

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

**IN THE MATTER OF THE CLAIM OF**

**ADOLFINA SHIRKO**

**Claim No. CU-4737**

**Decision No. CU-4974**

**Under the International Claims Settlement  
Act of 1949, as amended**

Appeal and objections from a Proposed Decision entered June 10, 1970;  
no hearing requested.

Hearing on the record held September 15, 1971.

**FINAL DECISION**

By Proposed Decision entered June 10, 1970, the Commission denied this claim for failure of proof. Since that time claimant has submitted some evidence in support. The specifics of her claim as amended, are as follows:

Owned in community with her non-United States national spouse:

|   |                 |                   |
|---|-----------------|-------------------|
| 1957 DeSoto Sedan   | \$ 1,500.00     |                   |
| Bank accounts   | 27,907.70       |                   |
| Furniture and furnishings<br>at 2103 34th St.,<br>Marianao) | \$12,356.00     |                   |
| Life insurance premiums<br>paid                             | <u>5,108.00</u> | (1/2) \$23,435.85 |

1/4 interest in property inherited from her parents:

|   |               |             |
|---|---------------|-------------|
| 2-story building at<br>2103 34th Street (1/4) | \$14,000.00   |             |
| House in Varadero (1/4)                       | 7,162.01      |             |
| Personalty in Varadero<br>house (1/4)         | <u>531.25</u> | \$21,693.26 |

Stefan Shirko, inheritance as of 1965:

|                            |          |
|----------------------------|----------|
| Tailor shop (1/6)          | 872.50   |
| 1/2 raincoat factory (1/6) | 1,526.33 |

Under the community property law of Cuba, property acquired during marriage is owned by the spouses in equal parts, but this does not include property acquired by inheritance or gift. On the other hand, the fruits of such a property, produced by the investment and industry of both parties, is owned in equal parts. Claimant refers to the above-listed raincoat factory as owned by her and her husband. However, the record does not establish that

she had an ownership interest, nor that any fruits or profits of this endeavor belonged to her in any part and were taken by the Government of Cuba. Accordingly, this item of claim is denied, as well as any asserted interest in the inheritance of her spouse.

The record does establish that claimant had an ownership interest in certain improved realty, personalty and bank accounts.

On December 6, 1961, the Government of Cuba published its Law 989 which provided for confiscation of property, rights, interests and the like of persons who left Cuba. Claimant left Cuba on about February 7, 1969. Accordingly, the Commission finds that her aforesaid properties in Cuba were taken on that date.

Although the claim arose subsequent to the close of the period for filing claims of this nature against the Government of Cuba, the Commission has held that it will consider on their merits claims for losses sustained subsequent to the deadline, so long as consideration thereof does not impede the determination of claims which arose prior to the close of the filing period. (See Claim of Vivian Morales, Claim No. CU-8739.)

Claimant asserts that the 1957 DeSoto Sedan had a value of \$1,500 at the time of loss. However, no evidence has been submitted in support of this. The Commission has considered publications of the National Automobile Dealers Association, and the fact that usually such a vehicle depreciates at the rate of 15% per year. The Commission finds that the residual value of the vehicle was \$300.00.

With respect to the bank accounts claimant has submitted documentation reflecting that when she left Cuba, the balance of four accounts totalled \$27,907.70.

Further, it appears that claimant maintained her home in an apartment in the building at 2103 34th Street, Marianao, and the record includes a listing of the properties with values totalling \$12,356.00 as of June 2, 1967. The Commission has examined this listing and finds the values fair and reasonable, and after appropriate depreciation to February 7, 1969, finds the value of this personalty on that date to have been \$10,502.60.

Claim has been made for premiums paid on two life insurance policies with Crown Life Insurance Company of Canada, on the life of claimant's spouse, who is still living, the premiums totalling \$5,108. However, it does not appear claimant had any interest in these policies and moreover, the record is devoid of evidence that the Government of Cuba has taken the policies or premiums. Accordingly, this item of claim is denied.

Accordingly, the Commission concludes that claimant suffered a loss in the amount of \$19,355.15 in connection with the property owned in community with her husband, within the meaning of Title V of the Act, as a result of the taking of her property interests by the Government of Cuba on February 7, 1969.

The record further establishes that the improved realty at 2103 34th Street contained four apartments and had been appraised at \$56,000. As a result of the death of her parents in 1962 and 1967, claimant owned a one-fourth interest in the property, equivalent to the apartment she occupied, and the Commission finds that the value of this interest was \$14,000.00.

