

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

IN THE MATTER OF THE CLAIM OF

HAROLD TANENBAUM
DOROTHEA TANENBAUM

Claim No. CU -1422

Decision No. CU -6807

Under the International Claims Settlement
Act of 1949, as amended

Counsel for claimants:

Shapiro, Fried, Weil & Scheer
By Herbert S. Shapiro, Esq.

Appeal and objections from a Proposed Decision entered on September 1, 1971.
Oral hearing requested.

Oral hearing held on October 13, 1971.

FINAL DECISION

By Proposed Decision issued September 1, 1971 the Commission certified losses to claimant HAROLD TANENBAUM in the amount of \$266,473.94 and claimant DOROTHEA TANENBAUM in the amount of \$171,658.86, respectively. Parts of the claim, common to both claimants, based on shareholders' interests in seven Cuban entities were denied for failure to establish a value of the Cuban corporations at the date of loss. A part of the claim of HAROLD TANENBAUM based upon the cash surrender value of ten life insurance policies was denied for claimant's failure to establish said proceeds were taken by the Government of Cuba.

At an oral hearing held October 13, 1971 argument was made by counsel and additional evidence was submitted reflecting on the value of all seven of the aforementioned Cuban corporations.

Based upon the entire record, including oral argument of counsel and the newly submitted evidence, the Commission finds that all seven entities, hereinafter listed, were taken by the Government of Cuba on October 13, 1960 and that the extent of each claimant's interest in each corporation and the value of such interest at the time of loss was as follows:

<u>Item</u>	<u>Ownership</u>	<u>Value</u>
1. Parcelacion Wilcha, S.A.	6.25%	\$15,937.50
2. Mirabel, S.A.	3.125%	14,859.66
3. Urbanizadora Las Palmas, S.A.	3.125%	10,625.00
4. Las Culebrines, S.A.	3.125%	5,312.50
5. Urbanizadora Ariguanevo, S.A.	3.125%	2,125.00
6. Inmobiliaria La Lisa, S.A.	6.25%	1,593.75
7. Taller de Confecciones	6.25%	<u>531.25</u>
Total		\$50,984.66

The Commission further finds that Mirabel, S.A. (item 2) was indebted to each claimant for unpaid dividends in the amount of \$781.25 based on a 3.125% interest in said firm and that each claimant sustained a further loss in this amount.

Claimant, HAROLD TANENBAUM, has failed to submit any probative evidence, within the time allotted to counsel at the oral hearing, in reference to the part of the claim based on the insurance policies. Accordingly, its denial is affirmed.

Claimants' losses are now restated as follows:

<u>Item</u>	<u>Harold Tanenbaum</u>	<u>Dorothea Tanenbaum</u>	<u>Date of Loss</u>
La Coronela, Havana	\$ 50,864.50		October 14, 1960
Calle 40A, Havana	23,750.00		October 14, 1960
Auto	1,800.00		October 14, 1960
Cuban Telephone Co.	18,400.57		August 6, 1960
Tiendas	153,273.56	\$153,273.56	October 13, 1960
Ellis	18,385.31	18,385.30	October 13, 1960
Additional Stock Interests	50,984.66	50,984.66	October 13, 1960
Dividends	<u>781.25</u>	<u>781.25</u>	October 13, 1960
	\$318,239.85	\$223,424.77	

The Commission concludes that claimant HAROLD TANENBAUM suffered a loss in the amount of \$318,239.85 and claimant DOROTHEA TANENBAUM, \$223,424.77, within the meaning of Title V of the Act.

The Commission affirms the holding that interest shall be included in the Certifications and it shall be included as follows:

	<u>FROM</u>	<u>ON</u>
HAROLD TANENBAUM	August 6, 1960	\$ 18,400.57
	October 13, 1960	223,424.78
	October 14, 1960	<u>76,414.50</u>
		\$318,239.85
DOROTHEA TANENBAUM	October 13, 1960	\$223,424.77

The Certifications of Loss in the Proposed Decision are set aside, and the Certifications of Loss, as restated below, will be entered and the remainder of the Proposed Decision, as amended herein, is affirmed.


