

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

IN THE MATTER OF THE CLAIM OF

MICHEL FRIBOURG

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-3617

Decision No. CU

3911

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 MICHEL FRIBOURG for \$150,657.00 based upon the asserted ownership and loss of real property and a stock interest in Cuba. Claimant has been a national of the United States since his naturalization on February 10, 1944.

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 describes his loss as

4,725 shares of Cia. Territorial Alturas del Olimpo, S.A.	\$135,000.00
Investment in five real estate plots in Residencial Alamar, Havana, Cuba	\$ 15,657.00

Based upon the entire record, including sales contracts between claimant and Territorial Alturas del Olimpo, S.A., the Commission finds that claimant purchased the five plots in question and that his investment was \$15,657.00.

On December 6, 1961, the Cuban Government published its Law 989 (Official Gazette, XXIII, No. 237, p. 23705) which confiscated all assets, personal property and real estate, rights, shares, stocks, bonds and securities of persons who had left the country.

The Commission finds, in the absence of evidence to the contrary, that the claimant's interest in the five lots was taken by the Government of Cuba on December 6, 1961 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].)

Based on the entire record, the Commission finds that claimant's real estate investment had a value of \$15,657.00. Accordingly, the Commission concludes that claimant suffered a loss in that amount within the meaning of Title V of the Act, as the result of the taking of his interests therein by the Government of Cuba on December 6, 1961.

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).)

Claimant has also asserted ownership of 4,725 shares of Cia. Territorial Alturas del Olimpo, S.A., which was confiscated by the Government of Cuba on June 19, 1961 by Resolution 3152, pursuant to Law 78 and others. In support thereof claimant submitted a statement by the Secretary of the corporation that claimant owned 4,725 shares having a par value of \$100, that 1,350 thereof were paid for in cash and 3,375 represented a stock dividend.

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.

By Commission letter of July 24, 1967, claimant was advised, through his then counsel, as to the type of evidence proper for submission to establish this claim under the Act, including stock certificates and evidence of the value of the corporation. Thereafter, by letter of December 13, 1967, the Commission made additional suggestions to claimant, concerning the submission of supporting evidence in this matter. However, no evidence in response to this correspondence has been received to date.

On February 15, 1968, claimant was invited to submit any evidence available to him within 45 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. By letter of August 22, 1968, the Commission spelled out in detail the type of evidence the claimant could submit for consideration. No evidence has since been submitted.

The Commission finds that claimant has not met the burden of proof with respect to the asserted stock interest in Cia. Territorial Alturas del Olimpo, S.A., in that even if the evidence of ownership were acceptable he has failed to establish that it had any value on the date of taking by the Government of Cuba. Thus, the Commission is constrained to deny this item of claim and it is hereby denied.

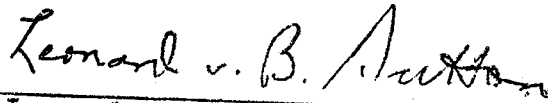
The Commission has decided that in certification of losses on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be included at the rate of 6% per annum from the date of loss to the date of settlement (see Claim of Lisle Corporation, Claim No. CU-0644), and in the instant case it is so ordered.


CERTIFICATION OF LOSS

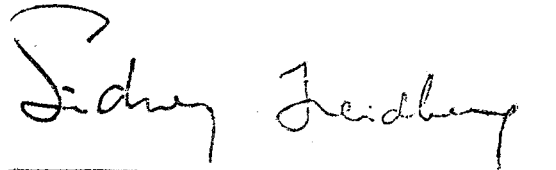
The Commission certifies that MICHEL FRIBOURG suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Fifteen Thousand Six Hundred Fifty-seven Dollars (\$15,657.00) with interest at 6% per annum from December 6, 1961 to the date of settlement.

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

SEP 24 1969


Leonard v. B. Sutton, Chairman


Theodore Jaffe, Commissioner


Sidney Freidberg, 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. 531.5(e) and (g), as amended, 32 Fed. Reg. 412-13 (1967).)