

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

IN THE MATTER OF THE CLAIM OF

JOHN HENRY FITZGERALD

Under the International Claims Settlement  
Act of 1949, as amended

Claim No. CU -3097

Decision No. CU -651

Counsel for claimant:

Marvin Weinstein, Esq.

Appeal and objections from a Proposed Decision entered November 15, 1967.  
Oral hearing requested and held July 22, 1969.

FINAL DECISION

This claim was denied in its entirety for failure of proof, by a Proposed Decision entered November 15, 1967. An oral hearing was requested and held on July 22, 1969. At that time, counsel offered argument and claimant's spouse Marta Fitzgerald, and his son testified. Claimant has been a national of the United States since birth. Marta Fitzgerald is said to have been a national of the United States since 1965.

Pursuant to the community property law of Cuba, spouses hold equal interests in property acquired during coverture, except that acquired by one spouse by gift or inheritance. (See Claim of Robert L. Cheaney and Marjorie L. Cheaney, Claim No. 0915).

As will be seen below, certain property subject of this claim was the sole property of Marta Fitzgerald and in other property she had a one-half interest. These properties were taken prior to the time she assertedly acquired nationality of the United States and cannot be the subject of a certification of loss under Title V of the governing act.

The claim was originally asserted as follows:

(1) 1/6 interest in Pedro Lopez e Hijos	\$197,030.99
(2) 122/723 of Sakoyute, S.A.	85,500.00
(3) 1/5 of a beach home of five units at Boca Ciega Beach, Havana	36,000.00
(4) 1/5 of apartment building with 42 units for workers	40,000.00
(5) Stock interest in Volkswagen de Cuba	17,000.00
(6) Cash in house at 1363 19th St., at 26th	8,000.00
(7) Furniture in an apartment of (3) above	2,000.00
(8) Pontiac and Volkswagen automobiles	4,200.00
(9) Business cash - 1/5 interest	<u>22,000.00</u>
	\$403,730.99

1/2 interest: \$201,865.49

Since the issuance of the Proposed Decision in this matter, there has been submitted various items of documentary evidence. On the basis of the record, including testimony of claimant's spouse and son, as well as other clarification offered subsequent to the oral hearing, the Commission finds that claimant herein owned certain property interests, further described below, which were taken by the Government of Cuba, and that claimant thereby suffered a loss within the scope of Title V of the Act.

The Act provides in Section 503(a) that in making determinations with respect to the validity and amount of claims and value of properties, rights, or interests taken, the Commission shall take into account the basis of valuation most appropriate to the property and equitable to the claimant, including but not limited to fair market value, book value, going concern value, or cost of replacement.

The question, in all cases, will be to determine the basis of valuation which, under the particular circumstances, is most appropriate to the property and equitable to the claimant. The Commission has concluded that this phraseology does not differ from the international legal standard that would normally prevail in the evaluation of nationalized property. It is designed to strengthen that standard by giving specific bases of valuation that the Commission shall consider.

In determining the value of claimant's interests in any property subject of this claim, as set out below, the Commission has considered reports by claimant to the Department of State, reconstructed balance sheets, previous findings in another claim, affidavits and testimony.

(1) Pedro Lopez e Hijos

This enterprise operated as a partnership, manufacturing paper bags at a factory at Castanedo 102, Guanabacoa, Havana, Cuba. It was listed as nationalized in Cuban Law 890, published by the Government of Cuba on October 13, 1960.

The first question for determination is the extent of claimant's interest if any. This has been asserted as one-half of one-sixth purchased about 1949. It has also been said that during the lifetime of Pedro Lopez (father of Marta Fitzgerald) he divided his interest in six parts, retaining one-sixth and distributing five-sixths to the five children of his marriage with Mercedes Fernandez and their spouses. It has been said that he owned a one-half interest, and that this was divided into six parts. The record indicates that the mother of Marta Fitzgerald died on February 11, 1957 and that her father died on March 15, 1957. It has also been said that Marta Fitzgerald would have inherited  $1/5$  of her mother's estate and  $1/6$  of her father's estate, since he had a sixth child.

If the Commission were to find that claimant and Marta Fitzgerald in about 1950 purchased a one-sixth part of the interest of Pedro Lopez in the partnership, the question would remain for determination as the extent of the interest of Pedro Lopez at that time.

