

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

IN THE MATTER OF THE CLAIM OF

GERTRUDE D. MAGOVSKY

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -2799

Decision No. CU 3934

Counsel for Claimant:

Willard B. Vogel, Esq.

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 \$41,500.00, was presented by GERTRUDE D. MAGOVSKY, also known as GERTRUDE LIMA DUARTE, and is based upon the asserted ownership and loss of a drugstore business and equipment located in Havana, Cuba. Claimant has been a national of the United States since her naturalization on May 9, 1956.

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.

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).)

Claimant asserted that she and her former husband, Godfrey S. Duarte, a national of the United States since May 9, 1956, and not a claimant herein, purchased a drugstore business and equipment in the Nuevo Vedado Section of Havana in March 1960; and that this property was taken by the Government of Cuba in July 1962 when she left Cuba.

By Commission letter of June 14, 1967, claimant was advised as to the type of evidence proper for submission to establish this claim under the provisions of the Act. Thereafter, the Commission made additional suggestions to claimant, through counsel, in letters of July 21, 1967, August 25, 1967, May 8, 1968 and September 18, 1968, with respect to the submission of supporting evidence pertaining to the ownership and loss of the property, subject of the claim. Extensions of time were given by the Commission to the claimant to enable her to submit supporting evidence.

By Commission letter of November 20, 1968, certain reports were forwarded to claimant, through counsel, with the suggestion that English translations be forwarded to the Commission along with any additional

information or evidence pertaining to ownership, loss and value of the property, subject of the claim. On September 18, 1969, the Commission received a letter from claimant, through counsel, with a copy of a diploma issued to claimant by the School of Pharmacy, University of Havana, and a translation of a report, written in Spanish, from Cuban sources. However, the latter and material submitted by claimant fail to establish the ownership, loss and value of the property, subject of the claim.

The Commission appreciates the difficulties encountered by some claimants in establishing their claims against the Government of Cuba. However, the Commission must be guided by the evidence of record pertaining to the ownership, loss and value of the property included in each claim. Thus, the Commission is constrained to find that claimant herein has not met the burden of proof in that she has failed to establish ownership of rights and interests in property which was nationalized, expropriated or otherwise taken by the Government of Cuba. Accordingly, the Commission is also constrained to deny this claim and it 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

SEP 24 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).)