

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

IN THE MATTER OF THE CLAIM OF

MORTIMER C. SIMON
EVELYN SIMON

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU - 0332

Decision No. CU - 4658

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 amount of \$58,900.24, was presented by MORTIMER C. SIMON and is based upon the asserted loss of real property, a bank account and cash.

Subsequently, EVELYN SIMON petitioned to join as a co-claimant. This matter having been considered, it is so ordered. Claimants have been nationals 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.

Real Property

Claimants state that they lost an investment in two pieces of unimproved real property consisting of 1,000 caballerias of timberland in the vicinity of Baracoa, Oriente Province and a residential lot in Reparto Parque, Bahia, Cojimar, Havana assertedly valued at \$50,000.00 and \$3,000.00 respectively. They submitted copies of a Court Decree dated April 14, 1958; a survey of the timberland; and a Purchase and Sale Agreement pertaining to the residential lot dated June 13, 1958.

Based upon the entire record, including information received from the Department of State, the Commission finds that claimants each owned a one-half interest in 1,000 caballerias of timberland in the vicinity of Baracoa, Oriente Province and a residential lot in Reparto Parque, Bahia, Cojimar, Havana.

Law 989, published in the Official Gazette of December 6, 1961, in its terms nationalized by confiscation all goods and chattels, rights, shares, stocks, bonds and other securities of persons who left the country of Cuba. Accordingly, this law applies to the claimants who had left Cuba prior to that date, and the Commission finds that this property was taken by the Government of Cuba on December 6, 1961 pursuant to Law 989.

In arriving at the value of the real property, consideration was given to all of the evidence of record including the survey by the Cuban Ministry of Agriculture pertaining to the timberland, the Purchase and Sale Agreement and the information received from the Department of State. The Commission finds that the value of the 1,000 caballerias of timberland on the date of loss was \$50,000.00, and the value of the residential lot was \$2,675.16. At the time of loss, however, the timberland was encumbered in the amount of \$10,000.00. Accordingly, the Commission concludes that claimants' equity therein was \$40,000.00 and that they suffered a loss in

the amount of \$42,675.16, within the meaning of Title V of the Act, as the result of the taking of the real property by the Government of Cuba as of December 6, 1961.

Bank Account

Claimants further state that they lost a bank account in Cuba having an aggregate balance of \$812.00. In support of this item the claimants submitted the statement of MORTIMER C. SIMON and the affidavit of Manuel Gil, a former representative of claimant, MORTIMER C. SIMON, indicating that in 1959 a Mr. Linarez paid into Mr. SIMON's account with Banco Nunez \$812.00.

The Commission finds that claimants owned the above-described bank account, totalling \$812.00, that it was taken by the Government of Cuba on December 6, 1961, pursuant to Law 989 (supra), and concludes that claimants suffered a loss in that amount within the meaning of Title V of the Act.

Cash

Claimants further state that Cuban authorities confiscated checks and money orders, amounting to \$7,376.24, and cash, amounting to \$712.00, at the airport on October 26, 1959 prior to claimant, MORTIMER C. SIMON, departing Cuba for the United States. The checks and money orders it was asserted were payments to MORTIMER C. SIMON for merchandise received. In support of this item the claimants submitted a copy of a letter from claimant, MORTIMER C. SIMON, to Cuban authorities dated October 28, 1959; copy of a statement by the Cuban authorities dated October 26, 1959; and statement of MORTIMER C. SIMON.

The Commission finds that claimants owned \$8,088.24 represented by checks, money orders, and cash, which was taken by the Government of Cuba on October 26, 1959 and concludes that claimants suffered a loss in that amount within the meaning of Title V of the Act.

In summary, the Commission finds that claimants suffered the following losses within the scope of Title V of the Act:

<u>Item</u>	<u>Date of Loss</u>	<u>Value</u>
Real Property	December 6, 1961	\$42,675.16
Bank Account	December 6, 1961	812.00
Cash etc.	October 26, 1959	<u>8,088.24</u>
	Total	\$51,575.40

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 MORTIMER C. SIMON 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 Twenty-Five Thousand Seven Hundred Eighty-Seven Dollars and Seventy Cents (\$25,787.70) with interest at 6% per annum from the respective dates of loss to the date of settlement; and


The Commission certifies that EVELYN SIMON 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 Twenty-Five Thousand Seven Hundred Eighty-Seven Dollars and Seventy Cents (\$25,787.70) 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 25 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).)