, 1960; and that this type of claim is allowable to an American national under the facts and circumstances set forth therein. We need not again detail here the reasons or the methods used in determining the value of Minimax stock as \$1.0023 per share; the values of Colon common stock and preferred stock as \$4.0418 and \$118.00 per share, respectively; the values of Fibra common stock and preferred stock as \$5.4913 and \$1.00 per share, respectively; and the values of Cuban common stock and preferred stock as \$0.600476 and \$100.00 per share, respectively.

On the basis of the evidence of record, the Commission finds that claimants come within the terms of the Reynolds, Clift, Brandon, and Kovner decisions; and that their losses aggregated \$190,867.99 for the above-described stock interests within the meaning of Title V of the Act.

Claimants' aggregate losses on September 1, 1960 are summarized as follows:

| <u>Item of Property</u> | <u>Amount</u> |
|-------------------------|---------------------|
| Minimax stock | \$ 40,087.99 |
| Colon common stock | 7,909.80 |
| Colon preferred stock | 47,790.00 |
| Fibra common stock | 4,069.05 |
| Fibra preferred stock | 18,998.00 |
| Cuban common stock | 40,813.15 |
| Cuban preferred stock | <u>31,200.00</u> |
| Total | <u>\$190,867.99</u> |

The Commission has decided that in certifications of loss 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.

The following Certifications of Loss will be entered and in all other respects the Proposed Decision, as amended herein, is affirmed.

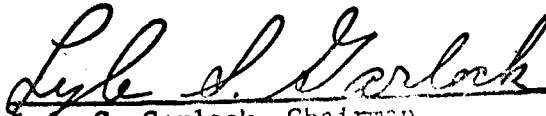
CERTIFICATIONS OF LOSS

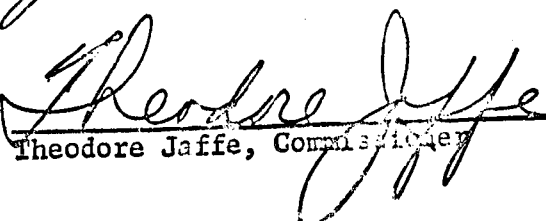
The Commission certifies that DAVID H. BRANDON suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Ninety-Five Thousand Four Hundred Thirty-Four Dollars (\$95,434.00) with interest thereon at 6% per annum from September 1, 1960 to the date of settlement; and

The Commission certifies that LOUISE MARIE BRANDON 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 Ninety-Five Thousand Four Hundred Thirty-Three Dollars and Ninety-Nine Cents (\$95,433.99) with interest thereon at 6% per annum from September 1, 1960 to the date of settlement.

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

OCT 20 1971


Lyle S. Garlock, Chairman


Theodore Jaffe, 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 or 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.

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

IN THE MATTER OF THE CLAIM OF

D. H. BRANDON

Claim No. CU-1935

Decision No. CU **1641**

Under the International Claims Settlement
Act of 1949, as amended

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 \$1,176,495.00, was presented by D. H. BRANDON, and is based upon the asserted loss of a house; furnishings and clothing; other items of personal property; and stock interests in Cuban corporations. Claimant stated that he has been a national of the United States since his 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)]⁷, 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.

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).)

Other than his own statements as set forth in the claim filed on April 24, 1967, and an inventory of home furnishings submitted to the United States Embassy in Havana, Cuba, in 1960, sufficient evidence was not submitted to enable the Commission to reach a favorable determination in this claim. Accordingly, by Commission letter of August 10, 1967, claimant was advised as to the type of probative evidence proper for submission to establish this claim under the Act. No evidence was received in response to the Commission's suggestions.

Subsequently, by Commission letter of September 14, 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. No evidence has since been submitted; neither has claimant corresponded with the Commission.

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. Accordingly, this claim 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

APR 10 1968

Leonard v. B. Sutton

Leonard v. B. Sutton, Chairman

Theodore Jaffe

Theodore Jaffe, 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).)