

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

IN THE MATTER OF THE CLAIM OF

JAMES A. ALLEN

Claim No.CU -2869

Decision No.CU - 1875

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 \$1,289,000.00, was presented by JAMES A. ALLEN, and is based upon the asserted loss of stock interests in four Cuban corporations. Claimant 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)], 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).)

In support of this claim, filed on May 1, 1967, claimant submitted several third party affidavits attesting to his ownership of stock interests in the four Cuban corporations which are the subject matter of this claim, and his own statements with respect to the value of the assets of the companies which he asserts were lost as a result of intervention by the Government of Cuba.

Inasmuch as the evidence submitted in support of the claim was insufficient to establish a compensable claim, by Commission letter of August 25, 1967, suggestions were made to claimant regarding the type of additional evidence proper for submission. Specifically, it was suggested that claimant submit original stock certificates as proof of ownership of specific interests in the four companies; evidence to establish the dates of purchase of the certificates; evidence to establish the financial condition of the companies; and proof of a nationalization or other taking of corporate assets by the Government of Cuba.

In reply to the Commission's suggestions, by letter of September 9, 1967, claimant submitted only his own statement and that of Agustin Garcia Allen, who also asserted ownership and loss of interests in the same four Cuban corporations which are the subject matter of this claim.

Subsequently, by Commission letter of December 27, 1967, it was suggested that claimant submit additional evidence regarding the values of corporate assets, including affidavits executed by third persons with knowledge of the facts. In reply, and under date of January 31, 1968, claimant submitted his own statements and an affidavit from a third party which stated that to the best of the affiant's knowledge, information and belief, the evidence previously submitted by claimant in support of this claim is true and correct.

On March 14, 1968, the Commission advised claimant that sufficient probative evidence had not been submitted to establish this claim. Although it was suggested that further evidence be submitted to establish the financial condition of the four Cuban companies, no additional evidence has been received. Neither has claimant corresponded further with the Commission.

The Commission is aware of the difficulties which some claimants face in establishing their claims; this is not to say, however, that the Commission should make a favorable determination when such action is not supported by the evidence of record.

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 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

MAY 15 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).)

CU-2869