CERTIFICATIONS OF LOSS

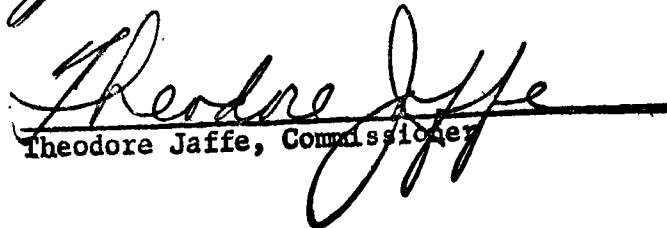
The Commission certifies that HAROLD TANENBAUM suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Three Hundred Eighteen Thousand Two Hundred Thirty-nine Dollars and Eighty-five Cents (\$318,239.85) with interest thereon at 6% per annum from the respective dates of loss to the date of settlement; and

The Commission certifies that DOROTHEA TANENBAUM 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 Two Hundred Twenty-three Thousand Four Hundred Twenty-four Dollars and Seventy-seven Cents (\$223,424.77) with interest thereon at 6% per annum from October 13, 1960 to the date of settlement.

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

OCT 20 1971


Lyle S. Garlock, Chairman


Theodore Jaffe, Commissioner

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

IN THE MATTER OF THE CLAIM OF

HAROLD TANENBAUM
DOROTHEA TANENBAUM

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-1422

Decision No. CU 6807

Counsel for claimants:

Shapiro, Fried, Weil & Scheer
by Herbert S. Shapiro, 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 \$749,665.00, was presented by HAROLD TANENBAUM based upon the loss of certain real and personal property in Cuba, and stock interests in Cuban enterprises. Under the Community Property Law of Cuba, claimant's spouse, DOROTHEA TANENBAUM, has an interest in her husband's property and is therefore joined in this claim. Claimants have been nationals of the United States since birth.

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 following losses are asserted:

	<u>Asserted Value</u>
An interest in the residence, La Coronela, with furnishings	\$ 75,000.00
Automobile	1,800.00
Securities:	
(a) Cuban Telephone & Telegraph Co. (100 shares)	10,000.00
(b) Tiendas Los Precios Fijos, S.A. (12.5%)	437,500.00
(c) Ellis Hosiery Mills of Cuba, S.A. (12.5%)	62,500.00
(d) Parcelacion Wilcha, S.A. (12.5%)	37,500.00
(e) Mirabel, S.A. (6.25%)	37,500.00
(f) Urbanizadora Las Palmas, S.A. (6.25%)	25,000.00
(g) Las Culebrines, S.A. (6.25%)	12,500.00
(h) Urbanizadora Ariguanevo, S.A. (6.25%)	5,000.00
(i) Inmobiliaria La Lisa, S.A. (12.5%)	3,750.00
(j) Taller de Confecciones (12.5%)	1,250.00
Insurance, cash surrender value (10 policies)	<u>40,365.00</u>
Total	\$ 749,665.00

Real and Personal Property

The Commission has found in the Claim of Dorothea Tanenbaum (Claim No. CU-1423, Amended Proposed Decision) that the residence at La Coronela and the personalty therein were taken by the Government of Cuba on October 14, 1960; that the residence had a value of \$75,000.00, and the personalty therein had a value of \$26,729.00. Accordingly, the Commission finds that claimant HAROLD TANENBAUM suffered a loss of \$50,864.50 in this connection.

The Commission has also found (Dorothea Tanenbaum, supra) that claimant HAROLD TANENBAUM owned a 1/8 interest in improved real property at Calle 40A, Miramar, Havana, Cuba also taken on October 14, 1960 and that a 1/8 interest had a value of \$23,750.00. Accordingly, the Commission finds that claimant HAROLD TANENBAUM suffered a loss in this amount.

Further, the Commission finds that claimant HAROLD TANENBAUM was the sole owner of a 1956 Dodge automobile also taken on October 14, 1960 which had a value of \$1,800.00 at that time, and that he suffered a loss in that amount.

Securities

(a) Cuban Telephone Company

Claimant HAROLD TANENBAUM owned a stock interest in the Cuban Telephone Company, and asserts a claim under Title V against the Government of Cuba because of its nationalization of said Company.

In our decision entitled the Claim of International Telephone and Telegraph Corporation (Claim No. CU-2615 which we incorporate herein by reference), we held that the properties of the Company were nationalized or otherwise taken by the Government of Cuba on August 6, 1960, and that this type of claim is compensable 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 common stock of \$184.0057.

