

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

IN THE MATTER OF THE CLAIM OF

REGINA SCHOENBERG JORDAN BARONE

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-2836

Decision No. CU 6150

Counsel for claimant:

Joshua I. Seidman, Esq.

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, was presented by claimant, REGINA SCHOENBERG JORDAN BARONE, in the amount of \$90,170.00, based upon the asserted ownership and loss of real and personal property in Cuba. 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.

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).)

The claimant asserted that she was married to Octavio Jordan y Pereira, a Cuban resident; and that she resided in Cuba from some date prior to 1956 until departure on January 6, 1964, when she and her husband went to Mexico where her husband died on October 12, 1965. Claimant stated that she acquired certain apartments in the Focsa Building, Havana, Cuba, with household furnishings and had a bank account in Banco Nacional, Vedado, Cuba.

According to the community property laws of Cuba, the properties acquired by one or both spouses during the marriage with money of the marriage partnership or by the industry, salary or work of either or both spouses, and the fruits thereof, belong in equal parts to both spouses (see Claim of Robert L. Cheaney, et ux., Claim No. CU-0915). Accordingly, the property discussed below will be deemed as having been owned by the claimant and her husband, since no evidence has been submitted to establish that such property was acquired by the claimant prior to the marriage, or by gift or inheritance. Inasmuch as there is no evidence that claimant's husband was a national of the United States at any time pertinent to this claim and no claim has been filed by him or on his behalf, his interests in the properties will not be considered here.

The claimant stated that she purchased five apartments in the Focsa Building in 1956-1957, including Nos. 17D, 21D, 21E, 25E and 27F; and that in July 1960 she sold 21D and 25E, retaining three apartments, one of which was her residence and two were utilized as rental units.

Claimant submitted several affidavits of persons who were former residents of Cuba, including two former tenants, who had personal knowledge of her ownership interest in the claimed real and personal property, including household furnishings. The record also includes correspondence and other evidence concerning the real property, including the July 1960 contract of sale between claimant and her husband and Barry Lee Taran, subject of another claim before the Commission. Further, the record includes reports received by the Commission from abroad concerning the claimant's residence and other apartments in the Focsa Building. On the basis of the entire record, the Commission finds that under the community property laws of Cuba claimant herein, REGINA SCHOENBERG JORDAN BARONE, owned a one-half interest in three furnished apartments located in the Focsa Building, Vedado, Havana, Cuba.

On December 6, 1961, the Cuban Government published its Law 989 which effectively confiscated all assets, personal property and real estate, shares, stocks, bonds and securities of persons who had left the country. As stated, the record reflects that claimant and her husband left Cuba on January 6, 1964.

The Commission finds, in the absence of evidence to the contrary, that the subject real and personal property was taken by the Government of Cuba on January 6, 1964, pursuant to the provisions of Law 989. (See Claim of Wallace Tabor and Catherine Tabor, Claim No. CU-0109, 25 FCSC Semiann. Rep. 53 [July-Dec. 1966].)

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 claimant has submitted a detailed description of the real property, including certain additions and alterations made by claimant, as well as affidavits and other material concerning the value of such real property, stated to be in the amount of \$62,930.00 at the time of loss. Additionally, claimant has submitted a detailed list of the household furnishings and equipment which includes the location, approximate dates of purchase and dealer from whom the property was purchased. Claimant asserts that the personal property had a total value of \$22,000.00 at time of loss.

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 property, subject of this claim, is that evaluation given by claimant and the affiants with personal knowledge of the properties in question; and that such evaluation is fair and reasonable, and is consistent with evaluation of like properties in Vedado and other areas of Cuba. Accordingly the Commission finds that on the date of loss the real property had a value of \$62,930.00.

However, based upon evidence available to the Commission concerning similar property in Cuba, with depreciation a factor, the Commission finds that the personal property in the three apartments had a total value of \$11,000.00 at the time of loss.

The Commission therefore concludes that on the date of loss, the real and personal property had a total value of \$73,930.00, and that claimant, pursuant to the community property laws of Cuba, suffered a loss of \$36,965.00 within the meaning of Title V of the Act.

With respect to the remaining portion of the claim, involving a bank account, the Commission made suggestions in several letters to claimant, through counsel, as to the type of evidence proper for submission to establish this portion of the claim. While claimant has responded in part to the Commission correspondence, she has not submitted evidence of probative value which would establish that she owned a bank account which was taken by the Government of Cuba within the meaning of Title V of the Act.

The Commission appreciates the difficulties encountered by the claimants in establishing their claims against the Government of Cuba. However, the Commission must be guided by the evidence of record pertaining to the ownership, loss and value of the property included in each claim. The Commission is constrained to find that claimant herein has not met the burden of proof in that she has failed to establish the ownership and value of rights and interest in a bank account which was nationalized, expropriated or otherwise taken by the Government of Cuba. Accordingly, this portion of the claim is hereby denied for the reasons stated. The Commission deems it unnecessary to make determinations with respect to other elements of this claim.

The Commission has decided that in certifications of losses 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.

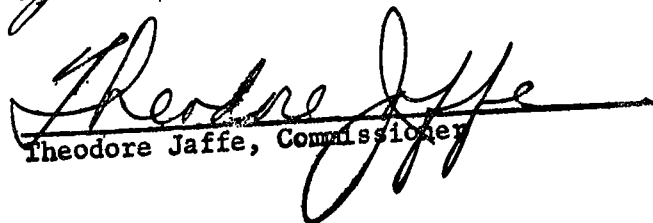
CERTIFICATION OF LOSS

The Commission certifies that REGINA SCHOENBERG JORDAN BARONE 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 Thirty-Six Thousand Nine Hundred Sixty-Five Dollars (\$36,965.00) with interest thereon at 6% per annum from January 4, 1964 to the date of settlement.

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

APR 7 1971


Lyle S. Garlock, Chairman


Theodore Jaffe, Commissioner

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. 501.5(e) and (g), as amended (1970).)