

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

IN THE MATTER OF THE CLAIM OF

TISDALE WYATT BIBB, JR.

Under the International Claims Settlement
Act of 1949, as amended

Claim No. **CU** - 3720

Decision No. **CU**-1517

Counsel for claimant:

Powe, Porter & Alphin
by William O. Harriss, Esq.

Appeal and objections from a Proposed Decision entered on April 10, 1968.

Oral argument on June 13, 1968, by claimant who appeared in his own behalf pursuant to the Regulations of the Commission (FCSC Reg., 45 C.F.R. §500.1, as amended, 32 Fed. Reg. 412-13 (1967).)

FINAL DECISION

The Commission issued its Proposed Decision on this claim on April 10, 1968. It was denied for the failure of the claimant, TISDALE WYATT BIBB, JR., to meet the burden of proof and establish ownership of retirement benefits which were nationalized, expropriated or otherwise taken by the Government of Cuba.

Claimant filed objections to the Proposed Decision and in the course of the oral hearing held on June 13, 1968, testified that beginning with January, 1959 his late mother and asserted predecessor in interest, Virginia Ruffin Bibb, ceased receiving her pension checks due from the Caja General de Jubilaciones y Pensiones de Empleados de Bancos de la Republica de Cuba (General Retirement and Pension Fund of the Employees of Banks in the Republic of Cuba).

Full consideration having been given to claimant's objections to the Proposed Decision and based upon the entire record, the Commission finds as follows:

(1) On May 3, 1956, the Caja General de Jubilaciones y Pensiones de Empleados de Bancos de la Republica de Cuba, hereafter referred to as the Fund, allowed a retirement pension to Virginia Ruffin Bibb; that Mrs. Bibb was a national of the United States from her birth until her death on November 18, 1966.

(2) That the Fund was established by the Law of September 7, 1938, as amended by Law Decrees No. 797 of March 27, 1953, No. 879 of May 27, 1953, and No. 1211 of November 26, 1953; that it was administered by a Board of Directors consisting of seven members, two elected by the General Assembly of Bank Employees, three by the banks contributing to the Pension Fund, one by the General Assembly of Retirees and Pensioners, and a chairman, appointed by the Supreme Court of Cuba.

(3) The amount of the pension awarded Mrs. Bibb was 109.10 pesos per month reduced by 20% for the first 20 years pursuant to Article XXVIII of the Law of September 7, 1938, as amended by Law-Decree No. 797 of 1953, with an additional reduction of 25% under Subsection 2 of Article XVI of the said Law, in case the pensioner resided abroad. In view of such deductions, the original pension of 109.10 pesos was reduced to 60.00 pesos per month for that period of time during which the pensioner resided in the United States with the amount of the pension being transferred to the United States in dollars on par with the peso.

(4) Contributions to the Fund consisted of 5% of the employee's salary; or, if employed subsequent to the creation of the Fund, then his first month's salary, payable over 24 months; and the amount of any first month's salary increase. The bank's contribution consisted of 5% of total salaries. The percentage of contributions, in both instances, was increased to 6% in March, 1953.

The record includes the last available balance sheet dated December 31, 1957, which shows that as of that date the Fund had a net worth of 19,837,811.57 pesos.

On May 29, 1959, Law No. 351 was enacted which provided for the establishment of the Banco de Seguros Sociales de Cuba (Social Insurance Bank of Cuba) as an agency of the Government of Cuba to supervise and administer social insurance, as well as to direct the policy concerning all social security matters. The law also provided for the transfer of the assets and liabilities of all pension funds to the Banco de Seguros Sociales de Cuba. Information also shows that retired employees received their monthly retirement benefits (pensions) from the Banco de Seguros Sociales de Cuba up to the time of their departure from Cuba. After their departure from Cuba the benefits remained unpaid. On the basis of the claimant's testimony given in the course of the oral hearing held on June 13, 1968, the Commission finds that from January 1959 through May 1959 the Fund, and thereafter the Government of Cuba, refused to transfer any pension benefits to Virginia Ruffin Bibb, who was then residing in the United States.

