

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

IN THE MATTER OF THE CLAIM OF

BERNARD R. JENNINGS

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU - 0620

Decision No. CU 6284

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 BERNARD R. JENNINGS in the amount of \$148,217.58 based upon the asserted ownership and loss of certain real and personal property as well as stock interests in Cuban corporations.

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) (1970).)

Claimant describes his losses as follows:

1. One-half interest in Lot 21, block 23, Residencial Bellomonte, Guanabo, Guanabacao, 404.31 square meters \$ 1,896.41
2. One-half interest in Lot 8, block 9, Bellomonte, Guanabo, Guanabacao, 332.67 square meters 887.60
3. Lot 22, block 2, Residencial Alamar, Guanabacao, area of 950 square varas; total price paid until loss, sum of 8,056.00
4. One-half interest in three lots acquired from Compania Territorial Rancho Alegre, S.A. under Agreement Nos. 505, 505A and 505-B, including lots 23, 24 and 25 a/40/a of Block V, with value of one-half interest 5,227.57
5. House and lot at Camino Webster #505, Tarara Beach, Bacuranao, Guanabo, including lot 18, block 24 of "San Martin", with 750.91 square varas 12,500.00

CU-0620

6. House and lot in Santa Catalina development, Via Blanca and Palatino, Havana; with equity at time of loss in amount of	\$ 9,000.00
7. Furniture, Playa de Tarara, depreciated value at the time of loss	3,500.00
8. Furniture, Santa Rosalia development, value at the time of loss	3,000.00
9. Dodge Automobile 1959, with depreciated value when confiscated	4,650.00
10. Bottle water route #23 of the Aguas Minerales Fuente Blanca, acquired from Compania Aguas Minerales La Jata, S.A. in 1957 for	7,000.00
11. Chevrolet truck, acquired in 1957	500.00
12. Publicidad Jennings, S.A., Avenida de la Republica #644, Havana	62,000.00
13. 1000 shares of stock in the Antilles Brewing Company, 35-1/2 Central Highway, San Jose de las Lajas, Havana	
	20,000.00 ^{1/}
Total	<u>\$138,217.58</u>

The claimant has submitted copies of several deeds, contracts of purchase and sale, copies of stock certificates, correspondence, reports and affidavits of persons who were former residents of Cuba with personal knowledge of his ownership interests in the properties, subject of his claim. Additionally, claimant has submitted detailed descriptions and itemized lists of the property, his affidavits and statements, as well as correspondence concerning the properties. On the basis of the entire record, the Commission finds that with the exception of the 1959 Dodge automobile, as discussed hereafter, the claimant owned the aforesaid real and personal property, including the business enterprise known as Publicidad Jennings, S.A. and the stock interest of 1,000 shares in the Antilles Brewing Company.

The claimant has submitted evidence to establish that in October 1960 employees or militiamen of the Government of Cuba ordered claimant to leave

^{1/} As amended. Claim was filed for loss of 1500 shares at \$30,000.00. Subsequent to filing claim, the application was amended to 1000 shares, with the loss, as claimed, for \$20,000.00.

Cuba under threat of imprisonment; and that his properties were thereafter taken by the Cuban Government. Accordingly, the Commission finds that with the exception of the stock interest in the Antilles Brewing Company, as discussed hereafter, the aforesaid properties were nationalized or otherwise taken by the Government of Cuba on October 31, 1960.

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". 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.

The Commission has considered the consideration stated in the contracts of sale, the detailed descriptions of the land, buildings and personal property therein, including photographs and lists of the household furnishings, Chevrolet truck and statements of the Aguas Minerales Fuente Blanca concerning water route #23.

Based upon the entire record, including evidence available to the Commission concerning the value of similar properties in Cuba, the Commission finds that the evaluation most appropriate to the real and personal property, subject of the claim, except as discussed hereinafter, is that evaluation given by the claimant and the affiants with personal knowledge of the properties in question; that such evaluation is fair and reasonable, and is consistent with the evaluation of like properties in Cuba.

