

FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
WASHINGTON, D.C. 20577

IN THE MATTER OF THE CLAIM OF

FELIX C. MARTINEZ

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-2973

Decision No. CU-0920

AMENDED PROPOSED DECISION

F.D. follows

This claim based in the asserted loss of stock interests in a Cuban corporation and certain personal property in Cuba was denied by the Commission for lack of proof by Proposed Decision issued on January 3, 1968.

Claimant has subsequently submitted additional evidence including affidavits of individuals who state that they have personal knowledge or pertinent facts in this matter; original stock certificates numbers 3 and 4 for 50 shares each of Compania Agro-Pecuaria, S.A. (Agro); sketch of the farms and structures of Agro and, claimant's explanation of the various items and areas on the sketch.

On the basis of the present record the Commission finds that claimant owned a 1/2 interest in the properties subject of the claim, further discussed below. Pursuant to the Community Property Law of Cuba his wife also owned a 1/2 interest in properties acquired during their marriage. However, since her United States nationality has not been established so much of this claim as is based on her interest cannot be considered.

Agro

The record includes 2 stock certificates of Agro issued to claimant in 1948 for 50 shares each. Based on the evidence of record including claimant's affidavit and the aforementioned affidavits of individuals relating to this enterprise, the Commission finds that claimant owned 100 shares of stock in Agro and that this represented 50% of the outstanding stock of the corporation.

Claimant states that he and his family left Cuba on October 3, 1960 and that Agro and his personal property were taken by the Government of Cuba in

October and November 1960. One of the affiants states that all of claimants' properties including the personal property were taken by the Government of Cuba between November 5, 1960 and November 10, 1960 when he was still in Cuba. Based on the evidence of record the Commission finds that Agro and claimant's personal property were taken on November 10, 1960 by the Government of Cuba.

Since the corporation was organized under the laws of Cuba, it does not qualify as a corporate "national of the United States" within the meaning of Section 502(1)(B) of the Act. In this type of situation, it has been held that an American stockholder is entitled to file a claim for the value of his ownership interest. (See Claim of Parke, Davis & Company, Claim No. CU-0180, 1967 FCSC Ann. Rep. 33.)

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 question, in all cases, will be to determine the basis of valuation which, under the particular circumstances, is "most appropriate to the property and equitable to the claimant". This phraseology does not differ from the international legal standard that would normally prevail in the evaluation of nationalized property. It is designed to strengthen that standard by giving specific bases of valuation that the Commission shall consider.

The record includes above mentioned sketch of the properties of Agro and an itemized list of the estimated values of the real and personal properties of Agro. Claimant states that the Agro properties consisted of 3 farms which according to the deed totaled 29.25 caballerias, but actually measured almost 35 caballerias. Included in this total, he states, are 12 caballerias of land dedicated to sugar cane, 11-1/4 caballerias of pasture land, and 6 caballerias of wooded area with an aggregate value of \$135,750.00. He estimates the overall value of Agro properties including livestock, trucks,

equipment, houses and other improved realty, orchards, and standing and cut sugar cane as \$330,380.00. Several affiants estimated the value of the Agro properties as between \$350,000 and \$380,000. One affiant states that he held 3 mortgages on the property in the amounts of \$23,000.00, \$15,000.00, and \$10,981.52.

Upon consideration of the entire record, the Commission finds that the value of Agro on the date of loss was \$330,380.00, that it was subject to mortgages in the aggregate amount of \$48,981.52, that therefore its net value was \$281,398.48, and that the value of claimant's 100 shares of stock was \$140,699.24. The Commission therefore concludes that claimant suffered a loss in the amount of \$70,349.62 for his one-half interest in the 100 shares of stock.

Household Furnishings and Other Personalty

Claimant states that he lost household furnishings and other personalty from his homes in Coronado and in Havana, consisting of furniture, utilities, books, clothing, two horses and riding equipment.

Based on the evidence of record, including the aforementioned affidavits, the Commission finds that claimant owned a one-half interest in this personalty, that, as stated above, it was taken by the Government of Cuba on November 10, 1960, and that the value of claimant's one-half interest therein was \$6,000.00.

In view of the foregoing the Commission finds that claimant suffered a loss in the total amount of \$76,349.62 on November 10, 1960 within the meaning of Title V of the Act.

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 case it is so ordered.


Accordingly, the following certification of loss will be entered and in all other respects the Proposed Decision is affirmed.

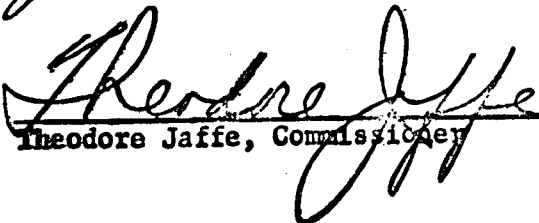
CERTIFICATION OF LOSS

The Commission certifies that FELIX C. MARTINEZ 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 Seventy-Six Thousand Three Hundred Forty-Nine Dollars and Sixty-Two Cents (\$76,349.62) with interest thereon at 6% per annum from November 10, 1960 to the date of settlement.

