

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

IN THE MATTER OF THE CLAIM OF

ELEANOR L. CROSBY
KENNETH M. CROSBY

Claim No. CU -0544

Decision No. CU - 4490

Under the International Claims Settlement
Act of 1949, as amended

Counsel for claimants:

Rufus King, Esquire

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 KENNETH M. CROSBY, for \$120,000.00, based upon improved and unimproved real property, personalty, and securities. Subsequently, ELEANOR L. CROSBY 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 contend that they lost an investment in improved and unimproved real property valued at \$89,000.00. They submitted among other things, copies of deed nos. 13 and 141 dated January 18, 1956 and April 4, 1955 respectively; statement from Joe Ellis dated February 2, 1959 acknowledging receipt of \$5,000.00 from KENNETH M. CROSBY for a 10% interest in a real estate development in Baracao, known as "Joe's finca"; photocopy of specifications and descriptive report prepared by architect and builder dated October 15, 1956; letter from architect-builder dated June 26, 1968; check in the amount of \$40,000.00 to the architect-builder in part payment for the construction of the house at Avenida 19A no. 15016 'Country Club Park' Marianao; and several pictures of the house, inside and out. Claimants state that their real property and personal effects were intervened by the Government of Cuba on May 1, 1961. Under Cuban law by virtue of the legal partnership existing between the claimants by reason of their marriage each owned a one-half interest in everything acquired during coverture..

Based upon the entire record, the Commission finds that the claimants each owned a one-half interest in a house at Avenida 19A no. 15016 Country Club Park, Marianao, situated on a lot measuring 1964 square meters; lot no. 6 of section 24 of the Hacienda Santa Fe, Barrio Santa Fe, Nueva Gerona, Isle of Pines and a 10% interest in a real estate development in Baracao known as "Joe's finca". The Commission further finds that the property was taken by the Government of Cuba on May 1, 1961.

CU-0544

In arriving at the value of the improved and unimproved real property consideration was given to all of the evidence of record, including claimants' statements, deed nos 13 and 141, checks for monies paid out, and statement of the architect-builder. The Commission finds that the value of the improved real property at the time of loss was \$81,000.00. However there was then outstanding a mortgage thereon in the amount of \$10,000.00 leaving a loss in the sum of \$71,000.00. The Commission further finds that the value of the 10% interest in the real estate development known as "Joe's finca" was \$5,000.00 and that lot no. 6 in Hacienda Santa Fe also had a value of \$5,000.00. Accordingly, the Commission concludes that claimants suffered a total loss in the amount of \$81,000.00 within the meaning of Title V of the Act, as the result of the taking of the improved and unimproved real property by the Government of Cuba on May 1, 1961.

Personalty

Claimants also contend that they lost certain household furnishings, including silverware, crystal, antiques, oil paintings and two automobiles. Claimants have submitted a list of the household furnishings purchased with approximate prices paid for each item; their statement that they owned a 1957 Oldsmobile and 1958 Dodge assertedly purchased for \$4,000.00 each; and two checks in payment for the 1958 Dodge.

On the basis of the entire record the Commission finds that claimants each owned a one-half interest in the household furnishings and two cars described above which were taken by the Government of Cuba on May 1, 1961.

The Commission further finds that the value of the household furnishings, after deducting depreciation of 5% per year from May 1, 1957 to May 1, 1961 or a total of 20% except with regard to the silverware, crystal, antiques and paintings, amounted to \$33,628.08; and the 1957 Oldsmobile and the 1958 Dodge after depreciation in accordance with

CU-0544

the National Automobile Dealers Used Car Guide had an aggregate value of \$2,695.00. The Commission therefore concludes that claimants suffered an additional loss in the amount of \$36,323.08 within the meaning of Title V of the Act.

Securities

Claim is also made for the loss of interests in the following:

- a) 1000 shares "Minimax Supermercados", hereinafter referred to as "Minimax";
- b) 1 Series 'A' share "Havana Biltmore Yacht and Country Club", hereinafter referred to as "Havana Biltmore";
- c) 1 share "Inmobiliaria La Torre S.A.", hereinafter referred to as "Inmobiliaria";
- d) 1000 shares "West Indies Perlite Manufacturing Corporation", hereinafter referred to as "West Indies Perlite";
- e) 1000 shares "North Atlantic Kenaf Corporation" stock;
- f) 100 shares "Slenderella System of Cuba, S.A."