Accordingly, the Commission finds that on the date of loss, October 31, 1960, the aforesaid real and personal property, including Items 1-8, inclusive,

and Items 10 and 11, had a total value of \$51,567.58, and concludes that claimant suffered a loss in that amount within the meaning of Title V of the Act.

With respect to the stock interest of 1,000 shares in the Antilles Brewing Company, known in Cuba as Compania Cervecera de las Antillas, S.A. the Commission finds in accordance with our decision entitled the Claim of Norman H. Boettcher, et al, Claim No. CU-1275, which we incorporate herein by reference, that the Cuban corporation was nationalized under Law 890, published in the Official Gazette on October 13, 1960; and that each of the 202,994 outstanding shares of stock had a value of \$17.53687 on that date. Accordingly, the Commission finds that the 1,000 shares of Antillas stock, owned by the claimant herein, had a value of \$17,536.87 at the time of loss on October 13, 1960; and that claimant suffered a loss in this amount within the meaning of Title V of the Act.

As stated above, the Commission determined that the business enterprise, Publicidad Jennings, S.A., was owned by the claimant; and that it was taken by the Government of Cuba on October 31, 1960. In several letters the Commission suggested that claimant submit data to establish the value of the business enterprise at the time of loss. However, the only evidence of probative value submitted by claimant concerning the value of the business enterprise in question is a report, in letter form, submitted to claimant by the Kenneth Groesbeck Advertising Agency Counsel of New York City, prepared on March 24, 1959, or over a year before loss. Further, the report indicates that the net worth of the business on September 30, 1958, was \$25,148.00, which includes depreciated furniture, automobile and similar items; that \$15,706.00 is carried as capital but ". . . if the business were wound up, this amount would be diminished or wiped out by your loss in your fixed assets"; and that claimant has removed most of the earnings as salary, has no capital except a bank loan, not otherwise explained in the report, and the business has little value without the personal management of the claimant.

Based upon the present record, and, in the absence of evidence to show a higher value, the Commission finds that claimant suffered a loss in the

amount of \$25,148.00 within the meaning of Title V of the Act when the aforesaid business enterprise was taken by the Government of Cuba on October 31, 1960.

The Commission finds that claimant has failed to submit evidence concerning the ownership, loss and value of a 1959 Dodge automobile. In the absence of evidence of probative value concerning this portion of the claim on the asserted date of loss, the Commission is constrained to find that claimant has not sustained the burden of proof and this portion of the claim is hereby denied.

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 as follows:

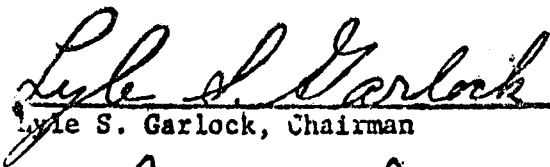
<u>FROM</u>	<u>ON</u>
October 13, 1960	\$17,536.87
October 31, 1960	<u>76,715.58</u>
	\$94,252.45

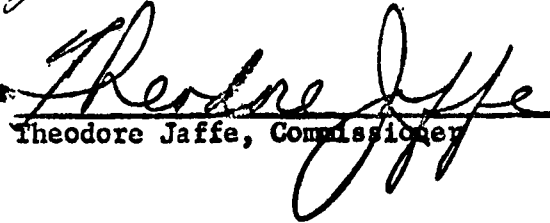
CERTIFICATION OF LOSS

The Commission certifies that BERNARD R. JENNINGS, 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 Ninety-Four Thousand Two Hundred Fifty-Two Dollars and Forty-Five Cents (\$94,252.45) with interest at 6% per annum from the respective dates of loss to the date of settlement.

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

JUL 28 1971


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 claimant establishes retention of the securities for 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 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 (1970).)

CU-0620