

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

IN THE MATTER OF THE CLAIM OF

BETTY G. BOYLE

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU - 3473

Decision No. CU 3380

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, in the amount of \$15,600.00, was presented by BETTY G. BOYLE and is based upon an asserted loss sustained in connection with bonds issued by the Republic of Cuba, and also upon currency issued by the Cuban Government. Claimant has been a national of the United States since her 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 has been nationalized, expropriated, intervened, or taken by the Government of Cuba.

Claimant asserts the ownership of 10,539.00 Cuban pesos, and has submitted the currency to the Commission as evidence of her ownership. The record establishes that claimant left Cuba permanently on February 25, 1960.

By Law 963, published in the Official Gazette on August 4, 1961, a currency exchange was ordered, to be carried out on August 6 and 7, 1961. All old currency was to be turned in at designated Centers in exchange for new Cuban bank notes. No one was allowed, under the Law, to receive more than 200 new pesos, and all currency in excess of that amount was placed in a special account in the individual's name. After the exchange old currency was of no value. A 60-day extension was provided in Article X for those showing good reason for their inability to surrender their money on the specified days of exchange. Article XI of Law 963 declared all currency which, at the time of promulgation, was outside the territory under the jurisdiction of the Cuban State to be null and of no legal force. Law 964, published on August 9, 1961, provided for the confiscation of all of the new special accounts over 10,000 pesos established pursuant to Law 963.

The record reflects that claimant left Cuba on February 25, 1960. She states that prior to leaving she was unable to convert her peso currency into United States dollars, nor has she since been able to effect such a conversion. The first situation resulted because after the Castro takeover banks were unable, due to governmental restrictions, to convert money or remit sums owed to creditors; e.g. Claim of Omni Products Corporation, CU-0451; and the latter situation resulted because the above described Cuban laws rendered her pesos valueless.

The Commission recognizes that a state's undeniable sovereignty over its currency is traditionally recognized by public international law; and to the power granted by municipal law there is a corresponding international right to the exercise of which other states cannot, as a rule, object (Mann, The Legal Aspects of Money, 419 (1953)). As the Permanent Court of International Justice has said, "it is indeed a generally accepted principle that

a state is entitled to regulate its own currency." (Serbian and Brazilian Loan Cases, P.C.I.J., Ser. A Nos. 20-21 at 44 (1929).) It is, however, also true that although persons using foreign money may risk market fluctuations in its value, there is no reason why they should be presumed to have agreed to allow their money to be expropriated as the result of foreign exchange control or currency legislation. (Wortley, Expropriation in Public International Law, 108 (1959).) It has been said that states do not incur international responsibility by reason of their currency policy, except when it involves an abuse of rights or a breach of treaty obligations. (Mann, The Law Governing State Contracts, 21 Brit. Yb. Int'l L. 11, 21 (1944).)

Even if Cuban Law 963 had as its legitimate purpose the reduction of the amount of currency in circulation and for that reason was in line with sound fiscal policy as well as with international law, it does not appear that any measures were taken by the Cuban Government to alleviate losses of the type sustained by this claimant. In fact, inasmuch as claimant's currency was outside of the territory under the jurisdiction of the Cuban State, her currency automatically was declared to be null and of no legal force under Article XI of Law 963.

In a similar situation involving a claim based upon Polish currency against the Government of Poland under the Polish Claims Agreement of 1960 the Commission, utilizing the foregoing reasoning, held that the failure of the Government of Poland to alleviate losses of nationals of the United States who held currency on the date of the currency reform laws, constituted an "abuse of right" and, thus, was a taking of property within the meaning of the Agreement. (See Claim of Alois Szpunar, Claim No. PO-1388, 18 FCSC Semiann. Rep. 17 [Jan.-June 1963].)

In this case, the Commission concludes that Cuban Law 963 and its implementation with respect to claimant and her husband constituted a taking of property by the Government of Cuba within the contemplation of Title V of the Act; that the loss in the amount of 10,539 pesos occurred on August 4, 1961; and the pesos had a value of \$10,539 on that date.

Claimant also asserts the loss of an ownership interest in bonds issued by the Republic of Cuba, known as 4-1/2% Bonds of the External Debt of the Republic of Cuba, 1937-1977.

On the basis of evidence of record, the Commission finds that claimant, since prior to 1951, has had an ownership interest in five bonds known as 4-1/2% Bonds of the External Debt of the Republic of Cuba, 1937-1977. The bonds in question are Nos. 28206, 34523, 38250, 39249 and 39250, and each is in the original face amount of \$1,000.00. Such bonds, as "debts owed by the Government of Cuba," clearly constitute property within the meaning of the term as defined in Section 502(3) of the Act, quoted above.

A study of the history of events with respect to bond obligations of the Republic of Cuba reveals that the Cuban Government defaulted on the payment of interest on bonds of this issue on December 31, 1960 (see Foreign Bondholders Protective Council, Inc., Annual Report 1958-1961, p. 52), but, other than continued failure to make payments under its obligation, it has taken no positive action concerning the rights of bondholders. The question arises whether such non-payment may be deemed a nationalization, expropriation, intervention, or other taking of, or special measures directed against the property of the bondholder within the meaning of Section 503(a) of the Act. This question has been affirmatively decided by the Commission. The Claim of Clemens R. Maise (Claim No. CU-3191, 1967 FCSC Ann. Rep. 68) determined that the failure of the Government of Cuba to make the obligated payment on December 31, 1960, even without express repudiation of the bonds, occurring as it did for the first time after January 1, 1959, constituted a taking on that date of the property of the bondholder within the meaning of the Act; and gave rise to a valid claim for the amount of the unpaid indebtedness as of that date.

The Commission finds that the amount of the unpaid indebtedness on the bonds in question on December 31, 1960 was \$5,112.50, including the principal amount of \$1,000.00 on each of the five bonds, and the interest due on each bond amounting to \$22.50.

The Commission holds, therefore, that the total amount of loss sustained in connection with the Cuban pesos and the Cuban Government bonds was \$15,651.50.

The property claimed herein was jointly owned by claimant and her late husband, who was a British subject. Under the community property laws of Cuba, claimant and her husband each held a 50% interest in this jointly-owned property. Consequently, the property upon which the claim is based was 50% owned by a natural person who was not a national of the United States as contemplated by the Act. The amount of loss to be certified to claimant is therefore 50% of the total amount determined by the Commission, or \$7,825.75, (\$5,269.50 for the pesos and \$2,556.25 for the bonds).

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.)

Accordingly, the Commission concludes that the amounts of loss sustained by claimant shall be increased by interest thereon at the rate of 6% per annum on \$2,556.25 from December 31, 1960 and on \$5,269.50 from August 4, 1961 to the date on which provision is made for the settlement thereof.

CERTIFICATION OF LOSS

The Commission certifies that BETTY G. BOYLE suffered a loss, as a result of the 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 Seven Thousand Eight Hundred Twenty-Five Dollars and Seventy-Five Cents (\$7,825.75) with interest thereon at the rate of 6% per annum from the respective dates of loss to the date of settlement.

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

DEC 11 1968

Leonard v. B. Sutton

Leonard v. B. Sutton, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

Sidney Freidberg

Sidney Freidberg, 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 for 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 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).)