

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

IN THE MATTER OF THE CLAIM OF

JOHN A. BADIA

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -3320

Decision No. CU

6245

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 JOHN A. BADIA for \$67,370.60 based upon the asserted ownership and loss of certain real and personal property and stock interests in two Cuban corporations. Claimant has been a national of the United States since his naturalization on December 19, 1960.

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) (1970).)

Claimant describes his loss as follows:

Two-story building in Marianao	\$25,000.00
Plot and one-story building in Havana	12,000.00
Unpaid drafts	4,520.60
Inventory of a Pharmacy	8,000.00
Interest in "Productos Evans, S.A."	4,800.00
Interest in "Laboratorios Mauryl, S.A."	3,050.00
Ten trade marks	<u>10,000.00</u>
	\$67,370.60

Based on the evidence of record the Commission finds that claimant owned interests in certain items of the real and personal property subject of this claim further discussed below. Pursuant to the Community Property Law of Cuba, claimant's wife owned 1/2 of her husband's interest in the two-story building and lot. Inasmuch as she is not a United States national her interests cannot be considered.

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.

CU-3320

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.

Two-story Building

Based upon the evidence of record including a copy of an official document relating to this property, the Commission finds that claimant owned a one-half interest in a two-story building located in Barrio Pogoloti, Marianao.

Claimant states that he last left Cuba in 1955.

On December 6, 1961, the Cuban Government published its Law 989 which confiscated all assets, personal property and real estate, rights, shares, stocks, bonds and securities of persons who had left the country.

The Commission finds, in the absence of evidence to the contrary, that the subject real property was taken by the Government of Cuba on December 6, 1961 pursuant to the provisions of Law 989. (See Claim of Wallace Tabor and Catherine Tabor, Claim No. CU-0109, 25 FCSC Semiann. Rep. 53 [July-Dec. 1966].)

The record includes, in support of the asserted value, claimant's description of the property as a two-story building with about thirty rooms; and the aforesaid official document which reflects that the purchase price of the building including the land was \$25,000.00 in 1957.

Based on the entire record, the Commission finds that the value of this improved realty on the date of loss was \$25,000.00 and that claimant's one-half interest had a value of \$12,500.00.

One-story Building

Based on the evidence of record including a report from abroad and claimant's affidavit, the Commission finds that claimant owned a one-half interest in a lot located in Barrio el Calvario, Havana, improved by a one-story

building and that it was taken by the Government of Cuba on December 6, 1961 pursuant to the aforementioned Law 989.

The record indicates that the lot in question measured about 2,157 square meters, had been purchased by another for \$5,000.00, and that claimant acquired title from the former owner on March 9, 1960. The building is described as a one-story monolithic concrete building.

Based on the entire record, the Commission finds that the value of this realty on the date of loss was \$5,000.00 and that claimant's one-half interest had a value of \$2,500.00.

Unpaid Drafts

Claimant recites the numbers of the documents and dates of protest for five unpaid drafts that had been accepted by the Compania Comercial Sibana, S.A. The dates of protests and the amounts of these five drafts are listed as follows:

<u>Date of Protest</u>	<u>Amount</u>
March 25, 1960	\$ 900.00
April 9, 1960	1,280.60
April 21, 1960	780.00
April 21, 1960	780.00
May 9, 1960	<u>780.00</u>
	\$4,520.60

Claimant states that he has not received the funds.

It appears that claimant's customer was precluded from transmitting funds by Cuban Law 568 of September 29, 1959 (see Claim of The Schwarzenbach Huber Company, Claim No. CU-0019, 25 FCSC Semiann. Rep. 58 [July-Dec. 1966]; and Claim of Etna Pozzolana Corporation, Claim No. CU-0049, 1967 FCSC Ann. Rep. 46), and if so the dates of loss would appear to be the above-shown protest dates. However, since claimant did not become a national of the United States until December 19, 1960, he was not a national of the United States on the dates of loss and for this reason the Commission finds that this portion of the claim must be denied as not within the scope of the Act. (See Claim of Sigridur Einarisdottir, Claim No. CU-0728, 25 FCSC Semiann. Rep. 45 [July-Dec. 1966].)

Inventory

A portion of this claim in the amount of \$8,000.00 is based on the loss of claimant's inventory of a pharmacy which he states was taken by the Government of Cuba. He says that the pharmacy was opened pursuant to Deed No. 254 of May 21, 1948 and was registered in the Mercantile Registry as of November 4, 1948.

Claimant, however, has been unable to establish that this property was taken subsequent to his acquisition of United States nationality, or (if so) to document the value of the inventory. He has submitted a tax receipt for the pharmacy located on Campanario Street, Havana, which would tend to establish that he was in business in Cuba. However, since the record contains no evidence to support the asserted taking and value of the inventory the Commission is constrained to deny this portion of his claim for failure of proof and it is therefore denied.

Productos Evans and Laboratorios Mauryl

Claimant has submitted two documents in support of this portion of his claim. One document dated December 17, 1942 recites that the authorized capital stock of Productos Evans was \$5,000.00 (the peso being on a par with the United States dollar) represented by 50 shares of \$100 each, and that claimant owned 48 shares. The other document dated November 12, 1947 reflects that 40 shares of Laboratorios Mauryl were purchased by claimant and his brother for \$6,000.00 and that his brother transferred his 20 shares to claimant's wife.

Although these documents support the purchase price paid by claimant for the shares of stock, claimant has submitted no evidence to establish that he

continued in ownership, that the entities were taken by the Government of Cuba after he acquired United States nationality, or if so, their value on the date of loss. The Commission is therefore constrained to and does also deny this portion of the claim for failure of proof.

Trade Marks

In support of this portion of his claim for the loss of ten trade marks, claimant lists the names of the trade marks and their certificate and registration numbers as recorded at the Ministry of Commerce in Havana.

Claimant, however, has submitted no evidence as to any action of the Government of Cuba subsequent to December 19, 1960 concerning them or if such action were taken, evidence from which the value of the trade marks could reasonably be ascertained. Accordingly the Commission is also constrained to and does deny this portion of the claim.

In view of the above the Commission finds, that claimant suffered a loss in the aggregate amount of \$15,000.00 as of December 6, 1961 within the meaning of Title V of the Act.


The Commission has decided that in certifications 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.

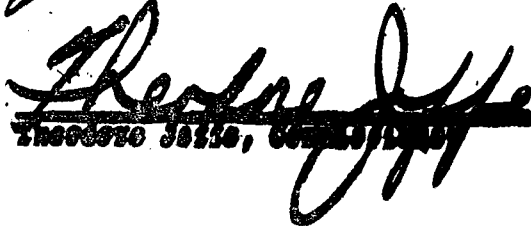
CERTIFICATION OF LOSS

The Commission certifies that JOHN A. BADIA 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 Fifteen Thousand Dollars (\$15,000.00) with interest thereon at 6% per annum from December 6, 1961 to the date of settlement.

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

JUN 30 1971


Lyle T. Garlock, Chairman


Theodore Jaffe, Counsel

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.

NOTE: 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. 1.5(e) and (g), as amended (1970).)

CU-3320