The Commission has held that Cuban Law No. 568, on Foreign Exchange Control published on September 29, 1959, and the Cuban Government's implementation thereof by denying transfer of funds abroad, was not in reality a legitimate exercise of its sovereign authority to regulate its foreign exchange. Rather, the Commission concluded that the application of this law in that respect, constituted an intervention by the Government of Cuba in the contractual rights of the claimant which, in effect, resulted in the taking of American-owned property within the meaning of Section 503(a) of the Act. (See Claim of The Schwarzenbach Huber Company, Claim No. CU-0019, 25 FCSC Semiann. Rep. 58 [July-Dec. 1966].) Accordingly, the Commission finds that the refusal of the Government of Cuba to transfer retirement benefits to claimant's late mother and predecessor in interest constituted a taking of her property, effective January 1, 1959, within the purview of Section 503(a) of the Act, and her interest in the fund arose on that date.

The Commission has adopted as a basis for the valuation of annuities the Makehamized mortality table, appearing as Table 38 of United States Life Tables and Actuarial Tables 1939-41, and a 3-1/2% interest rate, compounded annually, as prescribed by United States Treasury Department regulations of June 24, 1958, for the collection of gift and estate taxes, respectively. (See 23 F.R. 4547, 26 C.F.R. 2031-7.) According to that method of valuation, the value of the annuity for a person of the age of 64 amounts to 9.9036 times the yearly sum of the the annuity. Since on January 1, 1959, Virginia Ruffin Bibb was 64 years of age, the value of her discounted annuity on that date amounted to \$720.00 times 9.9036 or \$7,130.59, and the Commission finds that she sustained a loss within the purview of Title V of the Act in such latter amount.

Upon the death of Virginia Ruffin Bibb, her claim for the unpaid amount of her pension was inherited by the claimant, TISDALE WYATT BIBB, JR., a national of the United States since his birth. Accordingly, the Commission concludes that claimant, through his predecessor in interest, sustained a loss within the purview of Title V of the Act in the amount of \$7,130.59.

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 the Claim of Lisle Corporation, FCSC Claim No. CU-0644), and in the instant case it is so ordered.

Therefore, it is

ORDERED that the Proposed Decision of April 10, 1968, be amended in accordance with the foregoing with the following certification of loss to be entered.

CERTIFICATION OF LOSS

The Commission now certifies that TISDALE WYATT BIBB, JR., sustained 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 Seven Thousand One Hundred Thirty Dollars and Fifty-Nine Cents (\$7,130.59) with interest at 6% per annum from the date of loss to the date of settlement.

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

7 JAN 1970

Theodore Jaffe

Theodore Jaffe, Commissioner

Sidney Froidberg

Sidney Froidberg, Commissioner

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Counsel for claimant:

Powe, Porter & Alphin
By: William G. Harriss, 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 \$9,819.14, was presented by TISDALE WYATT BIBB, JR., and is based upon the asserted loss of a debt. Claimant has been a national of the United States since his 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) (Supp. 1967).)

Claimant asserts the ownership of a certain debt in the form of a pension owed to his mother, Virginia Ruffin Bibb, deceased, who died in 1966. However, other than a resolution granting the pension to claimant's predecessor, correspondence, and an affidavit, claimant has submitted no documentary evidence in support of his claim. By Commission letters of July 21, 1967 and December 7, 1967, claimant was advised, through counsel, as to the type of evidence proper for submission to establish his claim under the Act.

On December 7, 1967, counsel was invited to submit the evidence previously suggested within 20 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 present record. Counsel has not responded to the correspondence of the Commission and no evidence has been submitted in support of this claim.

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 or otherwise taken by the Government of Cuba. Accordingly, this claim is hereby denied. The Commission deems it unnecessary to determine other elements of this claim.

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

APR 10 1968

Leonard v. B. Sutton

Leonard v. B. Sutton, Chairman

Theodore Jaffe

Theodore Jaffe, 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).)

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