

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

IN THE MATTER OF THE CLAIM OF

GERALDINE ISABELLA SHAMMA,
a/k/a GERALDINE I. SUAREZ

Claim No. CU-2593

Decision No. CU 3845

Under the International Claims Settlement
Act of 1949, as amended

Counsel for claimant:

Harold C. Apisdorf, Esq.

PROPOSED DECISION - *Final Decision filed after P.D.*

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, in the amount of \$492,306.62, was presented by GERALDINE ISABELLA SHAMMA, a/k/a GERALDINE I. SUAREZ, based upon the asserted ownership and loss of certain real and personal property in Cuba, and upon personal injuries. 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.

Real and Personal Property

Claimant asserts a loss of certain improved real property at Miramar and at Marianao, Havana, Cuba, in the aggregate amount of \$138,500.00; as well as furniture, furnishings and various household effects maintained at the Miramar residence, in the amount of \$129,141.00; automobiles, luggage and sundry personalty in the amount of \$29,700.00; various items of jewelry in the amount of \$98,850.00; fur coats and other items of clothing in the amount of \$35,800.00; and a two-thirds interest in certain Cuban bonds in the amount of \$10,315.62. The aggregate amount claimed for this portion of the claim is \$442,306.62.

Claimant also states that she "was sentenced to Guanajay Prison in Cuba after being convicted of counter-revolutionary activities (for) acting as a liaison for x x x [a United States Government agency] situated in Cuba and (for) counter-revolutionary forces." The assertion that claimant was convicted of counter-revolutionary activities in violation of the laws of Cuba is corroborated by a substantial amount of evidence in the record, such as claimant's affidavit of April 27, 1967, a copy of an article written by claimant and published in the Saturday Evening Post issue of May 18, 1963, a number of recent newspaper articles, and a certified translation of the court decree, dated at Havana, Cuba, December 16, 1960, pursuant to which claimant was sentenced for allegedly violating the laws of Cuba.

The judgment of the court recites that claimant and a number of other persons, who appear to be Cuban nationals, were found guilty of counter-revolutionary activities for attempting to "overthrow the Powers of the State through violent means." Following trials, various sentences were imposed upon the several defendants, except for three who were acquitted; claimant's sentence was ten years in prison, and "confiscation of all . . . properties."

It is undisputed that claimant's properties in Cuba were confiscated by the Government of Cuba on December 16, 1960 as a result of her conviction for violating the criminal laws of Cuba. The only issue presented in this respect is whether the confiscation is within the purview of Title V of the Act.

It is universally recognized and needs no citations to support the proposition that a State has inherent authority to punish persons convicted of violating its criminal laws by fines, imprisonment and confiscation of their property, or by any one or more of said penalties. The Commission consistently has adhered to this principle in its determinations under the various titles of the International Claims Settlement Act of 1949, as amended. Thus, the Commission has held that it is a sine qua non for a claimant to receive favorable action that a violation of international law must be established in a claim for the nationalization or other taking of property. (FCSC Dec. & Ann. 394, 399, 548 (1968).) And, generally speaking, punishment for the internal violation of a country's laws is not such a violation. The last citation (id. at 548) involves facts that are similar to those in the claim under consideration. In that case, claimant was convicted of violating the laws of Poland by attempting to smuggle, by means of his yacht, 60,000 zlotys out of Poland. He was sentenced to imprisonment and fine, and his yacht and the 60,000 zlotys were confiscated by Poland. The Commission denied the claim, stating that there had been neither a lack of due process nor unusual or excessive punishment; that Poland had the sovereign right to impose penalties for the violation of its laws, and that in doing so under the circumstances in this case, it incurred no liability under international law and was not required to compensate claimant for its actions. (For the full text of that decision, see Claim of Walter Peter Milewski, Claim No. PO-5890, Dec. No. PO-1921, 19 FCSC Semiann. Rep. 42 (July-Dec. 1963).)

There is nothing in this record that establishes or even suggests that claimant was denied due process of law at her trial in Cuba or that there was a denial of justice, as that term is understood under international law, such as an unfair trial. Moreover, it does not appear that the sentence of confiscation of claimant's properties was unusual or excessive punishment. Copies of communications from the United States Department of State to claimant's counsel indicate that claimant was accorded the rights at her trial to which she was entitled under

international law. A communication, dated December 5, 1960, informed counsel that a prominent Cuban attorney who "had a great deal of experience in handling counter-revolutionary cases" had been engaged to represent claimant. It appears from another communication that a representative from the United States Embassy was not present at claimant's trial because "she did not want anyone there."

Upon consideration of the entire record, the Commission finds that the Government of Cuba violated no rule of international law by confiscating claimant's properties, and it concludes that the portion of the claim for the loss of the real and personal property confiscated pursuant to the Cuban court judgment of December 16, 1960 is not within the purview of Title V of the Act. Accordingly, this portion of the claim is denied.

