

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

IN THE MATTER OF THE CLAIM OF

MARIE K. HARPER

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -0305

Decision No. CU 6094

PROPOSED DECISION

This claim against the Government of Cuba, filed under Title V of the International Claims Settlement Act of 1949, as amended, in the revised amount of \$590,051.20, was presented by MARIE K. HARPER, based upon the loss of real property, stock interests and income of rents. 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.

The claim is based, as stated above, upon claimant's real estate holdings in the city of Havana, upon stock interests in a Cuban corporation, which in turn owned land, and upon the loss of rentals.

The aspects of the individual items of the claim and value of the property will be discussed under separate headings below.

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 question, in all cases, will be to determine the basis of valuation which, under the pertinent circumstances, is "most appropriate to the property and equitable to the claimant". This phraseology does not differ from the international legal standard that would usually prevail in the valuation of nationalized property. It is designed to strengthen that standard by giving specific bases of valuation that the Commission shall consider.

The record includes a substantial amount of supporting evidence to which reference is made under the heading of the property item to which it refers.

I. Real Property

(a) Calzada de Concha No. 109 - 111

Claimant states that she owned at Nos. 109 - 111 Concha (officially named Calzada de Concha) at the corner of Ensenada Street, in the Jesus del Monte section of the city of Havana, a piece of real property measuring 3,601 square meters, improved with a garage, a fourteen-unit apartment complex and a structure containing a grocery store. In that part of the street where this property is located the Calzada de Concha has been renamed Via Blanca. The grocery store is presently situated at No. 110 Via Blanca.

Documentation received subsequently and a report from abroad revealed that on September 18, 1945 a Cuban corporation named Fincas de Concha S.A. acquired this real property, formerly numbered 109 - 111 Concha; that on March 31, 1960 by Notarial Act No. 52 the corporation Fincas de Concha S.A. was liquidated and dissolved; that all assets of the corporation were distributed to the claimant herein, the corporation's sole stockholder; that the dissolved corporation was free of debts and liabilities; and that claimant ordered the transfer of the real property in the appropriate Real Property Register, but that such transfer, nevertheless, was not executed by the authorities.

The Commission has held that Cuban law controlling the transfer of real property does not preclude transfers by private instruments, such as above Notarial Act No. 52 and holds that claimant was the sole owner of the real property in question subsequent to March 31, 1960. (See Claim of Wallace Tabor and Catherine Tabor, Claim No. CU-0109, 25 FCSC Semiann. Rep. 53 [July-Dec. 1966].) It is noted that the realty was free of encumbrances.

The Government of Cuba published its Law on Urban Reform in the Official Gazette on October 14, 1960. Under this law, the renting of urban properties and all other transactions involving transfer of use of urban real properties were outlawed (Article 2). The law covered residential, commercial, industrial and business office properties (Article 15). (See Claim of Henry Lewis Slade, Claim No. CU-0183, 1967 FCSC Ann. Rep. 39.) In the absence of evidence to the contrary, the Commission finds that the aforesaid real property was taken by the Government of Cuba on October 14, 1960.

Claimant described this property as consisting of two parts: (a) a building erected on land of an area of 2,000 square meters, constructed of concrete and brick, used for commercial and business purposes and lately as a garage; and (b) land measuring 1,601 square meters upon which were erected several dwellings containing 14 separate apartments, built of concrete and tile, facing Via Blanca and Ensenada Street, and with some dwellings within a patio; one of the structures contained a grocery store. Claimant states that this

property was kept in good condition. The Commission records disclose that the corporation Fincas de Concha S.A. paid for the entire property in September 1945 \$45,000.00.

The Commission is aware that Fincas de Concha S.A. purchased this property from the Estate of Herman Bibb Harper, the late husband of the claimant, and that the purchase price may not have reflected the true value of the property, inasmuch as Mr. Harper's widow, the claimant herein, was in fact the owner of Fincas de Concha S.A. It is further noted that Herman Bibb Harper in 1944 filed a report with the United States Treasury Department estimating the value of the property at \$95,000.00. The Commission is also aware that prices for real property of the type described above within the territorial limits of the city of Havana have considerably increased from 1945 to 1960.