Minimax, Havana Biltmore and Inmobiliaria

The Commission has previously held that the properties owned by "Minimax", "Havana Biltmore", and "Inmobiliaria" were taken by the Government of Cuba on September 1, 1960, March 19, 1960, and May 1, 1961, respectively. It has further held that the value of a share of "Minimax" was \$1.0023, the value of a share of "Havana Biltmore" was \$3,500.00, and the value of a share of "Inmobiliaria" was \$1,000.00. (See Claim of Libby Holman Reynolds, Claim No. CU-1384, Claim of Armand E. Becker, Jr., Claim No. CU-1094, Claim of Frederick Snare Corporation, Claim No. CU-2035 which are incorporated herein by reference).

On the basis of evidence of record, the Commission finds that the claimants come within the terms of the Reynolds, Becker and Snare decisions; that each owned a one-half interest in 1000 shares of capital stock of "Minimax", one share of "Havana Biltmore" and one share of "Inmobiliaria."

CU-0544

The Commission further finds that claimants owned these stock interests continuously from the respective dates of loss to the presentation of the claim; and that they suffered a loss in the total amount of \$5,502.30 within the meaning of Title V of the Act, with respect thereto.

West Indies Perlite

With respect to the portion of the claim based upon a stock interest in "West Indies Perlite", the claimants submitted an original stock certificate, and a cancelled check evidencing payment for the stock shares. The record also contains a State Department file which includes among other things correspondence between the Department of State and "West Indies Perlite", and the affidavit of Mr. Raul Fernandez Valle Madrazo, Vice Secretary of "West Indies Perlite".

On the basis of the evidence of record, the Commission finds that "West Indies Perlite" was taken by the Government of Cuba on October 24, 1960; that claimants each owned a one-half interest in 1000 shares of its capital stock; and that the stock had a value of \$1.00 per share. The Commission further finds that the claimants owned this stock interest continuously from the date of loss to the presentation of the claim; and that they suffered a loss in the amount of \$1,000.00 within the meaning of Title V of the Act with respect thereto.

North Atlantic Kenaf Corporation
Slenderella System of Cuba

With respect to the portion of the claim that is based upon stock interests in North Atlantic Kenaf Corporation and Slenderella System of Cuba the claimants submitted original stock certificates and cancelled checks evidencing payment for the stock shares. However no evidence was submitted as to the value of the shares.

The Commission by letter of April 10, 1969 advised claimants through counsel as to the type of evidence proper for submission to establish this claim under the Act. No evidence in response to this letter was received.

The Commission finds that claimants have not met the burden of proof in that they have failed to establish that the aforementioned enterprises had any value on the asserted dates of loss. Thus, the Commission is constrained to deny this portion of the claim and it is hereby denied.

Summary

<u>ASSET</u>	<u>DATE OF TAKING</u>	<u>VALUE</u>
Real property	May 1, 1961	\$ 81,000.00
Personalty	May 1, 1961	36,323.08
Minimax Supermercados	September 1, 1960	1,002.30
Havana Biltmore Club	March 19, 1960	3,500.00
Inmobiliaria La Torre	May 1, 1961	1,000.00
West Indies Perlite	October 24, 1960	<u>1,000.00</u>
Total		\$123,825.38

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 ELEANOR L. GROSBY, 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-One Thousand Nine Hundred Twelve Dollars and Sixty-Nine Cents (\$61,912.69) with interest at 6% per annum from the respective dates of loss to the date of settlement and

CU-0544

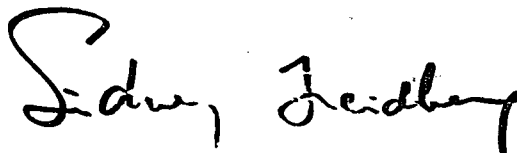
The Commission certifies that KENNETH M. CROSBY suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Sixty-One Thousand Nine Hundred Twelve Dollars and Sixty-Nine Cents (\$61,912.69) 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

12 FEB 1970



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).)

CU-0544