

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

IN THE MATTER OF THE CLAIM OF

ANTONIO A. HERSCHMANN
LAURA K. HERSCHMANN

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -0069

Decision No. CU ~~5882~~

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 ANTONIO A. HERSCHMANN in the amended amount of \$94,840.00 based upon the asserted ownership and loss of real property, a bond, a pension, a bank account and cash and currency in a safe deposit box. Claimant ANTONIO A. HERSCHMANN has been a national of the United States since naturalization on August 19, 1946. LAURA K. HERSCHMANN, a national of the United States since birth, having an interest in this claim, has been added as claimant.

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 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) (1969).)

Claimants describe the losses as follows:

| | |
|--|------------------|
| 1. One-half acre lot in Cabanas, Pinar del Rio Province | \$ 3,350.00 |
| 2. 5% First Mortgage Bond of Cuban Electric Company | 500.00 |
| 3. Savings Account with Royal Bank of Canada | 500.00 |
| 4. Currency and cashier's checks in safe deposit box | 6,200.00 |
| 5. Unpaid pension | 59,290.00 |
| 6. Group Insurance | <u>25,000.00</u> |
| | \$94,840.00 |

Real Property

Based upon the entire record, including a detailed report from abroad, the Commission finds that claimants owned a rustic property in Cabanas, Pinar del Rio, of about 2,000 square meters.

On December 6, 1961, the Cuban Government published its Law 989 which effectively confiscated all assets, personal property and real estate, rights, shares, stocks, bonds and securities of persons who had left the country.

Based on the foregoing and the evidence of record, the Commission finds that claimants' real property in Pinar del Rio 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].)

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, report from abroad giving a value of \$3,000.00; also, an affidavit of son of seller (now deceased) who states that the prices for such lots were \$3,000.00 with an additional charge of approximately 10 to 15 per cent covering registration fees and the like. Claimant, in a memorandum of June 16, 1960 to the American Embassy, stated that such fees were \$218.95.

Based on the entire record, the Commission finds that the said real property had a value of \$3,218.95. Accordingly, the Commission concludes that claimants suffered a loss in that aggregate amount within the meaning of Title V of the Act, as the result of the taking of this property by the Government of Cuba on December 6, 1961.

Bond

The record contains a certification by the Treasurer of Cuban Electric Company on the basis of which the Commission finds that ANTONIO A. HERSCHMANN was the registered holder of a 5% First Mortgage Bond of that company in the face amount of 500 pesos.

The Commission finds that this bond, secured by property of the Cuban Electric Company which was taken on August 7, 1960, had a value of \$500.00 (the peso being on a par with the United States dollar) and concludes that claimants suffered a loss in that amount. (See Claim of Frederick Snare Corporation, Claim No. CU-2035.)

Pension

Claimant was employed by the Cuban Electric Company and was summarily dismissed by the Cuban Government on August 7, 1960 when it took the properties of Cuban Electric Company.

Claimant contends that he was entitled to a pension from Caja de Retiro de Trabajadores de Plantas Electricas, Gas y Agua (Retirement Fund for Workers of Electric, Gas, and Water Works). The Commission finds that he was automatically entitled to receive his pension commencing on August 7, 1960, the date the Cuban authorities separated him from his employment and salary in the Cuban branch of Cuban Electric Company.

Although claimant ANTONIO A. HERSCHMANN has not been able to document this item of claim fully, on the evidence of record and evidence available in other pension claims before it, the Commission finds that claimant ANTONIO A. HERSCHMANN was entitled to a pension of \$490.00 a month. (See Claim of A. M. Joy de Pardo, Claim No. CU-1906; and Claim of Owen L. Eagan, et ux, Claim No. CU-1348.)

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 (BANSESCU). Information available to the Commission shows that retired employees after departure from Cuba received no pension benefits.

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 62 amounts to 10.6186 times \$5,880.00, the yearly sum of the annuity. Since on August 7, 1960, claimant was 62 years of age (according to his nearest birthday) the value of his discounted annuity on that date amounted to \$5,880.00 (the

peso being on a par with the United States dollar) times 10.6186, or \$62,437.37, and the Commission finds that claimant ANTONIO A. HERSCHMANN sustained a loss within the purview of Title V of the Act in that amount.

