

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

IN THE MATTER OF THE CLAIM OF

HARRY ARTHUR JOHNSON

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU - 3041

Decision No. CU - 4633

Counsel for claimant:

Manuel Zaiac, 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 HARRY ARTHUR JOHNSON for \$77,441.60 based upon the asserted loss of real and personal property in Cuba. The claimant, HARRY ARTHUR JOHNSON, has been a national of the United States since his naturalization on December 6, 1945.

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.

The claimant's losses on the Isle of Pines, Cuba, are asserted as follows:

- (1) farm at Reparto de la Hacienda San Antonio de los Indios, with improvements, equipment and cattle - \$20,000.00
- (2) land of 4,060 square meters with a garage and TV antenna at Reparto Sierra de Casas - \$ 3,200.00
- (3) mortgage of \$2,000.00, secured by real property on the Isle of Pines - \$ 2,000.00
- (4) one share of stock in the corporation Agricola Arcadia, S.A. - \$ 100.00
- (5) loan to Agricola Arcadia, S.A. - \$ 5,000.00
- (6) balance of checking account with Banco Financiero of Nueva Gerona - \$ 200.00
- (7) balance of savings account with The Chase National Bank of the City of New York, Havana branch office - \$ 297.91
- (8) a 1/3 interest in the Estate of the late Bertha Charlotte Johnson, consisting of real propeaty at Barrio Cuchilla Alta and at Reparto Sierra de Casas, motor vehicles, farm machinery, furniture, home furnishings, checking account and bond - \$46,643.69

The evidence of record establishes, and the Commission finds that the claimant, HARRY ARTHUR JOHNSON, owned on and prior to October 14, 1960, real property on the Isle of Pines, Cuba, as follows:

- (1) about 40 acres or about 16.240 hectares of land with improvements in Section 41 of Reparto San Antonio de los Indios;
- (2) land of 4,060 square meters in Reparto Sierra de Casas with improvements; and
- (3) a mortgage in the amount of \$2,000.00, secured by real property known as lot No. 1182 in Section 70 in Santa Barbara, Isle of Pines.

On October 14, 1960, the Government of Cuba published in its Official Gazette, Special Edition, its Urban Reform Law. Under this law the renting

of urban properties, and all other transactions or contracts involving transfer of the total or partial use of urban properties was outlawed (Article 2). The law covered residential, commercial, industrial and business office properties (Article 15). Moreover, Article 30 provided for the cancellation of mortgages.

Based on the foregoing and the evidence of record, the Commission finds that claimant's real property and the mortgage were taken by the Government of Cuba pursuant to the provisions of the Urban Reform Law; and, in the absence of evidence to the contrary, that the taking occurred on October 14, 1960, the date on which the law was published in the Cuban Gazette. (See Claim of Henry Lewis Slade, Claim No. CU-0183, 1967 FCSC Ann. Rep. 39, and Claim of Robert F. Sanchez, Executor of the Estate of Marita Dearing de Lattre, Deceased, Claim No. CU-0116.)

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 valuation of nationalized property. It is designed to strengthen that standard by giving specific bases of valuation that the Commission shall consider.

It is asserted by claimant that the real property at Reparto San Antonio de los Indios is improved by a dwelling house, a grapefruit packing house with certain equipment and a barn; and that there were on the property 12 head of Brahman cattle, having an aggregate total value of \$20,000.00. It is further asserted by claimant that the land at Reparto Sierra de Casas had a value of \$1,400.00 and was improved by a garage and

80-foot TV antenna, such improvements having a total value of \$1,800.00.

By Commission letter of June 20, 1967, claimant was advised as to the type of evidence proper for submission to establish the existence and value of improvements, equipment, and cattle. The suggestions for the submission of evidence were renewed by Commission letter of May 24, 1968. In that letter claimant was also advised that if the suggested evidence were not received by the Commission within 30 days from the date thereof, it might become necessary to determine the claim on the basis of the record then available. By letter of July 22, 1968, the time period for the submission of evidence was extended by 45 days, and on August 7, 1968, by another 45 days.

