

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

IN THE MATTER OF THE CLAIM OF

GILES S. GIANELLONI
and
WINNIFRED C. GIANELLONI

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-1041

Decision No. CU-907

AMENDED PROPOSED DECISION

Under date of January 3, 1968 this claim, originally filed by GILES S. GIANELLONI, was denied for lack of proof. Subsequently, further supporting evidence was submitted, including proof that the original claimant's wife, WINNIFRED C. GIANELLONI, has an interest in the claim.

Upon consideration of the new evidence in the light of the entire record, WINNIFRED C. GIANELLONI is added as party claimant, and the Proposed Decision is herein amended. Claimants have been nationals of the United States since birth.

Claimants assert the following losses:

| | |
|--|--------------------|
| Residence and contents | \$45,000.00 |
| 1/8 interest in home of Mr. Gianelloni's father | 10,722.48 |
| Lot No. 57 Reparto Floral Park | 3,220.02 |
| Property in Pinar del Rio | <u>3,000.00</u> |
| Total | <u>\$61,942.50</u> |

The evidence includes a report made to the American Embassy, Havana, Cuba, concerning two of the items of real property in question; copies of claimants' tax returns indicating that tax deductions for their Cuban losses were allowed; copies of original deeds; building permits respecting the construction of claimants' residence; photographs of the residence; a report from abroad concerning the real property inherited by Mr. Gianelloni from his father; and a detailed shipping list of personal property transported to claimants from the United States. In addition,

the Commission considered the record in the Claim of Lois Burk Gianelloni, et al., Claim No. CU-0577, also involving the inheritance of real property from Mr. Gianelloni's father.

On the basis of the entire record, the Commission finds that claimants owned interests in certain real and personal property in Cuba, discussed in detail below.

Residence and Contents

Based upon a copy of an original deed and the claimant's report to the American Embassy, Havana, Cuba in 1960 the Commission finds that claimants each owned a 1/2 interest in lot Nos. 48 and 49, Reparto Havana Biltmore, Marianao, Cuba. The record shows that claimants caused to be erected on said lots in 1957 a 2-story residence and a swimming pool.

The Commission further finds that claimants' improved real property was within the purview of the Urban Reform Law, published in the Cuban Official Gazette on October 14, 1960. In the absence of evidence to the contrary, the Commission finds that the property was taken by the Government of Cuba on October 14, 1960. (See Claim of Henry Lewis Slade, Claim No. CU-0183, 1967 FCSC Ann Rep. 39.)

The Commission finds that claimants each owned a 1/2 interest in furniture, furnishings and other items of personal property maintained at their residence. The Commission further finds that said personal property was taken by the Government of Cuba on October 14, 1960, when the residence was taken.

Claimants assert a loss of \$45,000.00 on account of their residence and its contents. The record shows that in 1955 claimants paid \$9,625.31 for the two lots, the Cuban peso being on a par with the United States dollar. It further appears that the improvements, including the personal property, cost \$34,500.00. Claimants were allowed a tax deduction of \$45,000.00 for the loss of their residence and personal property, based upon valuations of \$39,000.00 for the improved real property and \$6,000.00 for the personal property.

On the basis of the entire record, the Commission finds that claimants' valuations are fair and reasonable. Accordingly, the Commission finds that on October 14, 1960, the date of loss, claimants' residence and its contents had an aggregate value of \$45,000.00. Therefore, each claimant sustained a loss in the amount of \$22,500.00.

Inherited Real Property

Based upon the entire record, including the evidence in the related Claim No. CU-0577, the Commission finds that in 1957 GILES S. GIANELLONI inherited from his father a 1/8 interest in certain improved real property in Santiago de las Vegas, Havana, Cuba. The Commission further finds that said improved real property was taken by the Government of Cuba on October 14, 1960 pursuant to the Urban Reform Law, supra.

On the basis of the evidence of record and evidence contained in Claim No. CU-0577, the Commission finds that the value of the improved real property on October 14, 1960, the date of loss, was \$85,779.87. Therefore, GILES S. GIANELLONI sustained a loss in the amount of \$10,722.48 based on his 1/8 interest therein.

Lot No. 57

Based on the evidence of record and the evidence in Claim No. CU-0577, the Commission finds that GILES S. GIANELLONI inherited from his father a 1/8 interest in Lot No. 57 at Marianao, Havana, Cuba.

On December 6, 1961, the Cuban Government published Law 989, which confiscated all real property, personal property, rights, shares, stocks, bonds, securities and bank accounts of persons who had left the country. The Commission finds that this law applied to claimants who had left Cuba prior to that date, and that Lot No. 57 was taken by the Government of Cuba on December 6, 1961 pursuant to Law 989. (See Claim of Wallace Tabor and Catherine Tabor, Claim No. CU-0109, 25 FCSC Semiann. Rep. 53[July-Dec. 1966].)

The Commission further finds that the value of Lot No. 57 on December 6, 1961, the date of loss, was \$3,220.02. Therefore, GILES S. GIANELLONI sustained a loss of \$402.50 based on his 1/8 interest therein.

Property in Pinar Del Rio

Based upon a copy of an original deed and the report to the American Embassy, Havana, Cuba, the Commission finds that claimants each owned a 1/2 interest in Lot No. 16 at Cabanas, Pinar Del Rio, Cuba. The Commission further finds that Lot No. 16 was taken by the Government of Cuba on December 6, 1961 pursuant to Law 989, supra.