On the basis of the entire record, the Commission finds that the real property at No. 109 - 111 Calzada de Concha at the time of taking was worth \$150,000.00.

(b) Concha at Rodriguez Street

Claimant further states that she owned a piece of real property at the intersection of Concha (official name Calzada de Concha) and Rodriguez Street, in the Luyano section of Havana, measuring 700 square meters, improved with a cement structure, with concrete floor, a steel roof and fireproof roofing, used as a warehouse which was remodeled and reconstructed in 1954.

The documentation before the Commission reveals that this property, originally owned by Herman Bibb Harper, also was subsequently transferred to Fincas de Concha S.A., and upon liquidation and dissolution of the corporation, to the claimant herein. For the reasons stated above under (a) the Commission finds that this property also was owned by the claimant as sole owner, that it was subject to the Cuban Law on Urban Reform of 1960, and that it was taken by the Government of Cuba on October 14, 1960.

Claimant describes the improvements as well built, strongly constructed, and lately rented to the firm of Navarro & Company, a tire recapping company,

for a monthly rent of \$300.00. However, a prior tenant, the Continental Can Company, paid a monthly rental of \$400.00.

Claimant's late husband, in his report to the United States Treasury Department in 1944, estimated the value of this property at \$28,000.00.

Considering appreciation of values from 1944 to 1960, and based upon the entire record, the Commission holds that this property, free of encumbrances, at the time of taking was worth \$40,000.00.

II. Stock Interests

Claimant submitted to the Commission 110 stock certificates of the corporation Reparto "Santa Teresa" S.A. registered in her name; two certificates registered in the name of Leonor Elizabeth Pardo Squier, her daughter-in-law, and endorsed by the latter; two certificates registered in the name of Rogelio Fleites Travieso, an ex-employee of her late husband Herman and her son George, also endorsed by him; and one certificate registered in the name of Anne Rebecca Harper, claimant's daughter. It is asserted that these five stock certificates were, in fact, owned by the claimant, in whose possession they are and the endorsements establish these assertions, inasmuch as the history of the organization of the corporation indicates that these three individuals, Cuban citizens, acted merely as nominees for the claimant before Cuban authorities in order to comply with the requirements of the local corporation law. The Commission, therefore, holds that claimant was the owner of 115 shares of the outstanding 230 shares in the capital stock of the Cuban corporation Reparto "Santa Teresa" S.A. Such a corporation does not qualify as a corporate "national of the United States" defined under Section 502(1)(B) of the Act as a corporation or legal entity organized under the laws of the United States, or any State, the District of Columbia, or the Commonwealth of Puerto Rico, whose ownership is vested to the extent of 50 percent or more in natural persons who are citizens of the United States. In this type of situation, it has been held that American stockholders are entitled to file a claim for the value of their ownership interest (see Claim of Parke, Davis & Company, Claim No. CU-0180, 1967 FCSC Ann. Rep. 33). The Commission, therefore, finds that claimant is the proper party before it with respect to this portion of the claim.

Claimant states that the corporation Reparto "Santa Teresa" S.A. owned in a locality known as Lomas de Tierra, in the district of Guanabacoa, on the southeastern outskirts of Havana, approximately 12 miles distant from the city, along the Central Highway (Carretera Central) 467,000 square meters of land; this land was in part developed for a subdivision, and in part undeveloped. Several streets have been constructed from the Central Highway into the development and a number of cross streets formed blocks which were being sold to builders of dwellings. Utilities, such as water, electricity and telephone were introduced in that part of the development.