In reply, claimant submitted an affidavit by one Leonardo Cano, who states that he left Cuba on April 11, 1960, and in effect testifies that the claimant owned the real and personal properties as listed in the Statement of Claim, having values in the exact amounts stated by the claimant.

By letter of November 25, 1969, further, detailed suggestions were made to claimant toward the substantiation of this claim. Pursuant to claimant's request, the time period for submission of evidence was extended until February 20, 1970. However, no further evidence has been submitted to date.

The Commission holds that the affidavit by Leonardo Cano supports the existence of improvements and their nature. However, it is insufficient to establish the values of such improvements to the extent asserted by the claimant. Furthermore, there is no evidence to show that equipment and 12 head of cattle were on the property on October 14, 1960, and were taken by the Government of Cuba.

On the basis of the foregoing, the Commission finds that on October 14, 1960, the date of loss, the properties mentioned above had areas and

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improvements, having total values as follows:

<u>Property</u>	<u>Value</u>
(1) about 40 acres of land at Reparto San Antonio de los Indios, improved by a dwelling house, a packing house, and a barn -	\$15,000.00
(2) land of 4,060 square meters in Reparto Sierra de Casas, improved by a garage and a TV antenna, total -	\$ 2,300.00
(3) mortgage -	<u>\$ 2,000.00</u>
	\$19,300.00

The portion of the claim which is based upon cattle, equipment, one share of stock in Agricola Arcadia, S.A., a loan of \$5,000.00 to Agricola Arcadia, S.A., balances of checking and savings accounts in Cuban banks are denied for claimant's failure to establish his ownership of such property as of the date of their asserted taking by the Government of Cuba.

The remaining portion of the claim is based upon interest in real and personal property formerly owned by claimant's mother, Bertha Charlotte Johnson.

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.

Section 502(1) of the Act defines the term "national of the United States" to mean "(A) a natural person who is a citizen of the United States, . . . The term does not include aliens."

Thus, in order for the Commission to favorably consider claims under Section 503(a) of Title V of the Act, it must be established

(1) that the subject property was owned in whole or in part by a national of the United States on the date of nationalization or other taking; and
(2) that the claim arising as a result of such nationalization or other taking has been continuously owned thereafter in whole or in part by a national or nationals of the United States to the date of filing with the Commission.

The claimant states that the property now in question was lost on October 14, 1960, pursuant to the enactment of the Cuban Law on Urban Reform (supra). Information, furnished by claimant, HARRY ARTHUR JOHNSON, shows that Bertha Charlotte Johnson, the asserted owner of the property, was a Swedish national and she died as such on April 10, 1962. In view of such information, the Commission concludes that the subject properties were not owned by a national of the United States on the date of their asserted nationalization or other taking by the Government of Cuba, as required for certification of a loss under the provisions of the Act discussed above. (See Claim of Sigridur Einarsdottir, Claim No. CU-0728, 25 FCSC Semiann. Rep. 45 [July-Dec. 1966].) Accordingly, the portion of the claim which is based upon a one-third interest in real and personal property formerly owned by the late Bertha Charlotte Johnson, must be and it is hereby denied.

Accordingly, the Commission concludes that claimant suffered a loss in the amount of \$19,300.00 within the meaning of Title V of the Act as the result of the taking of his property by the Government of Cuba on October 14, 1960.

The Commission has decided that in certification of losses 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.

CERTIFICATION OF LOSS

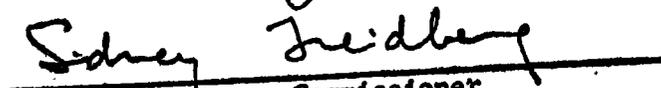
The Commission certifies that HARRY ARTHUR JOHNSON sustained a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Nineteen Thousand Three Hundred Dollars (\$19,300.00) with interest thereon at the rate of 6% per annum from October 14, 1960, to the date of settlement.

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

18 MAR 1970


Lytle S. Garlock, Chairman


Theodore Jaffe, Commissioner


Sidney Freidberg, Commissioner

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).)