

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

IN THE MATTER OF THE CLAIM OF

AMELIA ABELLA, Executrix of the
Estate of LUIS ABELLA, Deceased

Claim No. CU - 1127

Decision No. CU - 3793

Under the International Claims Settlement
Act of 1949, as amended

Counsel for claimant:

Baar, Bennett & Fullen
By Robert E. Smith, Esq.

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, for \$76,000.00 was presented by AMELIA ABELLA [aka AMELIA C. ABELLA], Executrix of the Estate of LUIS ABELLA, Deceased, based upon the asserted loss of improved real property and personal property in Cuba. LUIS ABELLA, a national of the United States by naturalization in 1942, died on October 3, 1959. The beneficiaries of his estate with respect to this claim 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.

Claimant describes the loss as a ranch type home and lot at 198th Street 1711, Biltmore, Havana, Cuba, and the personal property therein, valuing the land at \$11,000.00, the building at \$53,000.00, and personalty at \$12,000.00.

The record reflects and the Commission finds that LUIS ABELLA and Amelia, his wife, each owned a one-half interest in the above-described property, and on the death of LUIS ABELLA on October 3, 1959 his one-half interest became subject to a trust under his last Will and Testament, the income of which was to go to his widow for life and then to his children or their issue. Letters Testamentary were issued April 11, 1960 to AMELIA ABELLA.

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). 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 any rights and benefits conferred by this law.

Evidence of record establishes that the claimed property was rented to one Dioni Rossie and his family who were evicted by Cuban officials in June, 1961 pursuant to the Urban Reform Law. Accordingly, the Commission finds that the said real and personal property were taken by the Government of Cuba on June 1, 1961.

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.

Claimant asserts the value of the real property as \$64,000.00 at the time of loss. The property is described as a lot of 1,213.90 square meters improved by a two-story house containing six bedrooms, six baths, living room, dining room, recreation room, kitchen, family room, with patio, and air conditioned. In support of the evaluations, claimant has submitted affidavits of an expert appraiser, valuing the land at \$11,750.00; of the contractor who built the house for the sum of \$53,000.00 in 1958 and who installed certain appliances for the additional amount of \$3,500.00; and of the claimant itemizing the personal property.

On the basis of the entire record, the Commission finds that the improved real property had a value of \$64,750.00 at the time of loss and the fair and reasonable value of the personalty at that time was \$12,000.00.

Accordingly, the Commission finds that AMELIA ABELLA, individually, and the heirs of the Estate of LUIS ABELLA suffered losses in the aggregate amount of \$76,750.00 within the meaning of Title V of the Act as a result of the taking of the above described property by the Government of Cuba on June 1, 1961, AMELIA ABELLA having a loss of \$38,375.00 and the Estate of LUIS ABELLA having a loss of \$38,375.00.

The Commission has decided that in the 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, FCSC Claim No. CU-0644), and in the instant case, it is so ordered.

CERTIFICATION OF LOSS

The Commission certifies that AMELIA ABELLA 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-Eight Thousand Three Hundred Seventy-Five Dollars (\$38,375.00) with interest thereon at 6% per annum from June 1, 1961 to the date of settlement; and

The Commission certifies that AMELIA ABELLA, as Executrix of the Estate of LUIS ABELLA, Deceased, succeeded to and suffered a loss, as a result of the 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-Eight Thousand Three Hundred Seventy-Five Dollars (\$38,375.00) with interest thereon at 6% per annum from June 1, 1961 to the date of settlement.

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

30 JUL 1969

Leonard v. B. Sutton

Leonard v. B. Sutton, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

Sidney Freidberg

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).)