

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

IN THE MATTER OF THE CLAIM OF

ERNEST CHARLES SAMUEL AND
CONSTANCE SAMUEL KAUFMAN

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-4828

Decision No. CU
1718

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 ERNEST CHARLES SAMUEL AND CONSTANCE SAMUEL KAUFMAN, for their interests in two bonds issued by the Association of the Religious Community of the Company of Jesus of Bethlehem College of Havana. Claimants have been nationals of the United States since their births in the United States.

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.

On the basis of evidence of record, the Commission finds that claimants, since prior to May 3, 1961, have been recorded as "Usufructuary" and "Naked Owner", respectively, of two bonds in the original face amounts of \$1,000.00 each, issued by the Association of the Religious Community of the Company of Jesus of Bethlehem College of Havana, and known as 5-1/4% First Mortgage Six Year Gold Bonds, due February 1, 1934, under an Agreement of May 22, 1928, with the Bankers Trust Company, Trustee. The bonds were secured by all of the Association's property in Cuba. The bonds in question are Nos. M 1108 and M 1126, evidenced by Deposit Receipt Nos. 1756 and 1757.

The record reflects that on April 4, 1933, Cuba declared a moratorium on mortgage indebtedness, which was later extended to June 1942. On December 5, 1939, the maturity of the bonds was extended by the Association to February 1, 1944, and interest was reduced to 1-1/2% beginning February 1, 1939. On June 4, 1940, a new Constitution was adopted, having certain "Transitory Provisions" which extended the maturity date on mortgage indebtedness in excess of \$800,000 to June 30, 1970 and provided for interest at 1%, and amortization by certain annual installments.

On June 1, 1942, a "Procedure for Deposit" was entered into by the Association with Mississippi Valley Trust Company (now the Mercantile Trust Company) as Agent, and the bondholders. Those bondholders depositing their bonds under this Procedure received registered Deposit Receipts entitling them to payment of principal and interest according to the applicable schedule of the 1940 Transitory Provisions, without subsequent presentation of the bonds. The record shows that the last principal payment made was that due on June 30, 1958, leaving the principal due on such \$1,000.00 bonds as \$449.03; and the last interest payment made was that due on February 1, 1959. Thereafter, the Trustee declared the Principal due and payable in accordance with the provisions of the Agreement of 1928.

The record shows that the properties of the College were intervened by the Government of Cuba on May 3, 1961, by Resolution No. 4352 of the Directora Provincial de Educacion de la Havana (Provincial Educational Directors Office of Havana).

The Commission concludes that as a result of the intervention of the properties of the Association, in Cuba, claimants suffered a loss in connection with their respective interests in the bonds within the meaning of Title V of the Act. (See Claim of Gustavus Basch, Claim No. CU-0972.)

The Commission finds that the amount of the unpaid indebtedness on the two bonds on May 3, 1961, the date of loss, was \$918.34, including the principal amount of \$898.06 and the interest due on May 3, 1961, in the amount of \$20.28.

The Commission finds that the interest of ERNEST CHARLES SAMUEL is a life estate in these bonds and that CONSTANCE SAMUEL KAUFMAN has the remainder interest. According to evidence of record, ERNEST CHARLES SAMUEL was 73 years old on the date of loss. The value of the life estate and of the remainder interest must be determined.

The Commission has adopted as a basis for the valuation of life and remainder interests 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, a life estate in property so encumbered is valued at .23934 of the entire estate, and the remainder interest is valued at .76066 of the entire estate. Therefore, since the value of the property in question is \$918.34, the life estate is valued at \$219.80 which is .23934 of that amount and the remainder is valued at \$698.54 which is .76066 of that amount.

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.)

Accordingly, the Commission concludes that the amount of loss sustained by claimants shall be increased by interest thereon at the rate of 6% per annum from May 3, 1961, the date of loss, to the date on which provisions are made for settlement thereof.

CERTIFICATION OF LOSS

The Commission certifies that ERNEST CHARLES SAMUEL 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 Hundred Nineteen Dollars and Eighty Cents (\$219.80) with interest thereon at 6% per annum from May 3, 1961 to the date of settlement; and

CONSTANCE SAMUEL KAUFMAN 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 Six Hundred Ninety-Eight Dollars and Fifty-Four Cents (\$698.54) with interest thereon at 6% per annum from May 3, 1961 to the date of settlement.

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

Leonard v. B. Sutton

Leonard v. B. Sutton, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

APR 24 1968

NOTICE TO TREASURY: The bonds subject of this certification of loss may have been returned and no payment should be made until they are re-submitted.

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).)