On the basis of evidence in the record in the instant case, the Commission finds that claimant HAROLD TANENBAUM comes within the terms of the ITT decision; that he was an American national at the requisite time; that he had been the owner of 100 shares of stock in the Cuban Telephone Company since prior to August 6, 1960; and that he sustained a loss in the amount of \$18,400.57 within the meaning of Title V of the Act.

(b) Tiendas Los Precios Fijos, S.A.

On the basis of evidence of record the Commission finds that claimant HAROLD TANENBAUM is, and since prior to October 13, 1960, has been the owner of 12.5% of the outstanding capital stock of Tiendas Los Precios Fijos, S.A., hereinafter referred to as Tiendas.

The record discloses that Tiendas was listed as nationalized pursuant to Law 890 published in the Cuban Official Gazette on October 13, 1960. This corporation was organized in 1945 under the laws of Cuba. Thus the corporation does not qualify as a corporate "national of the United States" which is defined under Section 502(1)(B) of the Act as a corporation or other legal entity organized under the laws of the United States, or any State, the District of Columbia or the Commonwealth of Puerto Rico, whose ownership is vested to the extent of 50 per centum or more in natural persons who are citizens of the United States. Therefore claimant is entitled to file this claim based upon an ownership interest therein. (See Claim of Parke, Davis & Company, Claim No. CU-0180, 1967 FCSC Ann. Rep. 33.)

Tiendas was engaged in operating a department store in Havana, Cuba. The corporation had an authorized capital stock of \$3,000,000 of which \$2,000,000 was issued.

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.

Claimant has submitted a 1959 Balance Sheet prepared by a public accountant in Cuba listing its assets and liabilities, as follows:

TIENDAS LOS PRECIOS FIJOS, S.A.

ASSETS

Current Assets

Cash on Hand and in Banks	\$ 43,947.16	
Accounts Receivable	1,606,871.88	
Merchandise Inventory	1,531,353.92	
Recoverable Deposits	<u>2,357.50</u>	
Total Current Assets		\$3,184,530.46

Investments		80,400.00
-------------	--	-----------

Fixed Assets - Less Reserves for Depreciation

Building	\$ 9,792.13	
Furniture & Fixtures	19,130.75	
Elevators	6,554.79	
Air Conditioning Equipment	40,718.92	
Autos	<u>9,190.85</u>	
Total Fixed Assets		85,387.44

Deferred Charges		<u>77,586.17</u>
------------------	--	------------------

TOTAL ASSETS \$3,427,904.07

LIABILITIES AND CAPITAL

Current Liabilities

Checks in Transit	\$ 283,867.33	
Notes Payable - to Suppliers	13,088.06	
Accounts Payable - to Suppliers	217,284.51	
Miscellaneous Payable - Agents Deposits	64,696.19	
Expenses Payable	6,064.24	
Miscellaneous	<u>16,026.73</u>	
Total Current Liabilities		\$ 601,027.06

Loans Payable (The Trust Company of Cuba)		<u>302,500.00</u>
---	--	-------------------

Total Liabilities \$ 903,527.06

Capital

Capital Stock:

Issued and Outstanding -		
Preferred \$100 par - 1,500,000		
Common \$100 par - 500,000	\$2,000,000.00	

Surplus:

Balance on 2/1/59	\$607,454.72	
Less Adjustments		
from previous years -	<u>92,669.48</u>	
	514,785.24	

Profit this period	<u>9,591.77</u>	
Total Surplus		<u>524,377.01</u>

Total Capital 2,524,377.01

TOTAL LIABILITIES AND CAPITAL \$3,427,904.07

It is noted in the schedule of investments that Tiendas made investments in shares of stock in other companies, one of which is Ellis Hosiery Mills of Cuba, Inc. Another part of this claim is based on claimant's loss of a stockholder's interest in Ellis Hosiery Mills, the value of which is discussed below. There is no evidence of record as to the number of shares of Ellis Hosiery owned by Tiendas. The investment is stated in the amount of \$72,000.00. The stockholders of both companies are the same and hold the same percentage interest in both corporations. Therefore the net worth of Ellis will be divided among the individual stockholders and no loss for Tiendas's investment determined herein.