Claimants assert a loss of \$3,000.00 on account of Lot No. 16. The record shows that they acquired Lot No. 16 on February 16, 1955 at a cost \$2,775.00 and that its area was 2,249.80 square meters.

Upon consideration of the entire record, the Commission finds that claimants' valuation is fair and reasonable. Accordingly, the Commission finds that the value of Lot No. 16 on December 6, 1961, the date of loss, was \$3,000.00. Therefore, each claimant sustained a loss in the amount of \$1,500.00.

Claimants' losses are summarized as follows:

| <u>Item of Property</u> | <u>Date of Loss</u> | <u>Amount</u> |
|---|---------------------|--------------------|
| <u>GILES S. GIONELLONI</u> | | |
| Residence and Contents | October 14, 1960 | \$22,500.00 |
| Improved Real Property at Santiago de las Vegas | October 14, 1960 | 10,722.48 |
| Lot No. 57 | December 6, 1961 | 402.50 |
| Lot No. 16 | December 6, 1961 | <u>1,500.00</u> |
| | Total | <u>\$35,124.98</u> |
| <u>WINNIFRED C. GIANELLONI</u> | | |
| Residence and Contents | October 14, 1960 | \$22,500.00 |
| Lot No. 16 | December 6, 1961 | <u>1,500.00</u> |
| | Total | <u>\$24,000.00</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>GILES S. GIANELLONI</u> | |
| October 14, 1960 | \$33,222.48 |
| December 6, 1961 | <u>1,902.50</u> |
| Total | <u>\$35,124.98</u> |
| <u>WINNIFRED C. GIANELLONI</u> | |
| October 14, 1960 | \$22,500.00 |
| December 6, 1961 | <u>1,500.00</u> |
| Total | <u>\$24,000.00</u> |

Accordingly, the following Certifications of Loss will be entered and in all other respects the Proposed Decision is affirmed.

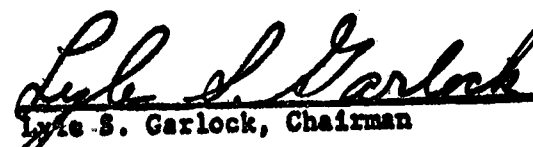
CERTIFICATIONS OF LOSS

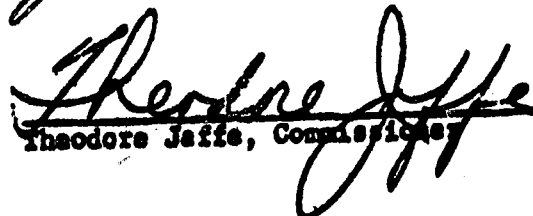
The Commission certifies that GILES S. GIANELLONI suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Thirty-Five Thousand One Hundred Twenty-Four Dollars and Ninety-Eight Cents (\$35,124.98) with interest at 6% per annum from the respective dates of loss to the date of settlement; and

The Commission certifies that WINNIFRED C. GIANELLONI 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-Four Thousand Dollars (\$24,000.00) 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 Amended Proposed Decision of the Commission

DEC 16 1970


Lyle S. Garlock, Chairman


Theodore Jaffe, 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 Amended 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).)

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

IN THE MATTER OF THE CLAIM OF

GILES S. GIANELLONI

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-1041

Decision No. CU

907

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 \$61,942.50, was presented by GILES S. GIANELLONI and is based upon the asserted loss of personal property, real property, and improved real property in Cuba. Claimant stated that he has been a national of the United States since his 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.

Section 504 of the Act provides, as to ownership of claims, that

(a) A claim shall not be considered under section 503(a) of this title unless the property on which the claim was based was owned wholly or partially, directly or indirectly by a national of the United States on the date of the loss and if considered shall be considered only to the extent the claim has been held by one or more nationals of the United States continuously thereafter until the date of filing with the Commission.

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) (Supp. 1967).)

No evidence in support of this claim was submitted. By Commission letter of February 21, 1967, claimant was advised as to the type of evidence proper for submission to establish this claim under the Act. However, no evidence in response to this correspondence has been received to date.

On August 1, 1967, claimant was invited to submit any evidence available to him within 45 days from that date, and he was informed, that, absent such evidence, it might become necessary to determine the claim on the basis of the existing record. No evidence has since been submitted.

CJ-1041

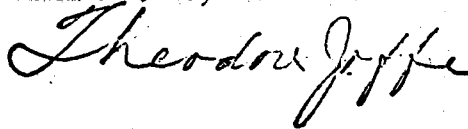
The Commission finds that claimant has not met the burden of proof in that he has failed to establish ownership of rights and interests in property which was nationalized, expropriated or otherwise taken by the Government of Cuba. Thus, the Commission is constrained to deny this claim and it is hereby denied. The Commission deems it unnecessary to make determinations with respect to other elements of the claim.

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

3 JAN 1968

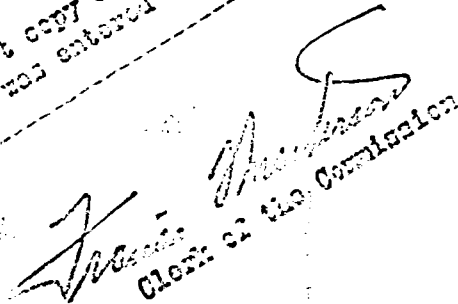


Edward D. Re, Chairman



Theodore Jaffe, Commissioner

CERTIFICATION
This is a true and correct copy of the decision
of the Commission which was entered as the final
decision on -----


Clerk of the Commission

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