

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

IN THE MATTER OF THE CLAIM OF

BERNARD WEISS

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-2357

Decision No. CU
3687

Counsel for claimant:

Ira Grossman, 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 \$8,676,500.00, was presented by BERNARD WEISS, based upon the asserted loss of certain real and personal property in Cuba, and upon personal injuries. Claimant has been a national 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.

Claimant has asserted the following losses:

1. A 100% stock interest in Super Markets, S.A., which owned and operated the Cachet Bar Club in Havana, Cuba, was engaged in the export and import business, and owned a 20% interest in the development of "Turtle Head Beach" at Bahia Honda, Cuba.

The assets assertedly taken by Cuba consist of:

Cash-U.S. currency	\$ 32,000.00
Cash-Cuban currency	80,000.00
Inventory	15,000.00
Furniture & fixtures	30,000.00
Accounts receivable	2,000.00
Office equipment	1,000.00
Long term renewable lease of building occupied by the Club	150,000.00
Land development - 2,700 acres 20% of \$3,000,000.00	600,000.00
Intangible assets of Super Markets, S.A.	<u>500,000.00</u>
Total	<u>\$1,410,000.00</u>

2. Personal belongings:

Jewelry	\$ 6,000.00
Clothes	900.00
Auto	800.00
Coin collection	1,000.00
Camera & binoculars	500.00
Fishing equipment	100.00
Guitar	100.00
Household furniture	5,000.00
Household appliances	1,600.00
Dishes, linens, silver	<u>500.00</u>
Total	<u>\$ 16,500.00</u>

3. Personal injuries:

Pistol whipping - pain and suffering	\$ 250,000.00
Mental anguish	1,000,000.00
Mental torture	1,000,000.00
Malicious slander and false arrest - punitive damages	<u>5,000,000.00</u>
Total	<u>\$7,250,000.00</u>

In addition to the foregoing asserted losses in the aggregate amount of \$8,676,500.00, claimant has stated that he suffered the loss of a pet spider monkey and a pet cocker spaniel dog, which he evaluates as "Priceless".

Property Losses

In support of his claim for property losses, claimant has submitted a number of affidavits from persons who either knew claimant through social contacts or did business with him, attesting to his ownership of the items of property claimed, the taking of his property by Cuba, and the value thereof. All of the affidavits are of the same general tenor, contain few details, and fail to indicate the bases for the statements except in general terms setting forth conclusions.

Claimant also submitted a business card for the Cachet Bar Club, a photograph of the Club from the outside, several photographs of property he indicated to be Turtle Head Beach, and two newspaper articles reporting claimant's arrest by Cuban authorities.

Since the record was deemed insufficient to warrant favorable action, the Commission made suggestions to claimant on several occasions, indicating the need for additional supporting evidence. The Commission suggested the submission of stock certificates, tax records, insurance records, balance sheets, and other appropriate evidence to establish ownership of the property assertedly taken by Cuba. Claimant's response, through his attorney, was that all such documentary proof had been left in Cuba and was unavailable. The Commission also suggested the submission of the documentation claimant used in supporting his claim for a tax deduction in his 1965 Federal tax return on account of the losses asserted in this claim. The response from claimant was that he had abandoned that claim for a tax deduction because he does not have the time to pursue it.

The record contains not even a scintilla of primary evidence or any contemporaneous correspondence or other pertinent documentation in support of the portion of the claim for property losses in the aggregate amount of \$1,426,500.00 plus an unstated amount for the asserted loss of the two pets.

While the Commission appreciates the difficulties involved in obtaining documentation, it nevertheless has a statutory duty to determine the validity and amount of claims against Cuba "in accordance with applicable substantive law, including international law".

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).)

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, intervened or otherwise taken by the Government of Cuba within the meaning of Title V of the Act. Accordingly, the portion of the claim for property losses is denied.

Personal Injuries

Section 503(b) of the Act provides as follows:

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 disability or death resulting from actions taken by or under the authority of the Government of Cuba . . .

This portion of the claim is also assertedly supported by some of the affidavits referred to with respect to the claim for the loss of real and personal property. In general, the affidavits contain statements

that claimant was arrested, harrassed and unjustly accused of violating Cuban laws. Further information concerning this portion of the claim appears from the newspaper articles claimant submitted. One article, dated at Havana, June 15, and stated by claimant to have been published in the New York Times in 1959, states that claimant and three others "have been arrested by the Cuban Army," and that the "arrests were linked to the smuggling of Cuban currency from abroad". The other article, published in The San Diego Union on January 17, 1964, states that claimant "was jailed three days after refusing to become an informer for Castro agents, and fled to avoid a second arrest four months later."

In a narrative attached to claimant's official claim form, claimant stated that he was falsely arrested in May 1959, and at gun point in the presence of his customers and employees he was forced to disrobe publicly, then forced to dress, was handcuffed, was driven around a cemetery and threatened with death for over one hour, and later taken to a military prison where he was pistol whipped during interrogation, and was released after three days in prison.

The Commission has held that in a claim under Section 503(b) of the Act, it must be established, inter alia, that the claimant suffered a disability and that the disability was the proximate result of actions of the Government of Cuba in violation of international law. (See Claim of Julio Lopez Lopez, Claim No. CU-3259.)

In connection with this portion of the claim, the Commission suggested the submission of evidence to support the various elements thereof and to establish that each of these elements falls within the purview of the statute. Counsel's reply, dated April 21, 1969, was

that the "claim of personal injuries in the amount of \$7,250,000.00 are (sic) for the unlawful and illegal false arrest of Mr. Weiss, as evidenced by the admission of malicious intent of the Castro Cuban Government after they released Mr. Weiss."

Clearly, the express language of Section 503(b) of the Act speaks only of claims for disability or death, and by necessary implication does not cover unlawful and illegal false arrest irrespective of malicious intent. The Commission holds that the gravamen of a claim under this section of the Act is proof that a disability or death resulted from actions by the Government of Cuba in violation of international law. It will not suffice under this statute that Cuba may have violated international law, if it did not cause a disability or death.

The Commission finds that the claim for \$5,000,000.00 for "malicious slander of reputation" and punitive damages for false arrest is not within the purview of Section 503(b) of the Act. The Commission further finds that the claim for \$1,000,000.00 for public disrobing and humiliation, assertedly causing claimant mental anguish, is likewise beyond the scope of Section 503(b) of the Act because it, too, does not involve a disability as contemplated by the statute. The Commission finds that the claim for \$1,000,000.00 based upon a cemetery ride for over an hour, during which time claimant was assertedly threatened with death by "Russian Roulette" and caused mental torture, is outside the intent of Section 503(b) of the Act because these asserted actions of the Cuban agents did not result in a disability within the meaning of the statute. The Commission finds that with respect to the claim for \$250,000.00 for asserted pistol whipping

and pain and suffering, claimant has failed to establish by persuasive evidence that he thereby sustained a disability within the meaning of Section 503(b) of the Act as a result of actions by the Government of Cuba in violation of international law.

For the foregoing reasons, the portion of the claim for personal injuries is also denied.

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

3 JUN 1969

Leonard v. B. Sutton

Leonard v. B. Sutton, Chairman

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).)