

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

IN THE MATTER OF THE CLAIM OF

ABRAHAM HUPPERT
GUTA HUPPERT

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -2782

Decision No. CU - 5877

Counsel for claimant

Rufus King, Esq.

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 ABRAHAM HUPPERT and GUTA HUPPERT (the former Eugenia Ejenbaum) for \$957,489.67 based upon the asserted ownership and loss of business interests, personalty and an equity in a plot of land. Claimant ABRAHAM HUPPERT has been a national of the United States since birth and GUTA HUPPERT has been a national of the United States since naturalization on August 18, 1967.

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.

Claimants describe their losses as follows:

(1) "Fabricantes de Colchones Americanos, S.A."	\$182,762.00
(2) "Colchoneria La Americana"	40,367.58
(3) "Productos Femex" de Eugenia Ejenbaum	33,038.75
(4) Bank Accounts	674.51
(5) Equity in land	3,446.83
(6) Household furnishings and personal effects	15,200.00
(7) Inheritance of Guta Huppert	682,000.00

Inheritance

The record includes a description of the properties which had been owned by User Ejenbaum, father of GUTA HUPPERT, a non-United States national, and which were taken from him by the Government of Cuba. Upon the death of User Ejenbaum, and his widow thereafter, GUTA HUPPERT and her brother are said to be the sold inheritors of the properties or such claim against the Government of Cuba. Inasmuch as the subject property was not owned by a national of the United States on the date it was taken by the Government of Cuba, the claim arising therefrom is not within the scope of Title V of the Act; and accordingly this part of the claim is denied.

Jointly Owned Properties

Based upon the entire record, including affidavits of claimants' former accountant, his legal adviser, excerpts from official Cuban records, reports from abroad, and affidavits from persons familiar with claimants' holdings, the Commission finds that, pursuant to the Community Property Law of Cuba, ABRAHAM HUPPERT and GUTA HUPPERT, who were married on June 15, 1947, acquired and owned equal interests in certain business enterprises, bank accounts, an equity in land, and household effects, as further discussed below. GUTA HUPPERT was not a national of the United States on any of the dates of loss set out below. Accordingly, her interests are not certifiable under Title V, and the claim based on her interest in the remaining items of claim is denied.

"Fabricantes de Colchones Americanos, S.A."

The record discloses that when the claimants were married in 1947, User Ejenbaum owned a small mattress factory in Havana, and ABRAHAM HUPPERT became

a partner in this enterprise. By 1949 a larger location was needed and Mr. Ejenbaum built on his property a larger factory building which was leased to Fabricantes de Colchones Americanos, S.A. (hereafter referred to as Fabricantes) of which ABRAHAM HUPPERT was the owner.

Fabricantes was listed as nationalized by the Government of Cuba in Presidential Resolution 3, published October 24, 1960 (pursuant to Law 851) and the Commission finds that it was taken by the Government of Cuba on that date, within the meaning of Title V of the Act.

The Act provides in Section 503(a) that in making determinations with respect to the validity and amount of claims and value of properties, rights, or interests taken, the Commission shall take into account the basis of valuation most appropriate to the property and equitable to the claimant, including but not limited to fair market value, book value, going concern value or cost of replacement.

The record includes, in support of the claimed values, a statement of net worth the accuracy of which has been attested to by Eugenio Sanson, now a United States citizen, who formerly, in Cuba, handled the accounting and legal matters pertaining to the business interests of the claimants. Claimant ABRAHAM HUPPERT has explained that this statement (and those for the other two ventures, to be discussed below) was prepared in July 1960, as of June, and points to the recitation of these net worth figures in his letter of July 22, 1960, to the United States Embassy.

The statement for Fabricantes reflects the following:

<u>Assets</u>		
Cash on hand and in Bank	\$ 2,500.00	
Accounts Receivable	70,000.00	
Payments advanced	1,500.00	
Inventory	68,500.00	
Investments and deposits	202.00	
Machinery and equipment	20,000.00	
Furniture and fixtures	4,060.00	
Rolling stock (trucks)	<u>25,000.00</u>	\$191,762.00
 <u>Liabilities</u>		
Accounts Payable	\$ 2,500.00	
Obligations payable	6,000.00	
Taxes accumulated	<u>500.00</u>	<u>9,000.00</u>
Net Worth		\$182,762.00

Based on the aforesaid record, the Commission finds that Fabricantes had a net worth of \$182,762 on the date of loss. Accordingly, the Commission concludes that claimant ABRAHAM HUPPERT suffered a loss in the amount of \$91,381.00 within the meaning of Title V of the Act, as the result of the taking of this property by Government of Cuba on October 24, 1960.