Similarly, claimant inherited and owned a 1/4 interest in a house and plot in Varadero, appraised at \$28,648.07 and the Commission finds that the value of her interest, taken on February 7, 1969 was \$7,162.01.

Moreover, the record contains a listing of the furnishings of this house in Varadero, which personalty was inherited by claimant in 1/4 part. The record includes a listing of this property with values as of June 2, 1967,

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totalling \$2,125, in which claimant had a 1/4 interest. The Commission finds these values fair and reasonable, and after appropriate depreciation to February 7, 1969, finds the value of claimant's interest was \$451.57.

Accordingly, the Commission concludes that claimant suffered a loss in the aggregate amount of \$21,613.58 in connection with her inherited properties, taken on February 7, 1969.

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.

Accordingly, the following Certification of Loss will be entered and in all other respects the Proposed Decision, as amended herein, is affirmed.

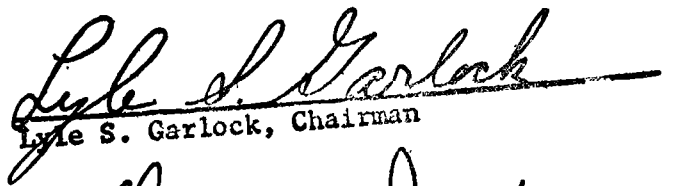
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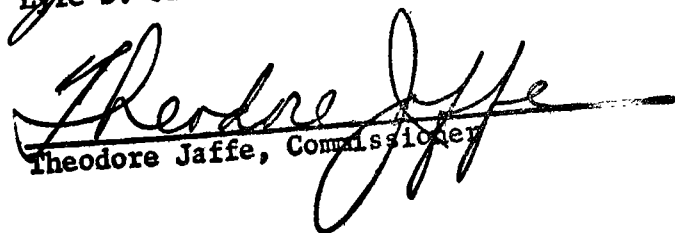
CERTIFICATION OF LOSS

The Commission certifies that ADOLFINA SHIRKO 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 Forty Thousand Nine Hundred Sixty-Eight Dollars and Seventy-Three Cents (\$40,968.73) with interest thereon at 6% per annum from February 7, 1969 to the date of settlement.

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

SEP 15 1971

  
Lyle S. Garlock, Chairman

  
Theodore Jaffe, 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.

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IN THE MATTER OF THE CLAIM OF

ADOLFINA SHIRKO

Under the International Claims Settlement  
Act of 1949, as amended

Claim No. CU -4737

Decision No. CU 4974

PROPOSED DECISION

This claim against the Government of Cuba, filed under Title V of the International Claims Settlement Act of 1949, as amended, was opened by the Commission for the claimant, ADOLFINA SHIRKO. Claimant now asserts losses in the amount of \$86,375.40, based upon the asserted loss of certain improved real properties, a bank account and other personal property in Cuba. 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 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 asserts that she owned a house in Varadero Beach and another in Havana, Cuba, and that her personalty in Cuba included a car, a savings bank account, securities and equipment.

By Commission letter of June 24, 1969, claimant was advised as to the type of evidence proper for submission to establish this claim under the Act, including an offer to assist her in obtaining evidence.

On September 23, 1969, claimant was invited to submit any evidence available to her within 45 days from that date, and she was informed that, absent such evidence, it might become necessary to determine the claim on the basis of the existing record.

On October 17, 1969, claimant informed the Commission that she was preparing the evidence and information to support her claim.


Claimant was sent another reminder on December 2, 1969, and asked to submit the suggested evidence within 30 days. No reply to this letter was received.

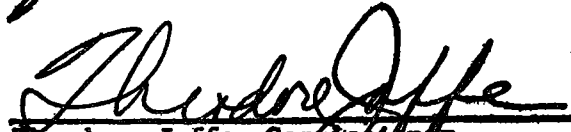
In the absence of evidence on which to base an affirmative decision, the Commission has no alternative but to deny this claim for lack of proof.

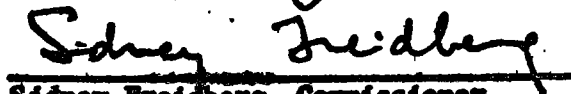
The Commission finds that claimant has not met the burden of proof in that she has failed to establish ownership of rights and interests in property which was nationalized, expropriated or otherwise taken by the Government of Cuba. Thus, the Commission is constrained to deny this claim and it is hereby denied. The Commission deems it unnecessary to make determinations with respect to other elements of the claim.

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

JUN 10 1970

  
Lyle S. Garlock, Chairman

  
Theodore 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).)