

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

IN THE MATTER OF THE CLAIM OF

ORLANDO AVILA

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -4552

Decision No. CU -5205

Counsel for claimant:

Bendit, Weinstock & Sharbaugh
By Lawrence Schechterman, Esq.

FINAL DECISION

By Proposed Decision dated August 6, 1970, the Commission denied this claim for failure of proof.

Since that time, claimant, a national of the United States since birth, has submitted supporting evidence, through counsel. Such evidence includes an affidavit executed in Cuba on September 18, 1967; his letter to the Department of State of April 24, 1968; affidavits of several persons acquainted with the fact that claimant's property in Cuba was taken by the Government of Cuba; and his affidavit of September 12, 1970.

The Commission finds that claimant and his spouse owned certain household furnishings, and a watchmaker and repair shop, and jewelry store in Cuba.

On December 6, 1961, the Government of Cuba published its Law 989 which provided for confiscation of property of those who left Cuba. The record shows that claimant and his spouse left Cuba on April 10, 1968 and the Commission finds, in the absence of evidence to the contrary, that claimant's property in Cuba was taken by the Government of Cuba on April 10, 1968, pursuant to Law 989. (and see Claim of Vivian Morales, Claim No. CU-8739)

Pursuant to the community property law of Cuba, claimant's spouse would have an interest in the property subject of this claim. The record

does not disclose, however, that she was a national of the United States on April 10, 1968, and accordingly, her interest cannot be further considered.

Claimant has included in two affidavits a listing of the household furniture and other furnishings, valuing them at \$2,850.00. The Commission has examined this list and finds the asserted value fair and reasonable. Accordingly, the Commission concludes that claimant suffered a loss of \$1,425.00 in this respect.

With regard to the watch repair shop and jewelry store at 606 Maceo Street, Regla, the record shows that claimant has valued the tools of this trade at \$5,000.00; the 1966 earnings at \$25,000.00; the inventory at \$35,000.00; and the average gross yearly income at \$52,000.00.

No evidence has been submitted in support of the asserted earnings figures. Neither does the record disclose the extent of accounts payable and accounts receivable, which the Commission now finds were about equal. On the basis of this record the Commission finds that the watchmaker and repair shop, and jewelry store, a combined enterprise, had a value of \$30,000.00, including the tools, on April 10, 1968, and concludes that claimant suffered a loss of \$15,000.00 in this respect; an aggregate loss of \$16,425.00 within the meaning of Title V of the Act, as a result of the taking of his property by the Government of Cuba.

The Commission has decided that in certifications of loss 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.

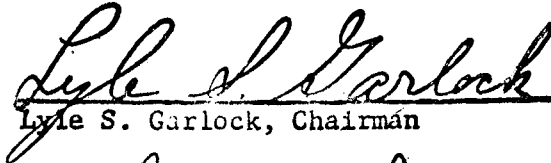
Accordingly, the following Certification of Loss will be entered, and in all other respects the Proposed Decision, as amended herein, is affirmed.

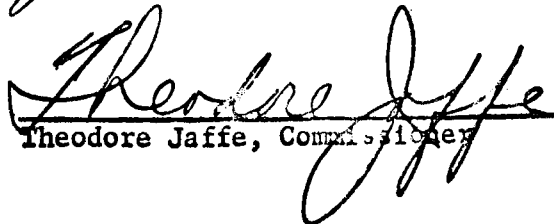
CERTIFICATION OF LOSS

The Commission certifies that ORLANDO AVILA suffered a loss, as a result of the 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 Sixteen Thousand Four Hundred Twenty-Five Dollars (\$16,425.00) with interest thereon at 6% per annum from April 10, 1968 to the date of settlement.

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

SEP 15 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.

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IN THE MATTER OF THE CLAIM OF

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Claim No. CU-4552

Decision No. CU 5205

Under the International Claims Settlement
Act of 1949, as amended

PROPOSED DECISION

This claim against the Government of Cuba, filed under Title V of the International Claims Settlement Act of 1949, as amended, was opened by the Commission for the claimant, ORLANDO AVILA. Claimant now asserts losses in the amount of \$32,862.40, based upon the asserted loss of certain 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) (Supp. 1967).)

Claimant asserts that he owned a Watchmaker Shop in Regla, Havana, Cuba, and that the shop including tools and equipment and furnishings in his home were taken by the Government of Cuba.

By Commission letter of July 18, 1968, claimant was advised as to the type of evidence proper for submission to establish this claim under the Act, including an offer to assist him in obtaining evidence.

Claimant has submitted his signed claim form, a request for assistance in obtaining evidence, and a photocopy of two pages in the Spanish language.

On September 29, 1969, because the two page document he had sent did not appear to be complete, he was asked to furnish the complete document with translation of the pertinent parts. He was also asked whether he owned the building and land and to inform the Commission when the Government of Cuba took his property.

On November 3, 1969, 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.

Claimant was sent another reminder on June 1, 1970, and asked to advise the Commission within 10 days if he intended to pursue his claim. No reply to these letters was received.

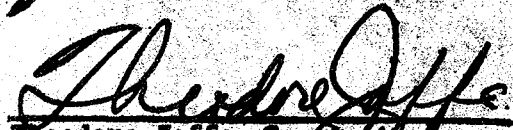
In the absence of evidence on which to base an affirmative decision, the Commission has no alternative but to deny this claim for lack of proof.

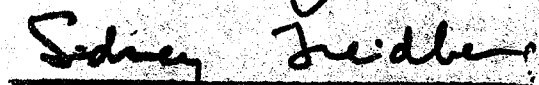
In the Commission finds that claimant has not met the burden of proof in that he has failed to establish ownership of rights and interests in property which was nationalized, expropriated or otherwise taken by the Government of Cuba. Thus, the Commission is constrained to deny this claim and it is hereby 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


Lyda 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).)