

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

IN THE MATTER OF THE CLAIM OF

JENNY LEAL ASTEINZA

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -3319

Decision No. CU **5831**

Counsel for claimant:

Manuel Zaiac, 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 \$385,528.38 was presented by JENNY LEAL ASTEINZA and is based upon the asserted loss of real and personal property, and business interests in Cuba. Claimant has been a national of the United States since her naturalization September 5, 1962.

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 has submitted a schedule of losses listing asserted 1/14th interests in thirty-one items of property consisting of farms with improvements and equipment, residential properties, an apartment building and warehouses, principally in Las Villas province, some items being in the provinces of Camaguey and Havana. These interests she values at \$127,814.11. Additionally she asserts claim for \$257,714.27 for asserted 1/4th interests in the following business enterprises:

Cia. Comercial Antonio Leal, Casa Mimbres, S.A.
(dealing in furniture and refrigeration)
Cia. Muebles y Ferreteria, S.A.
(dealing in furniture)
Sociedad Leal, Sandor y Cia. Sociada Limitada
(dealing in glass and mirrors)

She has asserted that her claim arose on December 5, 1962 the date of publication of Cuban Law 1076.

The record includes a copy and translation of a statement by Antonio Isidro Leal Herrera (claimant's brother) executed on July 19, 1966. This document describes the properties and further states that the rural estates were taken by Rural Reform Law of May 17, 1959; the improved realties by the Urban Reform Law of October 14, 1960; and that the commercial establishments were taken by virtue of Law No. 1076, which was published on December 5, 1962.

Apart from the fact that claimant's ownership interest is not established, it would appear that agrarian properties were taken by the Government of Cuba at various times under the Agrarian Reform Law (see Claim of Council Bluffs Savings Bank, Claim No. CU-1290) long prior to September 1962; and improved realties in the absence of evidence to the contrary, were taken on October 14, 1960 (see Claim of Henry Lewis Slade, Claim No. CU-0183, 1967 FCSC Ann. Rep. 39). Moreover, Law 1076 authorized the nationalization of private commercial enterprises dedicated to clothes, weaving, footwear and hardware (see Claim of Perkins Marine Lamp & Hardware Corp., Claim No. CU-0232). Although the records accumulated by the Commission do not divulge specific taking dates for the enterprises in question, it does not appear that they come within the scope of Law 1076. Moreover, furniture companies were generally found to have been taken by the Government of Cuba during 1960, 1961 and sometimes 1962, but none as late as December 5, 1962.


While information deleted from other claims before the Commission reflects that shipments were made to Comercial Antonio Leal, early in 1960 or prior thereto, this does not establish that claimant had an ownership in the company, nor that it was taken subsequent to her acquisition of United States nationality.

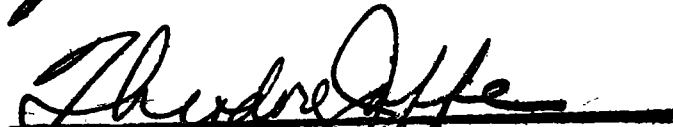
It was brought to attention of claimant's counsel that it must be established that not only should claimant's ownership be established, but the taking of the property subsequent to September 5, 1962, the date she became a national of the United States, as well as the value of such properties. Counsel has stated that all the evidence available has been submitted.

The Commission finds that claimant 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 from a national of the United States as required by the Act. (See Claim of Joseph Dallos Hollo, Claim No. CU-0101, 25 FCSC Semiann. Rep. 46 [July-Dec. 1966].) Thus, the Commission is constrained to deny this claim and it is hereby denied.

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

SFP 9 1970


Lyle S. Garlock, Chairman


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).)