Accordingly, an adjustment is made to the 1959 Balance Sheet of Tiendas to reflect investments in the amount of \$8,400.00 for Ferrocarriles Occidentales de Cuba, rather than \$80,400.00, reducing the asset value to \$3,355,904.07.

After deducting the liabilities of \$903,527.06, the Commission finds that the net worth of Tiendas on October 13, 1960 was \$2,452,377.01. A 12.5% interest in Tiendas had a value of \$306,547.12 and pursuant to the Community Property Law of Cuba, each claimant herein had a 1/2 interest therein.

Accordingly, the Commission concludes that claimants HAROLD TANENBAUM and DOROTHEA TANENBAUM each sustained a loss in the amount of \$153,273.56 for their interests in Tiendas.

(c) Fabrica de Medias Ellis de Cuba
(Ellis Hosiery Mills of Cuba)

The Commission finds that claimant HAROLD TANENBAUM is, and since prior to October 13, 1960 has been, the owner of 12.5% of the outstanding capital stock of Fabrica de Medias Ellis de Cuba, hereinafter referred to as Ellis.

The Commission has found that Ellis was listed as confiscated on May 14, 1962. (See Claim of Schiaparelli, Inc., Claim No. CU-2112.) However, it appears that claimants' interests were taken on October 13, 1960

when Tiendas was taken. Ellis was organized in 1955 under the laws of Cuba. Thus the corporation does not qualify as a corporate national of the United States and claimant is entitled to file this claim based upon an ownership interest therein. (See Parke, supra.)

Ellis operated a hosiery mill, manufacturing and distributing ladies' hosiery under the trade names of "Kayser" and "Schiaparelli". The corporation had an authorized capital stock of \$500,000.00 of which \$222,000.00 was issued. Upon consideration of the entire record, the Commission finds that the valuation most appropriate to the property and equitable to the claimant is that shown in the balance sheet for the year 1959 prepared by a public accountant in Cuba which reflects the following:

ELLIS HOSIERY MILLS OF CUBA
(Fabrica de Medias Ellis de Cuba)

ASSETS

Current Assets

Cash on Hand	\$ 226.32	
Accounts Receivable	153,688.20	
Recoverable Deposits	2,036.82	
Merchandise Inventory:		
Raw material	\$33,035.64	
Products in process	96,422.32	
Finished products	20,443.06	
Material & Supplies	<u>1,879.00</u>	
	<u>151,780.02</u>	
Total Current Assets		\$ 307,731.36

Fixed Assets - Less Accumulated Depreciation

Machinery	\$136,643.86	
Furniture & Fixtures	3,361.00	
Air Conditioning Equipment	<u>6,375.30</u>	
Total Fixed Assets		146,380.16

Deferred Charges

Organization Expenses	\$ 3,731.00	
Installation Expenses	20,509.80	
Leasehold Improvements	<u>3,698.93</u>	
		<u>27,939.73</u>

TOTAL ASSETS \$ 482,051.25

CU-1422

LIABILITIES AND CAPITAL

Current Liabilities

Checks in Transit		\$ 6,912.61
Miscellaneous Creditors (Salaries)		53,792.23
Accounts Payable		59,463.34
Notes Payable		19,116.72
Expenses Payable		17,353.05
Commissions Payable		7,522.65
Taxes Payable		2,520.36
Accrued Employees' Vacation Payable		1,705.41
Loans Payable		<u>19,500.00</u>

Total Liabilities \$ 187,886.37

Capital

Outstanding Capital		\$222,000.00
Surplus on 1/1/59	\$54,047.69	
Profit in this period	<u>18,117.19</u>	
Total Surplus		<u>72,164.88</u>

294,164.88

TOTAL LIABILITIES AND CAPITAL \$ 482,051.25

This balance sheet reflects that the net worth of Ellis on the date of loss was \$294,164.88. Accordingly, the Commission finds that claimant's 12.5% stock interest at that time had a value of \$36,770.61.

Under the Community Property Law of Cuba, claimant's wife would have a 1/2 interest in this property. The Commission concludes that claimant HAROLD TANENBAUM and DOROTHEA TANENBAUM sustained losses in the amounts of \$18,385.31 and \$18,385.30, respectively.

