

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

IN THE MATTER OF THE CLAIM OF

JOSEPH L. MORRISON

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -3695

Decision No. CU 4616

Counsel for claimant:

Vincent E. Cerow, 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 \$750,000.00, was presented by JOSEPH L. MORRISON based upon the asserted loss of a stock interest in a Cuban corporation. Claimant has been a national of the United States since 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 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 claim is based upon a stock interest in Territorial del Malecon, S.A., a Cuban corporation. The evidence includes copies of three assignments, dated December 30, 1960, and accompanying copies of stock certificates, which establish that as of December 30, 1960 claimant acquired 2,172 shares of stock in the Cuban corporation from Paul Tishman, 358 shares of stock in that Cuban entity from Marshall Harrison, and 1,301 shares of stock in said Cuban entity from Irving Castle.

The record also includes a letter, dated September 21, 1960, from a firm of attorneys to the Department of State, speaking on behalf of claimant's said three predecessors in interest. In that letter, counsel stated that Territorial del Malecon, S.A. had been organized in order to acquire a certain parcel of unimproved real property in Havana, Cuba. Counsel stated that the Cuban corporation did acquire the real property and that it was subject to a purchase-money mortgage. A report from abroad corroborates counsel's statements. Additionally, counsel for claimant's three predecessors in interest made the following statement to the Department of State:

. . . The Corporation and the American stockholders were and are represented by the law firm of Gorriin, Manas, Macia y Alamilla, Havana, Cuba.

In 1959, the said law firm advised that in light of certain new Cuban legislation, it was imperative, to avoid forfeiture of the property to the Cuban Government, to undertake some improvement of the property. Dr. Guillermo Alamilla of said law firm was authorized to make arrangements for the construction of a gasoline station and parking facilities. An architect was retained, plans were prepared and a permit was issued by

the appropriate municipal authority authorizing construction. On the day construction was to commence, it was found that employees of the City of Havana had erected a construction shack and were in the process of developing the property owned by Territorial del Malecon, S.A. for use as a recreational facility. The matter was discussed on several occasions by counsel with the municipal authorities and in February, 1960 Mr. Paul Tishman and I visited Havana to investigate the matter. All efforts made have thus far been to no avail. The City of Havana refused to return the property and has thus far been unwilling to pay fair compensation for it.

In his official claim form, claimant stated, in response to the question concerning the assertion of a tax deduction for the property involved, that he "believes that predecessor stockholders may have claimed a loss on sale of stock of this corporation."

The Commission finds, on the basis of the entire record, that Territorial del Malecon, S.A. was nationalized or otherwise taken by the Government of Cuba prior to December 30, 1960 when claimant acquired his interest. At that time, claimant acquired title to a claim against the Government of Cuba for the taking of property.

Section 507 of the Act provides, as to assignment of claims, that

(b) The amount determined to be due on any claim of an assignee who acquires the same by purchase shall not exceed (or, in the case of any such acquisition subsequent to the date of the determination, shall not be deemed to have exceeded) the amount of the actual consideration paid by such assignee, or in case of successive assignments of a claim by any assignee.

In view of the provisions of Section 507(b) of the Act, the Commission suggested under date of November 28, 1969 to counsel for claimant that he submit evidence to establish the consideration claimant paid for the shares of stock on December 30, 1960. It was also suggested that evidence was needed to establish that claimant's three predecessors in interest were nationals of the United States at all pertinent times in conformity with the provisions of Section 504(a) of the Act, supra. When no response was received, the Commission directed a "follow-up" letter to counsel for claimant on January 19, 1970. Since that date, the Commission has received no further word either from claimant or his attorney.

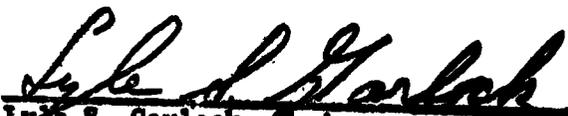
The Regulations of the Commission provide:

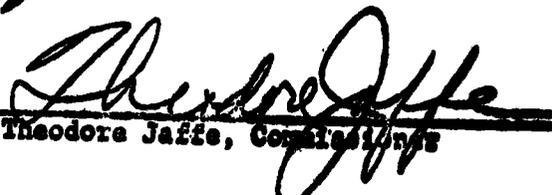
§ The claimant shall be the moving party and shall have the burden of proof on all issues involved in the determination of his claim. (FCSC Reg., 45 C.F.R. §531.6(d) (Supp. 1967).)

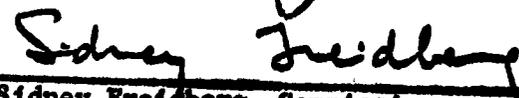
The Commission finds that claimant has failed to meet the burden of proof with respect to his claim against the Government of Cuba. Accordingly, this claim is denied in its entirety.

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

11 MAR 1970


Lyda S. Garlock, Chairman


Theodora Jaffe, Commissioner


Sidney Freidberg, 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).)

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