

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

IN THE MATTER OF THE CLAIM OF

FRANK Q. BARONE

Claim No. CU-2025

Decision No. CU -5533

Under the International Claims Settlement
Act of 1949, as amended

Counsel for claimant:

Rufus King, Esq.

Appeal and objections from a Proposed Decision entered August 6, 1970.
Oral hearing cancelled.

Hearing on the record held September 22, 1971.

FINAL DECISION

This claim based on the asserted loss of real and personal property including interests in four Cuban corporations was denied for lack of proof.

Claimant objected generally without specifying the basis for the objection. He has submitted an affidavit of a former Cuban attorney who states that he had set up two of the Cuban companies for claimant in which he served as Secretary. He states that he maintained their records, was intimately familiar with their activities, that in 1959 and 1960 they accumulated very large amounts in accounts receivables, and that although he is unable to recall precise amounts, believes the claimant's claim as set forth in the claim form reasonably reflects the true worth of the business interests and of the real and personal property of claimant. He adds that he has visited the two homes of claimant in Havana and Varadero Beach and that they were fully and comfortably furnished. No other evidence has been submitted.

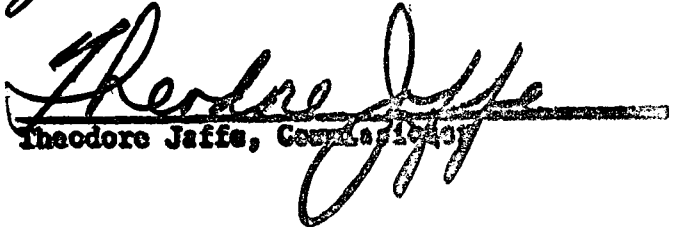
Full consideration having been given to the entire record including the new evidence the Commission finds that the evidence is not sufficiently probative to permit findings that would be other than speculative, and accordingly, it is

ORDERED that the Proposed Decision be and it is hereby affirmed as the Final Decision of the Commission in this matter.

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

SEP 22 1971


Lyle S. Garlock, Chairman


Theodore Jaffe, Commissioner

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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, in the amount of \$266,500.00, was presented by FRANK Q. BARONE and is based upon the asserted loss of real and personal property, and certain business interests. Claimant states that he has been a national of the United States since March 20, 1914.

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).)

The evidence of record in this claim consists solely of an official claim form wherein claimant asserts the ownership and loss of real and personal property and various businesses in which claimant asserts sole or partial interests.

By Commission letter of July 5, 1967, claimant was advised, through counsel, as to the type of evidence proper for submission to establish this claim under the Act. Thereafter, by letters of October 4, 1968 and January 21, 1970, the Commission made additional suggestions to claimant, through counsel, concerning the submission of supporting evidence in this matter. Although counsel has advised the Commission of his efforts to communicate with his client, no evidence of any kind has been received to date.

On February 11, 1970, in response to counsel's request for a one-year extension, counsel was invited to submit any evidence available to him within sixty (60) 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 existing record. No evidence has since been submitted.

Although the Commission has attempted to obtain evidence on behalf of the claimant, none has been received, nor is there any certainty that any such evidence can be obtained.


The Commission finds that claimant has not met the burden of proof in that he has failed to establish ownership of rights and interest in property

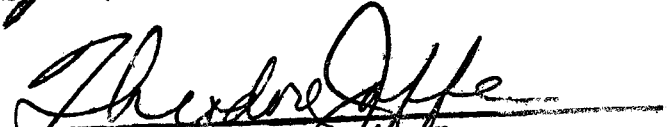
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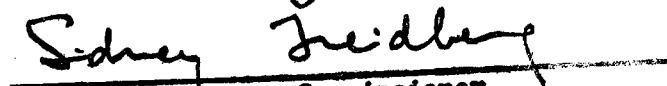
which was nationalized, expropriated or otherwise taken by the Government of Cuba. Thus, the Commission is constrained to deny this claim and it is hereby denied. The Commission deems it unnecessary to make determinations with respect to other elements of the claim.

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

AUG 6 - 1970


Lyle S. Garlock, Chairman


Theodore Jaffe, Commissioner


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-2025