- (d) Parcelacion Wilcha, S.A.
- (e) Mirabel, S.A.
- (f) Urbanizadora Las Palmas, S.A.
- (g) Las Culebrines, S.A.
- (h) Urbanizadora Ariguanevo, S.A.
- (i) Inmobiliaria La Lisa, S.A.
- (j) Taller de Confecciones

In reference to items (d) to (j) inclusive, some evidence has been submitted which reflects that all of the above listed entities were corporations incorporated under the laws of Cuba; the percentage of ownership held by claimant HAROLD TANENBAUM of the outstanding shares and the nationalization of the firms by the Government of Cuba.

Persuasive evidence of record in support of the asserted values of the corporations has not been submitted. The total assets of each corporation are approximated but there is no evidence of value independent of the assertions, such as balance sheets; profit and loss statements; schedules; ledger or business records; and liabilities of a particular or general nature are not listed.

From the foregoing it is obvious that the value of these Cuban corporations cannot be readily determined. By Commission letter of January 5, 1971 counsel was advised of this matter and was advised to submit documentation in support of the asserted value. No further evidence of value has been submitted.

The Commission finds that the burden of proof has not been met in this respect. Accordingly, these parts of the claim are denied.

Life Insurance

Part of this claim, in the amount of \$40,365.00, is based upon the asserted cash surrender value of ten life insurance policies issued on claimant HAROLD TANENBAUM's life and the lives of his children by the Occidental Life Insurance Company and American International Life Insurance Company.

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).)

The record does not establish that the Government of Cuba took any proceeds of the subject policies. Accordingly, this part of the claim is denied. The Commission need not consider other elements of this part of the claim.

Recapitulation

Claimants' losses are summarized as follows:

HAROLD TANENBAUM

<u>Item</u>	<u>Amount</u>	<u>Date of Loss</u>
La Coronela, Havana	\$ 50,864.50	October 14, 1960
Calle 40A, Havana	23,750.00	October 14, 1960
Auto	1,800.00	October 14, 1960
Cuban Telephone Co.	18,400.57	August 6, 1960
Tiendas	153,273.56	October 13, 1960
Ellis	<u>18,385.31</u>	October 13, 1960
	\$266,473.94	

DOROTHEA TANENBAUM

<u>Item</u>	<u>Amount</u>	<u>Date of Loss</u>
Tiendas	\$153,273.56	October 13, 1960
Ellis	<u>18,385.30</u>	October 13, 1960
	\$171,658.86	

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-0466), and in the instant case it is so ordered, as follows:

HAROLD TANENBAUM	<u>From</u>	<u>On</u>
	August 6, 1960	\$ 18,400.57
	October 13, 1960	171,658.87
	October 14, 1960	76,414.50
DOROTHEA TANENBAUM	October 13, 1960	171,658.86


CERTIFICATIONS OF LOSS

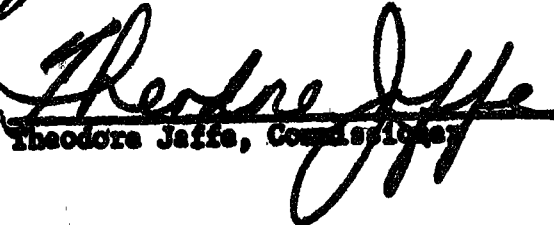
The Commission certifies that HAROLD TANENBAUM suffered a loss as a result of actions of the Government of Cuba within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Two Hundred Sixty-six Thousand Four Hundred Seventy-three Dollars and Ninety-four Cents (\$266,473.94) with interest thereon at 6% per annum from the respective dates of loss to the date of settlement; and

The Commission certifies that DOROTHEA TANENBAUM 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 One Hundred Seventy-one Thousand Six Hundred Fifty-eight Dollars and Eighty-six Cents (\$171,658.86) with interest thereon at 6% per annum from October 13, 1960 to the date of settlement.

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

SEP 1 1971


Lyle S. Garlock, Chairman


Theodore Jaffe, Commissioner

NOTICE TO TREASURY: Claimant DOROTHEA TANENBAUM may be the subject of another Certification of loss in CU-1423 involving asserted losses not covered under this Proposed Decision.

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.

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).)