

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

IN THE MATTER OF THE CLAIM OF

JOSEPH S. ELMALEH

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU - 1978

Decision No. CU - 4014

Counsel for claimant:

Lester Lichter, Esq.

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, for \$20,436.25 was presented by JOSEPH S. ELMALEH based upon his interest in 4 bonds of a Cuban corporation. Claimant has been a national of the United States since his naturalization on November 29, 1955.

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 that he was the owner of four 5-1/4% bonds, of Fondo de Inversiones, FHA three due June 30, 1965, in the aggregate face amount of \$15,000, and one in the amount of \$1,000 apparently due December 31, 1969, which he purchased on April 28, 1960.

Claimant submitted the original bonds, three in the face amount of \$5,000 each, and one in the face amount of \$1,000, and the Commission finds that claimant has been the owner of these bonds since April 28, 1960.

Evidence available to the Commission shows that these bonds had been issued by a Cuban government agency, equivalent to our Federal Housing Administration [Lanzas, A Statement of the Law of Cuba in Matters Affecting Business 322-323 (2^d ed. 1958).] (See Claim of Occidental Life Insurance Company of North America, Claim No. CU-2353).

The Commission further finds that interest on these bonds was payable on June 30 and December 31 of each year and was last paid for the period ending June 30, 1960.

The Commission has held that the failure of the Government of Cuba to make an obligated payment, even without express repudiation of the bonds, occurring 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 gave rise to a claim for the

amount of the unpaid indebtedness as of that date (See Claim of Clemens R. Maise, Claim No. CU-3191, 1967 FGSC Ann. Rep. 68; and Claim of Westchester Fire Insurance Company, Claim No. CU-1703).

Accordingly the Commission finds that the default by this Cuban Government agency on December 31, 1960 gave rise to a claim within the meaning of Title V of the Act.

Accordingly, the Commission finds that on this date Cuba owed claimant \$1,026.25 representing \$1,000 in principal and interest in the amount of \$26.25 on the \$1,000 bond, and \$15,393.75 representing \$15,000 in principal and interest in the amount of \$1,026.25 on the three \$5,000 bonds. The Commission therefore finds the aggregate loss sustained by claimant with respect to the foregoing bonds is \$16,420.

The Commission has decided that in certification 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 claim, it is so ordered.

CERTIFICATION OF LOSS

The Commission certifies that JOSEPH S. ELMALEH 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 Sixteen Thousand Four Hundred Twenty Dollars (\$16,420.00) with interest at 6% per annum from December 31, 1960 to the date of settlement.

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

OCT 8 1969

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].)