

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

IN THE MATTER OF THE CLAIM OF

ALBERT J. MARTINI
and
IDA MARTINI

Claim No. CU-7710

Decision No. CU -5900

Under the International Claims Settlement
Act of 1949, as amended

Represented by Cia. Azucarera Atlantica del Golfo

Counsel for Cia. Azucarera Atlantica del Golfo:
Dewey, Ballantine, Bushby, Palmer & Wood - By William C. Bush, Esq.

AMENDED PROPOSED DECISION

Under date of October 14, 1970, the Commission issued its Proposed Decision denying this claim on the ground that claimants had failed to establish that they were nationals of the United States within the meaning of Title V of the Act. Subsequently, claimants submitted additional evidence establishing their United States nationality.

Upon consideration of the new evidence in the light of the entire record, it is

ORDERED that the Proposed Decision be amended as follows:

In our decision entitled the Claim of Helen M. Drye (Claim No. CU-0807 which we incorporate herein by reference), we held that the properties owned by the Company were nationalized or otherwise taken by the Government of Cuba on August 6, 1960, and that this type of claim is allowable to an American national under the facts and conditions set forth therein. We need not again detail here the reasons or the method used in determining the value per share of \$34.056.

On the basis of evidence in the record in the instant case, the Commission finds that these claimants come within the terms of the Drye decision; that they were American nationals at the requisite times; that they have been the joint owners of 400 shares of stock in the Cia. Azucarera Atlantica del Golfo since prior to August 6, 1960; and that they suffered a loss in the amount of \$13,622.40 within the meaning of Title V of the Act. Further, the Commission finds that the amount of loss sustained shall be increased by interest thereon at the rate of 6% per annum from August 6, 1960, the date of loss, to the date on which provisions are made for the settlement thereof. (See Drye, supra.)

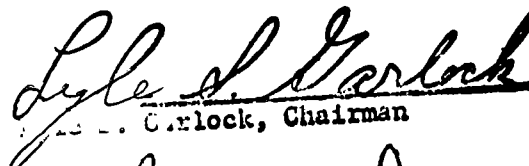
Accordingly, the following certification of loss will be entered and in all other respects the Proposed Decision is affirmed.

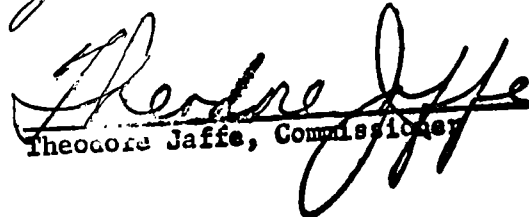
CERTIFICATION OF LOSS

The Commission certifies that ALBERT J. MARTINI and IDA MARTINI, jointly 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 Thirteen Thousand Six Hundred Twenty-two Dollars and Forty Cents (\$13,622.40) with interest at 6% per annum from August 6, 1960 to the date of settlement.

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

DEC-2 1970


Lyle S. Garlock, Chairman


Theodore Jaffe, 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 claimants establish retention of the securities or 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 Amended 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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PROPOSED DECISION

This claim against the Government of Cuba, filed under Title V of the International Claims Settlement Act of 1949, as amended, was presented by ALBERT J. MARTINI and IDA MARTINI based upon the asserted loss of 400 shares of stock in Atlantica del Golfo Sugar Company, a Cuban corporation.

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) (1969).)

Claimants assert that they have been nationals of the United States since birth. They add, however, that neither birth certificates nor baptismal certificates "are immediately available" to support their assertion. Claimants have submitted a copy of their 1921 marriage certificate and a copy of the United States Army discharge of ALBERT J. MARTINI as a private in 1919, in which documents appear their recitation that they were born in the United States.


Inasmuch as such recitations are merely self-serving declarations made by claimants, the Commission suggested the submission of appropriate supporting evidence. On several occasions the Commission suggested various means by which claimants' asserted United States nationality could be established. Letters in this respect were directed to claimants under dates of May 28, 1968, December 20, 1968, and July 21, 1970. However, no such evidence has been submitted to date.

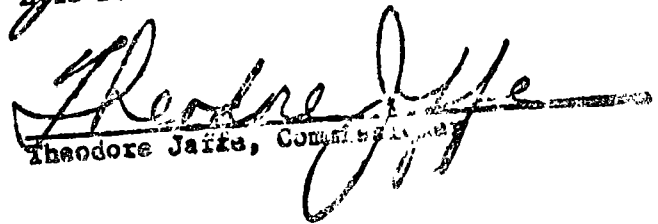
The Commission finds that claimants have failed to sustain the burden of proof. The evidence of record does not establish that claimants are nationals of the United States. Accordingly, this claim is denied in its entirety. (See Claim of Sigridur Einarsdottir, Claim No. CU-0728, 25 FCSC Semiann. Rep. 45 [July-Dec. 1966].)

The Commission deems it unnecessary to consider other elements of this claim.

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

OCT 14 1970


Lyle S. Garlock, Chairman


Theodore Jaffe, Counsel

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CU-7710