The facts involving the loss of claimant's two-thirds interest in certain Cuban bonds warrant further discussion. The record shows that bonds in the face amount of \$23,000.00 of the issue known as 6% mortgage bonds of The Centro Asturiano de la Habana, Series A, had been on deposit with the First National City Bank of New York, Havana Branch, since 1947 in favor of claimant's late husband, Carmen V. Suarez, who died on April 19, 1950. In accordance with the duly probated will of Carmen V. Suarez, claimant was bequeathed his entire estate, and by assignment, dated December 2, 1952, she transferred a one-third interest in the bonds to her attorney, Harold C. Apisdorf, Esq. For the record it can be noted that his claim (CU-0626), based upon said one-third interest, inter alia, will be decided on its own merits. Accordingly, the Commission finds that claimant owned a two-thirds interest in 23 bonds of the said issue, each bond in the amount of \$1,000.00.

On September 17, 1960, the Cuban Government published in its Official Gazette Resolution 2 pursuant to Law 851, which listed as nationalized on that date the First National City Bank of New York. The Commission finds that upon the nationalization of the assets of the First National City Bank of New York, Havana Branch, the bonds in which claimant owned a two-thirds interest, on deposit with that bank, were taken by the Government of Cuba.

This gave rise to a claim against the Government of Cuba for the value of the bonds. The Commission holds, however, that the confiscation order of December 16, 1960 against the claimant also effected a confiscation of her claim against Cuba, a chose in action constituting personal property, that had arisen on September 17, 1960. For the reasons stated above with respect to claimant's other personal property and her real property, the portion of the claim for these bonds is also denied.

Personal Injuries

Claimant has asserted a claim in the amount of \$50,000.00 for personal injuries allegedly sustained while imprisoned in Cuba. She states that prior to her trial in Cuba she was subjected to intensive questioning for three weeks which caused her to experience a heart attack; that women prisoners were beaten with gun butts and during one such occasion she was struck by a gun butt at the side of her head, causing severe injury to her left ear, which will require surgery to repair the damage and restore her hearing; and that she subsequently suffered a second heart attack while imprisoned in Cuba.

The record includes a statement from Dr. Jose C. Gros, dated January 19, 1968, in which he states that he had examined claimant in a Cuban prison in December 1960, that claimant complained of an earache "after being hit on the left ear by a soldier during a prison riot." The doctor stated that he had examined claimant again in January 1961 and found "bilateral ear infection with pus in both external ear canals, and the tympanic membranes were perforated." The doctor concluded that claimant had suffered a hearing "loss of 75-80% in the left ear, and 38-43% in the right ear."

Section 503(b) of the Act provides as follows:

The Commission shall receive and determine in accordance with applicable substantive law, including international law, the amount and validity of claims of nationals of the United States against the Government of Cuba . . . arising since January 1, 1959 . . . for disability or death resulting from actions taken by or under the authority of the Government of Cuba . . .

The Commission has held that in a claim under Section 503(b) of the Act, it must be established, inter alia, that the claimant suffered a

disability and that the disability was the proximate result of actions of the Government of Cuba in violation of international law. (See Claim of Julio Lopez Lopez, Claim No. CU-3259.)

The evidence of record does not support claimant's assertions that her injuries and present disability resulted from violations of international law by the Government of Cuba within the purview of Section 503(b) of the Act. A copy of a letter to counsel from the Department of State, dated March 16, 1961, states in part: "I can only report that she was recently visited and that she was found to be well treated and in good health." In another letter to counsel from the Department of State, dated July 24, 1961, it was stated in part: "We have now received a report from the American Embassy at Bern informing us that a representative of the Swiss Embassy in Habana visited Mrs. Geraldine Shamma De Carrera at the Guanajay prison on June 15 and that Mrs. Shamma appeared to be in better health. She also confirmed that she was well treated, but complained that the prison food was insufficient."

Another letter to counsel from the Department of State, dated June 1, 1962, stated in part: "Mrs. Shamma declared (at an interview with a Swiss representative on May 2, 1962) she was not subjected to cruelty since she was an American. . . Mrs. Shamma had no complaint against the prison authorities. . . During her 18 months imprisonment, Mrs. Shamma has never been subjected to propaganda or indoctrination in favor of the present regime." Although claimant did not appear to be as well on the occasion of the visit of May 2, 1962 nor subsequently, according to other Department of State correspondence, it does not appear from such correspondence or any other evidence of record that her deterioration in health was the result of any Cuban action in violation of international law. The record shows that claimant was hospitalized while in prison and given medical attention. The correspondence of record indicates claimant had recovered from her illness, was released from the prison hospital and returned to her cell in August 1962. Swiss representatives spoke with claimant personally after her release from the hospital and "were assured of her well-being."

