

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

IN THE MATTER OF THE CLAIM OF

HARRIETTE FENIAS

Under the International Claims Settlement  
Act of 1949, as amended

Claim No. CU -4805

Decision No. CU 4535

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, was presented on July 17, 1967 by Otto Fenias for \$14,345.00 based upon the asserted ownership and loss of personal property. Otto Fenias had been a national of the United States since birth. He died intestate on June 19, 1968, survived by his widow, HARRIETTE FENIAS, who is substituted as claimant herein.

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.

The Commission's Regulations provide that claims under Title V of the Act (Cuban claims) shall be filed with the Commission on or before May 1, 1967 (FCSC Reg., 45 C.F.R. Sec. 531.1(d) (Supp. 1967)); and further that any initial written indication of an intention to file a claim received within 30 days prior to the expiration of the filing period thereof shall be considered as a timely filing of a claim if formalized within 30 days after the expiration of the filing period. (Reg., Sec. 531.1(g))

No claim was filed with this Commission by or on behalf of Otto Fenias within the allowable period for timely filing of such claims, nor does the Commission have any record of any communication concerning his asserted loss.

The Commission has held, however, that it will accept for consideration on their merits claims filed after the deadline so long as the consideration thereof does not impede the determination of those claims which were timely filed. (See Claim of John Korenda, Claim No. CU-8255.) This is such a claim.

The decedent described his loss as follows:

Golf clubs and golf bag	\$ 1,050.00
Golf cart and transportation	1,295.00
Clothing, jewelry and miscellaneous possessions	2,000.00
Due for promoting 1958 golf tournament under a contract with the Government of Cuba	<u>10,000.00</u>
	\$14,345.00

Based upon the entire record, including statements from the vendors of the golf equipment, the Commission finds that the decedent owned certain golf equipment and items of clothing left in Cuba on his departure.

Based on the evidence of record, the Commission finds that decedent's personal property in Cuba was taken by the Government of Cuba on January 10, 1959 subsequent to his departure on or about January 7, 1959.

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 record includes, in support of the claimed values, the aforementioned statements from the vendors of the golf equipment and a letter concerning other items lost.

Based on the entire record, the Commission finds that, after appropriate depreciation the personal property had a value of \$2,599.50 on January 10, 1959. Accordingly, the Commission concludes that decedent suffered a loss in that amount within the meaning of Title V of the Act, as the result of the taking of his property by the Government of Cuba on January 10, 1959.

Claim has also been asserted in the amount of \$10,000.00 said to be due the decedent, under a contract with the Government of Cuba, for promoting and directing the 1958 Havana International Golf Tournament. In this connection the record includes a letter from the former Minister of Sports of Cuba stating that Otto Fenias had been engaged by the Government of Cuba commencing 1958 through December 31, 1962 to promote and direct a golf tournament in Havana each year and that under the contract he was to receive \$10,000.00 annually.

The record also includes a letter from the publisher of a Miami newspaper who states that he got the money from the hotels, casinos and Cuban Government to finance the tournament.

Requests were made by the Commission of the decedent's representative for information as to the amount due and any amounts collected under the contract. No such information has been received.

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 decedent's successor in interest has not met the burden of proof in that she has failed to establish the amount of any

debt owed by the Government of Cuba under the asserted contract. 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.

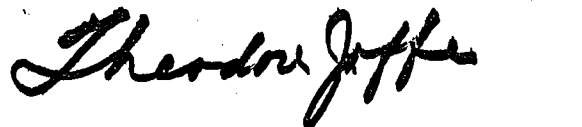
CERTIFICATION OF LOSS

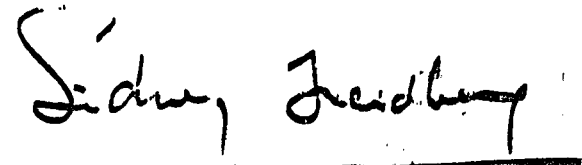
The Commission certifies that HARRIETTE FENIAS succeeded to and suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Two Thousand Five Hundred Ninety-nine Dollars and Fifty Cents (\$2,599.50) with interest at 6% per annum from January 10, 1959 to the date of settlement.

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

MAR 4 1970

  
Lyle S. Garlock, 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).)