

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

IN THE MATTER OF THE CLAIM OF

ANTONIO HILLER
RENEE R. HILLER COLBY

Claim No. CU-0715
Claim No. CU-0918

Decision No. CU
5088

**Under the International Claims Settlement
Act of 1949, as amended**

PROPOSED DECISION

These claims against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, were presented by ANTONIO HILLER and RENEE R. HILLER COLBY for a total of \$57,716.68 based upon the asserted ownership and loss of certain real and personal property in Cuba. Claimants, ANTONIO HILLER and RENEE R. HILLER COLBY, have been nationals of the United States since their naturalization in 1957 and 1954, respectively.

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. 38 (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.

Each claimant describes the loss as follows:

Interest in an apartment at Salud #314, Havana	\$28,108.34
Personalty	<u>750.00</u>
	\$28,858.34

Based upon the entire record including a copy of a document certifying that claimants' father, Leib Hiller, purchased the property in question in June, 1954, and a report from abroad, the Commission finds that under the Community Property Laws of Cuba, claimants' parents each owned a one-half interest in the real and personal property subject of these claims.

The Commission further finds, based on the evidence of record, that upon the death of claimants' father in 1958, and pursuant to the Cuban laws of descent and distribution and claimants' father's will, his interest was inherited equally by his two children, claimants herein, with a life estate in favor of his widow, Mina Biegeleisen Weinmann, in one-third of his estate, remainder in his two children. Each of the two children therefore inherited a one-third interest in their father's estate outright, or one-sixth of the whole; and one-half of the remainder in the one-sixth (of the whole) subject to the life estate.

On October 14, 1960, the Government of Cuba published in its Official Gazette, Special Edition, its Urban Reform Law. Under this law the renting of urban properties, and all other transactions or contracts involving transfer of the total or partial use of urban properties was outlawed (Article 2). The law covered residential, commercial, industrial and business office properties (Article 15). Moreover, Article 30 provided for the cancellation of mortgages. Following Chapter VI of the law appears a section entitled "Temporary Provisions" and the third paragraph thereof provides that citizens

of foreign countries who do not have the status of legal residents shall be excluded from the rights and benefits conferred by this law.

Based on the foregoing and the evidence of record, the Commission finds that claimants' real property in Havana, Cuba was taken by the Government of Cuba pursuant to the provisions of the Urban Reform Law; and, in the absence of evidence to the contrary, that the taking occurred on October 14, 1960, the date on which the law was published in the Cuban Gazette. (See Claim of Henry Lewis Slade, Claim No. CU-0183, 1967 FCSC Ann. Rep. 39.) The Commission also finds that the personalty was taken at the same time.

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 the aforementioned certification that claimants' father purchased the realty in June, 1954 for \$120,000.00, a description of the property as a 4-story brick building having 34 apartments, a copy of a schedule which sets forth the income, expenses, and depreciation of the apartment house in 1957, and a report from abroad which indicates that the property was subject to a \$25,000.00 mortgage.

Based on the entire record, including evidence of annual rentals of \$12,500.00, the Commission finds that the value of the apartment house on the date of loss was \$113,500.00; that it was encumbered by a mortgage of \$25,000.00. The equity in the apartment house was therefore \$88,500.00. The value of the personalty was \$3,000.00.

As indicated above, one-third of the late Leib Hiller's estate was encumbered with a life estate in favor of his widow, Mina Biegeleisen Weinmann. According to the evidence of record she was 61 years old at the time of taking and did not become a United States national until December 18, 1961. The value of the remainder must be determined, the total value of the decedent's estate being \$45,750.00.

The Commission has adopted as a basis for 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 the method of valuation, the remainder interest in property so encumbered is valued at .61578 of the entire estate. Therefore, since the value of one-third of the property in question is \$15,250.00 the remainder is valued at \$9,390.64 which is .61578 of that amount.

Therefore, the Commission finds that the interest of each of the claimants had a value of \$15,250.00 (one-third of \$45,750.00) plus \$4,695.32 (one-half the remainder interest of \$9,390.64) for a total of \$19,945.32, to each.

The Commission therefore concludes that each claimant suffered a total loss in the amount of \$19,945.32 within the meaning of Title V of the Act as a result of the taking of their interest in the real and personal property by the Government of Cuba.

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.


CERTIFICATIONS OF LOSS

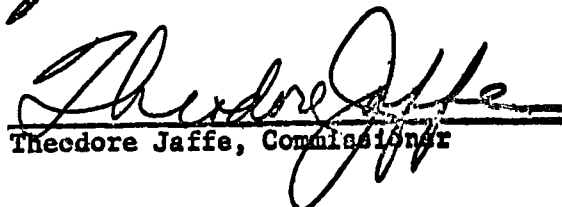
The Commission certifies that ANTONIO HILLER suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Nineteen Thousand Nine Hundred Forty-five Dollars and Thirty-two Cents (\$19,945.32) with interest at 6% per annum from October 14, 1960 to the date of settlement; and

The Commission certifies that RENEE R. HILLER COLBY 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 Nineteen Thousand Nine Hundred Forty-five Dollars and Thirty-two Cents (\$19,945.32) with interest at 6% per annum from October 14, 1960 to the date of settlement.

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

JUN 30 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].)