

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

IN THE MATTER OF THE CLAIM OF

CARRIE JANE MCGAREY

Claim No. CU - 8259

Decision No. CU - 4414

Under the International Claims Settlement
Act of 1949, as amended

Appeal and objections from a Proposed Decision entered January 13, 1970.
No hearing requested.

Hearing on the record held on June 23, 1971

FINAL DECISION

Under date of January 13, 1970, the Commission issued its Proposed Decision denying this claim inasmuch as claimant had not established that any property owned by her was taken by the Government of Cuba.

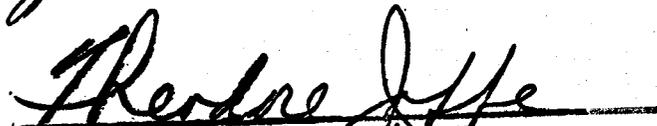
The claimant had asserted that she inherited a one-third interest in a partnership known as McAvoy y Cia., doing business in Cuba. The record showed that claimant's father sold his interest in July, 1955 to his two sons, claimant's brothers (erroneously referred to as half-brothers in the Proposed Decision); and that in November, 1955 the father died. Claimant has stated that the widow, his second wife, would have been entitled to a one-half interest and a portion of the other half, leaving each child with a one-fifth interest, which she felt would amount to \$20,000 if a 1954 evaluation were accepted. Nevertheless, it appears that she had been advised by a law firm in Cuba, that while she might have a cause of action against the brothers, the father had sold his interest, his estate amounted to about \$30,000 and she had been offered \$3,000 as her portion.

The Commission has considered the entire matter but finds no valid basis for altering its decision in this matter. Accordingly, the Proposed Decision, as amended herein, is affirmed.

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

JUL 6 1971


Lyle S. Garlock, Chairman


Theodore Jaffe, Commissioner

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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 CARRIE JANE MCGAREY for an unspecified sum based upon the asserted ownership and loss of a certain interest in the partnership McAvoy y Cia., in Havana, Cuba. Claimant has been a national of the United States since her birth on April 24, 1913.

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 Commission's Regulations provide that claims under Title V of the Act (Cuban claims) shall be filed with the Commission on or before May 1, 1967 (FCSC Reg., 45 C.F.R. Sec. 531.1(d) (Supp. 1967)); and further that any initial written indication of an intention to file a claim received within 30 days prior to the expiration of the filing period thereof shall be considered as a timely filing of a claim if formalized within 30 days after the expiration of the filing period. (Reg., Sec. 531.1(g))

No claim was filed with this Commission by or on behalf of claimant within the allowable period for timely filing of such claims, nor does the Commission have any record of any communication concerning her asserted loss.

The Commission has held, however, that it will accept for consideration on their merits claims filed after the deadline so long as the consideration thereof does not impede the determination of those claims which were timely filed. (See Claim of John Korenda, Claim No. CU-8255.) This is such a claim.

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).)

It is asserted by the claimant, CARRIE JANE MCGAREY, that her father, Charles McAvoy, died in Havana, Cuba, on November 19, 1955, and upon his death, presumably intestate, she inherited a certain interest in the partnership McAvoy y Cia.

By Commission letter of July 2, 1968, claimant was advised as to the type of evidence proper for submission to establish this claim under the Act. Claimant was advised, among other things, that evidence should be submitted to establish that the assets of the partnership McAvoy y Cia., and claimant's interest therein, was nationalized, intervened, or otherwise taken by the Government of Cuba, and the date of such governmental action, if that was the case.

CU-8259

In reply, claimant submitted English translations of two letters, dated March 12, and April 6, 1956, by an attorney at law in Havana, Cuba, the pertinent portions of which may be summarized as follows:

The partnership McAvoy y Cia. was organized in 1951 and was engaged in the business of selling products and goods of foreign manufacturers represented in Cuba by the partnership. On July 16, 1955, claimant's father, Charles A. McAvoy, sold his interest in the business to his two sons, Charles Carroll McAvoy and Henry S. McAvoy, claimant's half-brothers. Shortly thereafter, on November 19, 1955, Charles A. McAvoy died.

In claimant's opinion, the sale of July 16, 1955, by which the late Charles A. McAvoy sold his interest in the partnership McAvoy y Cia. was intended to deprive her of any inheritance she might have been entitled to upon her father's death. The letters by the Cuban attorney indicate that claimant may have had a cause of action against her half-brothers. In fact, claimant's half-brothers, Charles Carroll McAvoy and Henry S. McAvoy, offered the sum of \$3,000.00 in full settlement of any inheritance right claimant may have had in her late father's estate. No further evidence has been submitted by claimant and the record is incomplete as to whether or not claimant's asserted inheritance rights now in question were settled.

It appears from the foregoing that claimant may have had a claim against her half-brothers for the payment of money, but there is no evidence that she acquired any ownership interest in the assets of the partnership McAvoy y Cia. Moreover, the record is void of any evidence to indicate that any assets of the partnership McAvoy y Cia. were nationalized, intervened, or otherwise taken by the Government of Cuba, an essential element for a claim under the Act. A nationalization, intervention, or other taking of any assets of the partnership McAvoy y Cia. in Havana, Cuba, is doubted by the fact that one of claimant's half-brothers, Henry S. McAvoy, filed a claim with this Commission for losses in Cuba in which he did not claim any loss for the nationalization, intervention, or other taking of any assets of the partnership McAvoy y Cia.

In view of the foregoing, the Commission finds that claimant has not met the burden of proof in that she has failed to establish that any property or interest in property owned by her was nationalized, intervened, or otherwise taken by the Government of Cuba as required for the certification of a loss under Title V of the International Claims Settlement Act of 1949, as amended. 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 this claim.

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

13 JAN 1970

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).)

CU- 8259