This property was formerly owned, in part, by the firm of Harper Brothers, by the aforementioned corporation Fincas de Concha S.A., and by other individuals. On March 8, 1949, five tracts of land and one lot were transferred to the name of the corporation Reparto "Santa Teresa" S.A., namely:

(1) Tract designated "B" measuring	39,963 square meters
(2) Lot designated "C" measuring	480 square meters
(3) Tract designated part of "Rosario" measuring	69,000 square meters
(4) Tract designated part of "Rosario" measuring	67,100 square meters
(5) Tract designated part of "Rosario" measuring	134,202 square meters
(6) Tract designated part of "Rosario" measuring	<u>132,303 square meters</u>
Total	443,048 square meters

The record shows that the corporation subsequently purchased land for \$10,000, but the record does not indicate the area of this additional land.

The Commission finds that the entire land was within the purview of the Cuban Agrarian Reform Law and that the property was taken on or about November 1, 1960, pursuant thereto.

Claimant states that 67,000 square meters of this land were ready to be sold as building lots, while 400,000 square meters were undeveloped. She placed the value of the developed land at \$2.00 to \$3.00 per square meter, and the value of the undeveloped land at \$1.00 per square meter, thus arriving at the total value as follows:

67,000 square meters at \$2.75	\$174,250.00 rounded to	\$174,000.00
400,000 square meters at \$1.00	\$400,000.00	<u>400,000.00</u>
Total		\$574,000.00

Claimant, however, has failed to submit sufficiently convincing evidence in support of such valuation. The evidence upon which claimant seems to rely, is a Notarial Act dated April 17, 1959, according to which The Royal Bank of Canada, Havana Branch, agreed to grant a loan of \$250,000 against a second mortgage on three tracts of land measuring 37,101 square meters, 134,202 square meters and 132,303 square meters, respectively (the above listed tracts Nos. 1, 5 and 6). A first mortgage in the amount of \$25,000 was recorded in favor of Barbara A. Saez Moreno; in addition a tax lien of \$1,500 was also on record. Claimant, however, states that the loan to The Royal Bank of Canada was fully paid, and in support of this statement there are on record three returned promissory notes for an aggregate amount of \$250,000 which indicate that payment was made.

The Commission has reviewed the value of this land and compared its value with similar land in the outskirts of Havana, approximately 12 miles from the city, and finds that the 67,000 square meters of developed land at the time of taking had a value of \$134,000.00, and the remainder of the undeveloped land \$200,000.00. Thus the value of the property at the time of taking was

taking was	\$334,000
less mortgages and liens	<u>26,500</u>
Net value	\$307,500

Accordingly, claimant, as the owner of a 50% interest in the capital stock of the corporation, which appears to have had no additional liabilities, suffered a loss under Title V of the Act in the amount of \$153,750.00.

III. Loss of Rental Income

Claimant states that she lost rentals from November 1, 1960 to July 1, 1965 at the rate of \$1,281.60 per month for the property located in Havana, in the aggregate amount of \$73,051.20.

The Commission has held that rental income due after the date of nationalization or taking of a property is not certifiable within the scope of Title V of the Act (see Claim of The University of Chicago, Claim No. CU-2590). Inasmuch as the property after the date of taking no longer

belonged to the claimant, but to the Government of Cuba, claimant is not entitled to certification of rental losses, in addition to those for the value of the property at the time of taking. However, claimant is entitled to accrued interest (see below).

SUMMARY

Claimant's losses, certifiable under the Act, are summarized as follows:

<u>I. Real Property:</u>	
(a) Calzada de Concha 109-111	\$150,000.00
(b) Concha y Rodriguez	40,000.00
<u>II. Stocks:</u>	
50% Interest in Reparto "Santa Teresa" S.A.	<u>153,750.00</u>
Total	\$343,750.00

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>
October 14, 1960	\$190,000.00
November 1, 1960	153,750.00

CERTIFICATION OF LOSS

The Commission certifies that MARIE K. HARPER 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 Three Hundred Forty-Three Thousand Seven Hundred Fifty Dollars (\$343,750.00) 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

MAR 3 1971


Robert S. Galt, Chairman

Robert S. Galt, Chairman

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 claimant establishes 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 (1970).)