"Colchoneria La Americana"

In this connection claimant ABRAHAM HUPPERT explains that this store hereafter referred to as Colchoneria was founded in 1949 or 1950. Its operations were separated from the factory in order that the factory could sell its output to this outlet which would in turn resell to other retailers. This permitted a reduction in tax as sales of retailers were not taxed to the extent of gross sales of manufacturers.

The record includes a copy of Resolution No. 1 of the National Institute of Agrarian Reform, issued on October 28, 1960, (pursuant to Presidential Resolution No. 3,) intervening Colchoneria, and the Commission finds that Colchoneria was intervened by the Government of Cuba on that date, within the meaning of Title V the Act.

The record includes, similarly as in the preceding discussion of Fabricantes, a statement of net worth for June, 1960, which reflects the following:

<u>Assets</u>			
Cash on hand and in Bank	\$ 3,000.00		
Accounts Receivable	60,500.00		
Inventory	12,500.00		
Furniture and fixtures	<u>2,867.58</u>	\$78,867.58	
 <u>Liabilities</u>			
Accounts Payable	\$28,000.00		
Taxes accumulated	500.00		
Loans Payable	<u>10,000.00</u>	<u>38,500.00</u>	
Net Worth			\$40,367.58

Based on this record, the Commission finds that Colchoneria had a net worth of \$40,367.58 on the date of loss, and concludes that ABRAHAM HUPPERT suffered a loss in the amount of \$20,183.79 as the result of the intervention of this property on October 28, 1960.

"Productos Femex" de Eugenia Ejenbaum

Claimant ABRAHAM HUPPERT states as to this venture hereafter referred to as Femex, that in the 1950's the Government of Cuba, in order to encourage new industry, established certain tax and import duty concessions to new industries. Accordingly in 1955 claimants established this factory, in the name of Eugenia Ejenbaum. They purchased a small parcel of land in Marianao and erected a building at a cost of \$10,000, for both land and building.

When the claimants departed Cuba on October 30, 1960, they left this venture in the operation of User Ejenbaum, but ABRAHAM HUPPERT avers that nevertheless it was expropriated in January, 1961. Thereafter, this enterprise was listed as nationalized in Acuerdo 7, of September 13, 1961. Based on this record, the Commission finds that it was taken on January 15, 1961, within the meaning of Title V of the Act.

The record includes, again with the same attestations as in the two preceding sections, a statement of net worth for June, 1960, which reflects the following:

<u>Assets</u>		
Cash on hand and in Bank	\$ 300.00	
Accounts receivable	2,325.00	
Loans receivable	2,513.75	
Advance payment on letter of credit	3,050.00	
Merchandise in transit (purchased)	5,210.00	
Inventory	6,365.00	
Real estate owned	10,000.00	
Machinery	<u>8,000.00</u>	\$37,763.75
 <u>Liabilities</u>		
Accounts Payable	<u>\$ 4,725.00</u>	<u>4,725.00</u>
Net Worth		\$33,038.75

Accordingly, the Commission finds that Femex had a net worth of \$33,038.75 on the date of loss and concludes that Claimant AERAHAM HUPPERT suffered a loss in the amount of \$16,519.38 within the meaning of Title V of the Act, as the result of the taking of this property by the Government of Cuba on January 15, 1961.

Bank Accounts

The record includes copies of pass books showing balances as follows:

Banco Nunez	6.58 pesos
Banco Pujol	<u>667.93 pesos</u>
	674.51 pesos

On December 6, 1961, the Cuban Government published its Law 989 which effectively confiscated all assets, personal property and real estate, rights, shares, stocks, bonds and securities of persons who had left the country.

In the absence of evidence to the contrary, the Commission finds that claimants' above-described bank accounts, totalling 674.51 pesos (which were on a par with United States dollars) were taken by the Government of Cuba on December 6, 1961.

(See Claim of Floyd W. Auld, Claim No. CU-0020, 25 FCSC Semiann. Rep. 55 [July-Dec. 1966]) and the Commission concludes that claimant ABRAHAM HUPPERT thereby suffered a loss in the amount of \$337.26 within the scope of Title V of the Act.