Savings Account and
Contents of Safe Deposit Box

Claimant contends that he left in a safe deposit box a Royal Bank passbook with a \$500.00 balance; and currency and cashier's checks amounting to a total of \$6,200.00 and that the box was opened and its contents confiscated on April 3, 1961. Claimants have submitted receipts for rental of the box.

The Commission is aware of the practice of the Cuban Government in opening safe deposit boxes (see Claim of Anna Littner, et al., Claim No. CU-3655). The difficulty in such cases, however, is to establish the contents confiscated from the box.

The Commission appreciates the difficulties encountered by some claimants in establishing their claims against the Government of Cuba. However, the Commission must be guided by the evidence of record pertaining to the ownership, loss and value of the property included in each claim. Thus, the Commission finds that claimants herein have not met the burden of proof in regard to the contents of the box. Accordingly, the Commission is constrained to deny this portion of the instant claim and it is hereby denied.

Insurance

Claimant ANTONIO A. HERSCHMANN asserts that under a group insurance plan he was covered in the amount of \$25,000.00. He states that he paid part of the premiums for years.

However, the record does not reflect that the policy was paid up, that it was taken by the Government of Cuba or that in fact ANTONIO A. HERSCHMANN had any interest in it during his life.

Under these circumstances the Commission is constrained to and does hereby deny this item of claim.

Recapitulation

Claimants' losses within the scope of Title V of the Act may be summarized as follows:

| | <u>Item</u> | <u>Date of Loss</u> | <u>Value</u> |
|---------------------------------|-------------|---------------------|--------------------|
| <u>ANTONIO A. HERSCHMANN:</u> | | | |
| | Realty | December 6, 1961 | \$ 1,609.47 |
| | Bond | August 7, 1960 | 250.00 |
| | Pension | August 7, 1960 | <u>62,437.37</u> |
| | | | \$64,296.84 |
| <u>LAURA K. HERSCHMANN:</u> | | | |
| | Realty | December 6, 1961 | \$ 1,609.48 |
| | Bond | August 7, 1960 | 250.00 |
| | | | <u>\$ 1,859.48</u> |

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 as follows:

| | <u>FROM</u> | <u>ON</u> |
|---------------------------------|------------------|--------------------|
| <u>ANTONIO A. HERSCHMANN:</u> | | |
| | December 6, 1961 | \$ 1,609.47 |
| | August 7, 1960 | <u>62,687.37</u> |
| | | \$64,296.84 |
| <u>LAURA K. HERSCHMANN:</u> | | |
| | December 6, 1961 | \$ 1,609.48 |
| | August 7, 1960 | 250.00 |
| | | <u>\$ 1,859.48</u> |

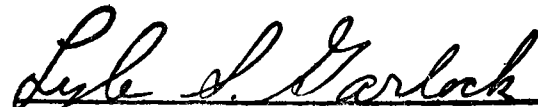
CERTIFICATIONS OF LOSS

The Commission certifies that ANTONIO A. HERSCHMANN 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 Sixty-four Thousand Two Hundred Ninety-six Dollars and Eighty-four Cents (\$64,296.84) with interest at 6% per annum from the respective dates of loss to the date of settlement; and

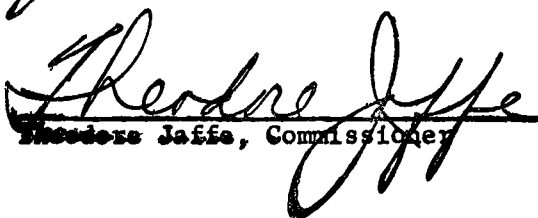
The Commission certifies that LAURA K. HERSCHMANN suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of One Thousand Eight Hundred Fifty-nine Dollars and Forty-eight Cents (\$1,859.48) with interest at 6% per annum from the respective dates of loss to the date of settlement.

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

OCT 7 1970



Lyle S. Garlock, Chairman



Theodore Jaffe, Commissioner

NOTICE TO TREASURY: The above-referenced securities may not have been submitted to the Commission or if submitted, may have been returned; accordingly, no payment should be made until claimants establish retention of the securities or the loss here certified.

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).)