

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

IN THE MATTER OF THE CLAIM OF

DONALD J. NALTY AND THE HIBERNIA
NATIONAL BANK IN NEW ORLEANS AS
CO-ADMINISTRATORS OF THE SUCCESSION
OF LOUIS D. NALTY

Claim No: CU -4849

Decision No. CU 1846

Under the International Claims Settlement
Act of 1949, as amended

Counsel for claimants:

Chaffe, McCall, Phillips,
Burke, Toler & Sarpy
by: Paul A. Nalty, Esquire

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 Naomi N. Provost as Agent for the Heirs of Louis D. Nalty, and was subsequently amended to substitute DONALD J. NALTY AND THE HIBERNIA NATIONAL BANK IN NEW ORLEANS AS CO-ADMINISTRATORS OF THE SUCCESSION OF LOUIS D. NALTY as claimants. The claim is based upon an interest in bonds issued by the Association of the Religious Community of the Company of Jesus of Bethlehem College of Havana. The record reflects that Louis D. Nalty, a national of the United States since birth, died on June 27, 1964. Each of the beneficiaries of the estate is a national of the United States.

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.

On the basis of evidence of record, the Commission finds that decedent was, and since prior to May 3, 1961, had been the owner of two bonds in the original face amount of \$1,000.00 each, issued by the Association of the Religious Community of the Company of Jesus of Bethlehem College of Havana, and known as 5-1/4% First Mortgage Six Year Gold Bonds, due February 1, 1934, under an Agreement of May 22, 1928, with the Bankers Trust Company, Trustee. The bonds were secured by all of the Association's property in Cuba. The bonds in question are Nos. MO 222 and MO 223, evidenced by Deposit Receipt Nos. M 1749 and M 1750.

The record shows that the properties of the College were intervened by the Government of Cuba on May 3, 1961, by Resolution No. 4352 of the Directora Provincial de Educacion de la Havana (Provincial Educational Directors Office of Havana).

Therefore, claimant is entitled to file this claim based upon the bonds in question which represent a debt which was a charge upon intervened property as defined in Section 502(3) of the Act.

(See Claim of Gustavus Basch, Claim No. CU-0972.)

The record reflects that on April 4, 1933, Cuba declared a moratorium on mortgage indebtedness, which was later extended to June 1942. On December 5, 1939, the maturity of the bonds was extended by the Association to February 1, 1944, and interest was reduced to 1-1/2% beginning February 1, 1939. On June 4, 1940, a new Cuban Constitution was adopted, having certain "Transitory Provisions" which extended the maturity date on mortgage indebtedness in excess of \$800,000 to June 30, 1970 and provided for interest at 1%, and amortization by certain annual installments.

On June 1, 1942, a "Procedure for Deposit" was entered into by the Association with Mississippi Valley Trust Company (now the Mercantile Trust Company) as Agent, and the bondholders. Those bondholders depositing their bonds under this Procedure received registered Deposit Receipts entitling them to payment of principal and interest according to the applicable schedule of the 1940 Transitory Provisions, without subsequent presentation of the bonds. The record shows that the last principal payment made was that due on June 30, 1958, leaving the principal due on such \$1,000.00 bonds as \$449.03; and the last interest payment made

was that due on February 1, 1959. Thereafter, the Trustee declared the principal due and payable in accordance with the provisions of the Agreement of 1928.

The Commission finds that the amount of the unpaid indebtedness on the two bonds on May 3, 1961, the date of loss, was \$918.34, including the principal amounts of \$449.03, and the interest due on May 3, 1961, in the amount of \$10.14 on each bond, and that claimants succeeded to that loss upon the death of Louis D. Nalty,

It will be noted that the total amount of loss found herein is in excess of the amount asserted. However, in determining the amount of loss sustained, the Commission is not bound by any greater or lesser amounts which may be asserted by claimants as the extent thereof.

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 amount of loss sustained herein shall be increased by interest thereon at the rate of 6% per annum from May 3, 1961, the date of loss, to the date on which provision is made for settlement thereof.

CERTIFICATION OF LOSS

The Commission certifies that DONALD J. NALTY AND THE HIBERNIA NATIONAL BANK IN NEW ORLEANS AS CO-ADMINISTRATORS OF THE SUCCESSION OF LOUIS D. NALTY succeeded to and 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 Nine Hundred Eighteen Dollars and Thirty-Four Cents (\$918.34) with interest thereon at 6% per annum from May 3, 1961 to the date of settlement.

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

MAY 15 1968

Leonard v. B. Sutton

Leonard v. B. Sutton, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

NOTICE TO TREASURY: The bonds subject of this certification of loss may have been returned and no payment should be made until they are resubmitted.

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).)