Additionally, there is nothing to support claimant's contentions that she sustained a disability from Cuban action in violation of international law from newspaper articles or the article claimant wrote for the Saturday Evening Post. The newspaper articles report that claimant was released from prison in 1963 and that she was working to free other prisoners held by Cuban authorities, but there was not a word about any injuries or disability suffered by claimant. Claimant's article, published in the Saturday Evening Post, discusses a riot at the prison. Claimant wrote: "We started to riot. We broke up furniture and used table legs for clubs. I was right in the thick of it, shouting encouragement to the other women. We chased the guards out of our dormitory and barricaded the door with cots and mattresses. Then we kept them at bay by turning a tremendous fire hose on them. We were only 45 women, and they were several hundred milicianos, but we fought like demons. Finally, they turned off the water, and overwhelmed us. They dragged us out--wet, beaten and still screaming-- and threw us on a bus. One woman had a broken arm. Another had her head split open. We were all cold and shivering."

Although claimant described her experiences immediately after arrest and after her trial, she made no mention in that article of being beaten with a gun butt or suffering a heart attack from severe intensive questioning. Describing her experiences while under arrest and during questioning by "G-2," claimant stated in that article: "I spent 16 days with G-2. I didn't sleep well, and I didn't eat very much, but they never laid a hand on me except to search me." Claimant described other women as being treated inhumanely, but not herself. At one point claimant did state that she sustained pain from "angina pectoris" but she stated she had refused transfer to the prison hospital.

Upon careful consideration of the portion of the claim for personal injuries, the Commission finds the record insufficient to warrant favorable action. Claimant was arrested and convicted for violating the criminal laws of Cuba. Claimant refused to have an American representative from

the United States Embassy present at her trial. The record fails to corroborate claimant's present version as to how her disabilities arose. Although she may have suffered a heart attack and may have been disabled, it does not appear that this was the proximate result of Cuban Government actions in violation of international law.

The Commission finds that claimant has failed to sustain the burden of proof with respect to the portion of her claim for a disability under Section 503(b) of the Act. Accordingly, this portion of the claim is also denied.

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

SEP 3 1969

Leonard v. B. Sutton

Leonard v. B. Sutton, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

Sidney Freidberg

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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IN THE MATTER OF THE CLAIM OF

GERALDINE ISABELLA SHAMMA
a/k/a GERALDINE I. SHAMMA

Claim No. CU-2593

Decision No. CU-3845

Under the International Claims Settlement
Act of 1949, as amended

Counsel for claimant:

Harold C. Apisdorf, Esq.

Appeal and objections from a Proposed Decision entered on September 3, 1969.
No oral hearing requested.

Hearing on the record held on September 8, 1971.

FINAL DECISION

Under date of September 3, 1969, the Commission issued its Proposed Decision denying this claim on the ground that the evidence failed to establish that the confiscation of claimant's properties and her imprisonment by the Government of Cuba constituted violations of international law. Moreover, the record failed to establish that claimant's asserted personal injuries resulted from action by the Cuban Government in violation of international law.

Claimant objected to the Proposed Decision and submitted statements from former Cuban attorneys in support of her objections. It is contended that the Cuban Tribunal which convicted and sentenced claimant was an illegal body; that its members were ignorant of Cuban law and procedure; and that its sentence was not in accord with Cuban law. Counsel for claimant therefore urges that claimant's constitutional rights were violated by the Commission's action in denying the claim.

Upon consideration of claimant's objections and the new evidence in light of the entire record, the Commission finds no valid basis for altering the decision previously entered. The Commission reaffirms its findings that the

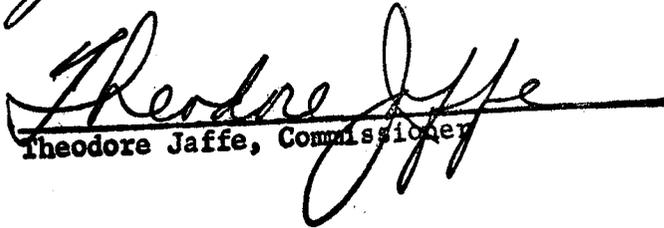
record fails to establish that claimant's property losses and asserted personal injuries resulted from action by the Cuban Government in violation of international law. Moreover, there are no constitutional rights involved in any claim administered by the Commission. (See FCSC Dec. & Ann. 9 (1968), citing inter alia, de Vegvar v. Gilliland, 228 F. 2d 640 (D.C. Cir. 1955), cert. denied, 350 U. S. 994 (1956).)

Accordingly, the Proposed Decision of September 3, 1969 is affirmed in all respects.

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

SEP 8 1971


Lyle S. Garlock, Chairman


Theodore Jaffe, Commissioner