Land

The record includes copy of the contract whereby claimants agreed to purchase a lot in the Santa Amelia Subdivision for \$7,981.10, to be paid for \$79.81 monthly; and which further provided that the purchasers could take possession thereof after payment of \$15.00 for the services of the surveyor.

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, supra (see Claim of Wallace Tabor and Sherine Tabor, Claim No. CU-0109, 25 FCSC Semiann. Rep. 53 [July-Dec. 1966]).

Additionally, claimant has submitted receipts for the \$15.00 and another showing that the balance due on March 5, 1959 was \$6,145.47. Thus claimant had paid \$1,835.63 toward the purchase price, and the \$15.00 surveyor fee.

Claimant having asserted that the equity was \$3,446.83 explained that he had made arrangements with his bookkeeper at the mattress factory to make 20 additional payments and presumes that this was done, but has no receipts to verify this.

On the basis of this record, the Commission finds that claimant ABRAHAM HUPPERT suffered a loss in the amount of \$925.31 within the meaning of Title V of the Act, as a result of the taking of the realty on December 6, 1961.

Household Goods, Personal Effects and Automobile

Claimant has submitted a list of personal property left in Cuba, including various household furnishings and appliances, personal effects and a 1957

Chevrolet Bel Air Hardtop. The record also includes affidavits concerning ownership and value of such personalty.

The Commission finds, in the absence of evidence to the contrary, that this personal property was also taken by the Government of Cuba on December 6, 1961, pursuant to Law 989, supra.

The record does not reflect the date of acquisition of the items involved. However, considering the claimants' marriage in 1947, the Commission finds that the personalty had an average age of seven years, except that the clothing and related items had an age of two years, and that it should be depreciated as follows:

Furniture and appliances	5% per year
Furnishings (lamps, etc.)	10% per year
Clothing and unidentified miscellaneous items	20% per year

Accordingly, the Commission finds that the items of personal property had the following values on December 6, 1961, the date of loss:

Furniture and appliances depreciated at 5% per year for seven years 65% of \$11,300	\$7,345.00
Furnishings depreciated at 10% per year for seven years 30% of \$800	240.00
Clothing and miscellaneous unidentified items depreciated at 20% for two years, 60% of \$2,000	1,200.00

Further, the Commission finds that the value of the automobile on the date of loss, according to the National Automobile Dealers Association, had a value of \$1,015.

Accordingly, the Commission finds that claimant ABRAHAM HUPPERT'S one-half interest in the items of personal property had a value of \$4,900 on the date of loss.

Recapitulation

Claimant ABRAHAM HUPPERT'S losses may be summarized as follows:

<u>Item</u>	<u>Date of Loss</u>	<u>Value</u>
Fabricantes	October 24, 1960	\$ 91,381.00
Colchoneria	October 28, 1960	20,183.79
Femex	January 15, 1961	16,519.38
Bank Accounts	December 6, 1961	337.26
and Equity in	December 6, 1961	925.31
Personal property	December 6, 1961	<u>4,900.00</u>

\$134,246.74

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 as follows:

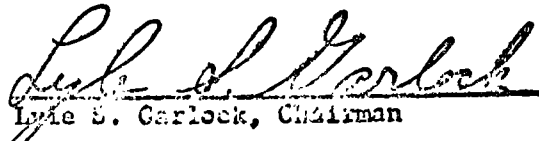
<u>FROM</u>	<u>ON</u>
October 24, 1960	\$ 91,381.00
October 28, 1960	20,183.79
January 15, 1961	16,519.38
December 6, 1961	<u>6,162.57</u>
	\$134,246.74

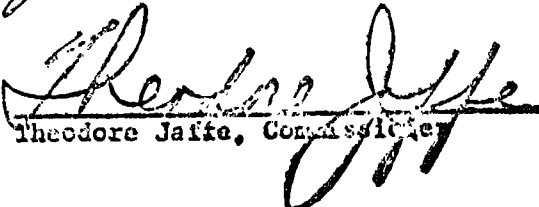
CERTIFICATION OF LOSS

The Commission certifies that ABRAHAM HUPPERT 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 One Hundred Thirty-Four Thousand Two Hundred Forty-Six Dollars and Seventy-Four Cents (\$134,246.74) with interest at 6% per annum from the aforesaid dates of loss to the date of settlement.

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

OCT 7 1970


Lydie S. Carlock, 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.

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].)