The record includes a Document No. 435 of July 5, 1957, which is an Acceptance of Inheritance of the heirs of Pedro Lopez, and his wife Mercedes Lopez. This document reflects, among other things, that the partnership had been constituted in its latest form in 1952; and refers to the last will of Pedro Lopez, made on May 26, 1950. The Commission repeatedly asked for a translation of this document but has been furnished with only a partial translation, of those parts the son of claimant considers important.

This partial translation sets out that Marta Fitzgerald was to receive in the partnership, one-sixth of two-fifths of one-half. Thus it appears that one-half and three-fifths of one-half of the partnership were held elsewhere leaving two-fifths for division among the six children.

It is impossible from this record to ascertain with accuracy what portion of the partnership may have been purchased previously by claimant and his wife. Accordingly, this item of claim remains denied.

(2) Sakoyute, S.A.

The Commission finds that Sakoyute, S.A., was a Cuban enterprise operating a burlap bag factory, and that it was taken by the Government of Cuba on October 13, 1960, when the properties of the partnership Pedro Lopez e Hijos were taken.

Since Sakoyute was organized under the laws of Cuba, it does not qualify as a national of the United States under Section 502(1)(B) of the Act which defines the term "national of the United States" as including a corporation or other legal entity which is organized under the laws of the United States, or of any State, the District of Columbia, or the Commonwealth of Puerto Rico, if natural persons who are citizens of the United States own, directly or indirectly, 50 per centum or more of the outstanding capital stock or other beneficial interest of such corporation or entity. In this type of situation, it has been held that an American stockholder is entitled to file a claim for the value of his ownership interest. (See Claim of Parke, Davis & Company, Claim No. CU-0180, 1967 FCSC Ann. Rep. 33.)

The Commission finds that Sakoyute had outstanding 723 shares of stock at the time it was nationalized, and that claimant and his wife owned 122 shares between them. Accordingly, the claimant's interest was the value of sixty-one shares.

The Commission has examined a reconstructed balance sheet for the firm prepared by its former accountant. This balance sheet, as of the time of taking, reflects a net worth of \$453,265.55, and thus the value of each of 723 shares was \$626.9233. Accordingly, the Commission finds that claimant suffered a loss of \$38,242.32 in connection with this stock interest.

(3) Beach House

(4) Apartment Building

Although Marta Fitzgerald appears to have inherited a portion of the above properties, this would not give claimant an interest therein, nor does

the Commission find the evidence of record sufficiently probative to support a finding that he acquired an interest in any way. Accordingly these items of claim remain denied.

(5) Volkswagon Stock

The record includes a receipt for \$15,000 paid by claimant for stock in Volkswagon de Cuba, S.A., in 1959. The Commission finds that claimant held 150 shares of preferred stock of a par value of \$100 and 150 shares of common stock of a par value of \$1.00.

In our decision entitled the Claim of Ana Maria Miller, et al, (Claim No. CU-0285, which we incorporate herein by reference), we held that this Cuban company was nationalized on October 24, 1960, by publication by the Government of Cuba in Resolution 3, pursuant to Cuban Law 851.

The record shows that the company had outstanding 4,000 shares of preferred stock and 8,000 shares of common stock. A balance sheet for June 30, 1960 reflected a surplus of \$105,782.74.

Accordingly, the Commission finds that the 300 shares represented .025 of the outstanding issue and represented a loss, as follows:

150 preferred	\$15,000.00
150 common	1,000.00
.025 of the surplus	<u>2,644.57</u>
	\$17,794.57

The Commission finds that Marta Fitzgerald had a one-half interest in this stock, which is not certifiable, and that claimant's loss therefore amounted to \$8,897.28.

(6) Cash in House

(9) Business Cash

It has been asserted that \$8,000 was hidden in a house in Cuba. This has not been established, nor that it was taken by the Government of Cuba. Further, it is said that an account of about \$110,000 belonging to the partnership in Item (1) was maintained in Banco Continental, and that claimant had an interest therein through his asserted interest in the partnership. The evidence of record does not substantiate this account, nor does it appear

substantiated by the reconstructed balance sheet submitted for the partnership. Moreover, claimant's asserted interest is not established.

Accordingly, these items of claim remain denied.

- (7) Furnishings at the Beach Home
- (8) Automobiles

The Commission finds on the basis of the entire record that claimant owned a one-half interest in certain furnishings maintained at the beach home (Item 3 above), in which claimant and family occupied an apartment, and in two automobiles, a 1958 Pontiac and a 1959 Volkswagon.