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

AUG 18 1971


Lyle S. Garlock, 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 Amended 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 (1970).)

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

IN THE MATTER OF THE CLAIM OF

FELIX C. MARTINEZ

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -2973

Decision No. CU-0920

Appeal and objections from an Amended Proposed Decision entered on August 18, 1971; no oral hearing requested.

Hearing on the record held on October 7, 1971.

FINAL DECISION

Under date of August 18, 1971, the Commission issued its Amended Proposed Decision certifying a loss in favor of claimant in the amount of \$76,349.62 plus interest representing \$70,349.62 for a stock interest in Compania Agro-Pecuaria, S.A. (Agro), a Cuban corporation, and \$6,000.00 for certain tangible personal property, all of which properties were taken by Cuba on November 10, 1960. Since it appeared that claimant was married at the time he acquired the properties in question, it was concluded that claimant's wife owned equal interests in the properties under the community property laws of Cuba. However, the portion of the claim based on her interests was denied because the record failed to establish that claimant's wife was a national of the United States at all pertinent times.

Claimant objected to the denial of said portion of his claim, and in support of his objections he filed copies of his marriage certificates evidencing his religious marriage as of December 21, 1950 and his civil marriage as of February 23, 1953.

Upon consideration of the new evidence in light of the entire record, the Commission now finds that claimant acquired his stock interest in Agro in 1948, prior to his marriage. Pursuant to the community property laws of

Cuba, property acquired before marriage is not subject to those laws. (See Claim of Robert L. Cheaney, et ux, Claim No. CU-0915.) Therefore, the Commission finds that claimant owned a 50% stock interest in Agro on November 10, 1960, the date of loss, and that his interest had a value of \$140,699.24.

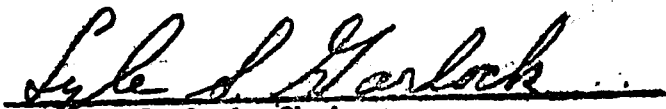
Accordingly, the Certification of Loss in the Amended Proposed Decision of August 18, 1971 is set aside and the following Certification of Loss will be entered, and in all other respects the Amended Proposed Decision is affirmed.


CERTIFICATION OF LOSS

The Commission certifies that FELIX C. MARTINEZ 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 Forty-six Thousand Six Hundred Ninety-nine Dollars and Twenty-four Cents (\$146,699.24) with interest thereon at 6% per annum from November 10, 1960 to the date of settlement.

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

OCT 7 1971


Lyle S. Garlock, Chairman


Theodore Jaffe, Commissioner

FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES

WASHINGTON, D.C. 20579

IN THE MATTER OF THE CLAIM OF

FELIX C. MARTINEZ

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-2973

Decision No. CU 920

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 \$177,190.00, was presented by FELIX C. MARTINEZ and is based upon the asserted loss of stock interests in Compania Agro-Pecuaris, S.A., and certain personal property located in Havana, Cuba. Claimant has been a national of the United States since his naturalization on September 16, 1943.

Under Title V of the International Claims Settlement Act of 1949 [76 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:

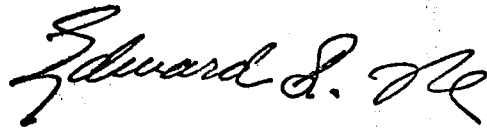
The claimant shall be the moving party and shall have the burden of proof on all issues involved in the determination of his claim. (FCSC Reg., 45 C.F.R. §531.6(d) (Supp. 1967).)

Claimant asserts the ownership of stock interests in Compania Agro-Pecuaría, S.A. and certain personal property. Claimant has submitted no documentary evidence in support of his claim other than photocopies of two stock certificates. By Commission letter of August 7, 1967, claimant was advised as to the type of evidence proper for submission to establish his claim under the Act. On October 30, 1967, claimant was invited to submit any evidence available to him within 45 days from that date, and he was informed that, absent such evidence, it might become necessary to determine the claim on the basis of the existing record. No evidence has since been submitted.

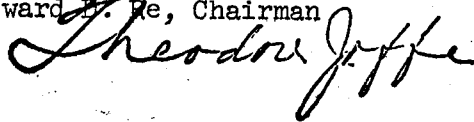
The Commission finds that claimant has not met the burden of proof in that he has failed to establish ownership of rights and interests in property which was nationalized, expropriated or otherwise taken by the Government of Cuba. Thus, the Commission is constrained to deny this claim and it is hereby 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

8 JAN 1968



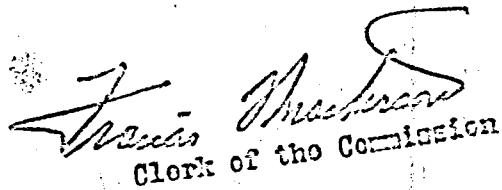
Edward D. Re, Chairman



Theodore Jaffe, Commissioner

CERTIFICATION

This is a true and correct copy of the decision
of the Commission which was entered as the final
decision on -----



Clerk of the Commission

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).)