

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

IN THE MATTER OF THE CLAIM OF

MICHAEL S. COLIN

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -4824

Decision No. CU 3611

Counsel for claimant:

Ibanez & Fellman
by Richard A. Ibanez, 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 \$895,000.00, was presented by MICHAEL S. COLIN based upon the asserted loss of certain personal property, including stock interests, and personal injuries of a permanent nature assertedly resulting from actions of the Government of 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.

The record shows that this claim was filed on August 7, 1967, long after the close of the formal filing period. The Commission has held, however, that an untimely claim against Cuba may be considered on its merits if it does not impede the processing of timely claims. (See Claim of John Korenda, Claim No. CU-8255.) It appears that consideration of this claim on its merits will not impede the processing of timely claims.

Claimant has computed his claim as follows:

Assets (personalty)	\$295,000.00
Securities (Cubana Pictures International)	200,000.00
Personal injuries of a perma- nent nature and loss of income since 1959	<u>400,000.00</u>
Total	<u>\$895,000.00</u>

With respect to the claim for the loss of personalty, including the securities, claimant has submitted his affidavit of December 24, 1968. According to his affidavit, claimant arrived in Cuba in January 1959, his "last arrival in Cuba," and had "twenty thousand dollars and story properties and film, short subjects;" his investment in the Cuban corporation was \$10,000.00; the films taken by the Government of Cuba in 1959 or 1960 cost him \$50,000.00; the films "could well be worth over a million dollars today; but I would estimate their worth at at least five hundred thousand dollars." Claimant has also submitted affidavits of a general nature from other persons who knew him. One of the affidavits was executed by Frank B. Sanders

under date of March 18, 1969. Mr. Sanders, who has not filed a claim against Cuba, states that he also invested \$10,000.00 in a venture with claimant in a Cuban corporation. No other evidence to support this portion of the claim has been submitted, although the Commission suggested the need for such evidence on several occasions.

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 record contains certain evidence which appears to be in conflict with claimant's statements. Claimant's United States passport, No. B107382, indicates that on February 7, 1961 he was authorized to return to Cuba. A copy of the Hearing Examiner's Decision on claimant's application for disability insurance benefits before the Social Security Administration of the United States Department of Health, Education and Welfare discloses the following information: (a) claimant went to Cuba in 1958; (b) he "escaped to the United States sometime in April 1959"; (c) the hearing examiner was unable to determine "whether much or any of claimant's testimony was merely a figment of his imagination or hallucinations or the truth."

The Commission finds that the evidence of record is insufficient to warrant favorable action with respect to the portion of the claim for the loss of personalty in the amount of \$295,000.00 and securities in the amount of \$200,000.00. Accordingly, this portion of the claim is denied.

The claim for permanent personal injuries is governed by Section 503(b) of the Act, which provides as follows:

The Commission shall receive and determine in accordance with applicable substantive law, including international law, the amount and validity of claims of nationals of the United States against the Government of Cuba . . . arising since January 1, 1959 . . . for disability or death resulting from actions taken by or under the authority of the Government of Cuba . . .

With respect to this portion of his claim, claimant has submitted his affidavit of December 24, 1968, a copy of the Hearing Examiner's Decision on the disability claim before the Social Security Administration, and affidavits from three individuals.

In his own affidavit, claimant stated that he was imprisoned in Cuba in 1959 and 1960; that he spent seven months in jail in Cuba; and about "one year elapsed before I was able to escape." He further stated that he was tortured, beaten and severely injured.

The affidavit of Bill Watters, dated March 7, 1969, includes statements that on February 24, 1959 he received a telephone call from one of his clients, claimant, indicating that claimant was in Havana, Cuba; that on March 3, 1959 the affiant arrived in Havana and discussed certain business matters with claimant and claimant's business associates until affiant left Havana on or about March 9, 1959. As indicated above, claimant stated to the Hearing Examiner of the Social Security Administration that he had escaped from Cuba in April 1959, and the examiner stated he was unable to determine whether claimant was telling the truth. Moreover, claimant's passport, No. B 107382, was issued to him on February 7, 1961 for the express purpose of returning to Cuba. There is no explanation as to why claimant would want to return to Cuba where he was assertedly tortured and beaten.

Upon careful consideration of the entire record, the Commission finds the evidence not persuasive with respect to the claim for personal injuries. The fact that claimant was granted some disability benefits by the Social Security Administration is found insufficient to establish that claimant sustained a disability within the meaning of Section 503(b) of the Act, which was the proximate result of actions of the Government of Cuba in violation of international law. (See Claim of Julio Lopez Lopez, Claim No. CU-3259.)

It should be noted, moreover, that the Hearing Examiner's Decision indicates that claimant was suffering from a coronary artery disease and hiatus hernia; that he was able to engage in gainful employment from September 15, 1964 until January 21, 1966 when he suffered a back injury. The evidence, however, does not establish a causal connection between the asserted permanent injuries and actions by the Government of Cuba in violation of international law.

For all of the foregoing reasons, the portion of the claim for personal injuries is also denied.

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

APR 16 1969

Leonard v. B. Sutton

Leonard v. B. Sutton, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

Sidney Freidberg

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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