The Commission further finds that claimant left Cuba in January, 1961, and these properties were taken by the Government of Cuba, in the absence of evidence to the contrary, on January 31, 1961.

Claimant has submitted a detailed listing of the personalty which was acquired from November 1958 to May 1959, and therefore had an average age of 2 years. This personalty, except for the silver, was subject to depreciation of 10 per cent a year. Thus the residual value on January 31, 1961, including the silver, was \$5,584.40, a loss to claimant of \$2,792.20.

The Pontiac was purchased in 1958 for \$3,700 and was subject to depreciation of 15 per cent a year. Accordingly the value on January 31, 1961 was \$2,035. The Volkswagon was purchased in 1959 for \$1,800 and had a residual value of \$1,260.

Thus claimant's loss in connection with the automobiles was \$1,647.50.

Claimant's losses are now summarized as follows:

<u>Item</u>	<u>Date of Loss</u>	<u>Value</u>
Sakoyute stock	October 13, 1960	\$38,242.32
Volkswagon stock	October 24, 1960	8,897.28
Personalty including automobiles	January 31, 1961	<u>4,439.70</u>
		\$51,579.30

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 from the aforesaid dates.

It may be noted, however, that in the event additional evidence is received as to other items of the claim, the Commission will reopen the matter provided the evidence is submitted by May 1, 1972 to permit consideration thereof before the close of the program on June 30, 1972.


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

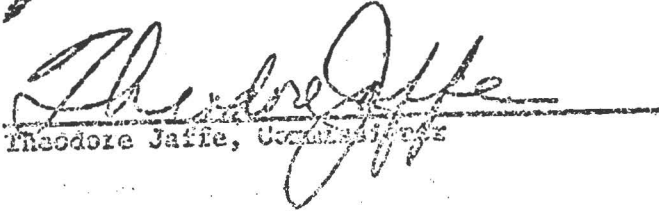
CERTIFICATION OF LOSS

The Commission certifies that JOHN HENRY FITZGERALD sustained 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 Fifty-One Thousand Five Hundred Seventy-Nine Dollars and Thirty Cents (\$51,579.30) with interest thereon at 6% per annum from the respective dates of loss to the date of settlement.

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

OCT 13 1971

  
Lytle S. Garlock, Chairman

  
Theodore Jaffe, Counsel

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 claimant establishes 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.



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JOHN HENRY FITZGERALD

Claim No. CU -3097

Decision No. CU

651

Under the International Claims Settlement  
Act of 1949, as amended

Counsel for claimant:

Marvin Weinstein, Esq.

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, in the amount of \$201,865.49, was presented by JOHN HENRY FITZGERALD based upon the asserted loss of improved real property, personal property, and stock interests in Volkswagen de Cuba Company and Sakoyute, S.A., both said to be Cuban enterprises.

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 of 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 Cuba 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 in all issues involved in the determination of his claim. (FCSC Reg., 45 C.F.R. §531.6(d) (Supp. 1967).)

Claimant asserts the ownership of certain improved real property and personal property, and stock interests in the Volkswagen de Cuba Company and Sakoyute, S.A., assertedly Cuban. In support, claimant submitted photographs of real property, photostatic copies of passport pages, and copies of correspondence with the Department of State. By Commission letter of July 12, 1967, claimant was advised, through counsel, as to the type of additional evidence proper for submission to establish his claim under the Act.

On September 1, 1967, counsel was invited to submit any evidence he might have within 45 days from that date, and he was informed, that, absent such evidence it might become necessary to determine the claim on the basis of the present record. Counsel has submitted no additional evidence of probative value in support of this claim since the claim was filed on May 1, 1967.

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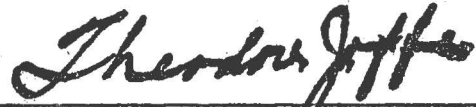
The Commission finds that claimant has not met the burden of proof, in that he has failed to establish ownership of rights and interests in property which was nationalized, expropriated or otherwise taken by the Government of Cuba. Accordingly, this claim is hereby denied. The Commission deems it unnecessary to determine other elements of this claim.

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

NOV 15 1967



Edward D. Re, Chairman



Theodore Jaffe, Commissioner



LaVern R. Dilweg, 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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