

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

IN THE MATTER OF THE CLAIM OF

ARAEI MEDINA

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -1174

Decision No. CU-1908

Appeal and objections with respect to an Amended Proposed Decision entered on March 4, 1970. No oral hearing requested

Hearing on the record held on June 8, 1971

FINAL DECISION

This claim was originally filed for \$154,420 based on 330 acres of land or 10 caballerias, with livestock, equipment, a vehicle, and a mortgage on the land of another. The evidence of record did not support the claim which was denied on May 22, 1968.

Thereafter the Commission received a report from abroad which reflected that certain real property of a value of \$40,000 was recorded in claimant's name. He stated that he was married at the time of acquisition of the property to his present wife, a national of the United States since 1964. The Commission found that the property was intervened by the Government of Cuba in 1960, that Connie Medina pursuant to the community property of Cuba had a one-half interest therein, but this was not certifiable under the Act, as she was not a national of the United States at the time of loss. Accordingly a loss of \$20,000 was certified to claimant.

Claimant entered objections and contends that allowance should be made for livestock, equipment and a mortgage receivable; and further that he was single at the time of loss.

The record now shows that claimant acquired the property in 1952 when he was apparently married to one Isabel Medina; that he was divorced in 1958, the decree stating that neither party brought any rights to the marriage to be now separated; that the only rights involved were those acquired during the marriage. Further, the property was as found, intervened in 1960 and 1962 claimant married Connie Medina, who became a United States national in 1964.

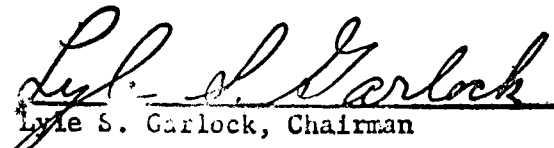
It thus appears that Isabel Medina, and not Connie Medina, had an interest in the real property, but that the rights of said Isabel Medina are not shown to have been satisfied. Accordingly, the Commission concludes that claimant is not entitled to a further allowance on account of the land.

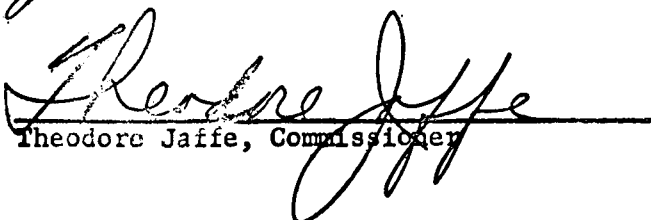
Further the Commission has considered the entire record with respect to the claimed livestock, equipment and mortgage receivable but finds that the evidence of record is insufficient to permit favorable findings in this respect.

Accordingly, the Commission is constrained to and does affirm the Amended Proposed Decision in this matter.

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

JUN 16 1971


Lyle S. Garlock, Chairman


Theodore Jaffe, Commissioner

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

IN THE MATTER OF THE CLAIM OF

ARAEI MEDINA

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-1174

Decision No. CU - 1908

AMENDED PROPOSED DECISION

By Proposed Decision dated May 22, 1968, the Commission denied this claim on the ground that claimant failed to meet the burden of proof in that he failed to establish ownership of rights and interests in property by a national of the United States which was nationalized, expropriated, or otherwise taken by the Government of Cuba. The decision was entered as Final on July 1, 1968. Subsequently, claimant furnished additional evidence and a report was received from abroad, which the Commission finds to be adequate.

Upon consideration of this matter, it is

ORDERED that the Final Decision be and it is hereby set aside and the Proposed Decision be and it is hereby amended.

The record establishes that a farm known as "La Otilia y La Otilita" in Bayamo, Oriente, Cuba was recorded in the claimant's name, having been acquired in 1952. At that time claimant was married to Connie Medina. Pursuant to the community property laws of Cuba, she acquired a one-half interest therein. (See Claim of Robert L. Cheaney and Marjorie L. Cheaney, Claim No. CU-0915.)

Claimant has been a national of the United States since his naturalization on May 15, 1959 and Connie Medina has been a national of the United States since her naturalization on November 20, 1964.

According to the record a nearby farm in which claimant assertedly owned an interest was intervened by Cuban Resolution 1 of Agrario 0-26, dated February 10, 1960. Claimant asserts that similar orders followed, covering the farm "La Otilia" and others. The Commission finds that the farm Otilia was intervened by the Government of Cuba on February 15, 1960.

Inasmuch as Connie Medina was not a national of the United States on February 15, 1960, her interest in the property is not certifiable under the Act and so much of the claim as may be based on her interest must be and is denied.

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 question, in all cases, will be to determine the basis of valuation which, under the particular circumstances, is "most appropriate to the property and equitable to the claimant". This phraseology does not differ from the international legal standard that would normally prevail in the evaluation of nationalized property. It is designed to strengthen that standard by giving specific bases of valuation that the Commission shall consider.

A report from abroad recites that the property having a surface area of 7.10 caballerias, being free of encumbrances, was acquired for \$7,000.00. At some time it was valued at \$16,470.00. However, the report continues that the property was dedicated to coffee plants and pastures, estimated to value \$40,000.00 according to experts in that area.

Accordingly, the Commission finds that the farm had a value of \$40,000.00 on February 15, 1960, and the Commission concludes that claimant suffered a loss in the amount of \$20,000.00 within the meaning of Title V of the Act, as the result of the taking of his property interest by the Government of Cuba on February 15, 1960.

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.


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


CERTIFICATION OF LOSS

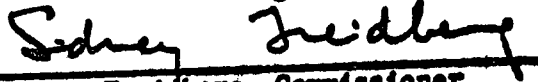
The Commission certifies that ARAEL MEDINA suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Twenty Thousand Dollars (\$20,000.00) with interest at 6% per annum from February 15, 1960 to the date of settlement.

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

MAR 4 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 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, 32 Fed. Reg. 412-13 (1967).)

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

IN THE MATTER OF THE CLAIM OF

ARAEI MEDINA

Claim No. CU - 1174

Decision No. CU - 1908

Under the International Claims Settlement
Act of 1949, as amended

Counsel for claimant:

Frederick A. Resnick, Esq.

Petition to reopen. Amended Proposed Decision dated and entered March 4, 1970.
Final Decision entered June 16, 1971.

AMENDED FINAL DECISION

This claim against the Government of Cuba was allowed by the Commission's Amended Proposed Decision of March 4, 1970 in the amount of \$20,000.00, based upon claimant's one-half interest in certain land consisting of 7.10 caballerias, located near Bayamo, Oriente Province, which claimant had acquired on February 26, 1952. The other one-half interest was disallowed, because the record indicated that claimant was married to Connie Medina who did not become a national of the United States until November 20, 1964, and it was assumed that she had a one-half interest under the community property law of Cuba. Claimant objected to the Amended Proposed Decision and stated that he was single when he acquired the property; that he divorced his first wife Isabel in 1958, and that in 1960, at the time of the loss, he was not yet married to his second wife Connie. He further objected to the Amended Proposed Decision, because it did not include an allowance for livestock, equipment and a mortgage interest.

In its Final Decision of June 16, 1971, the Commission found that claimant's first wife Isabel, and not Connie, had an interest in the land; that after the divorce in 1958 the rights of Isabel had not been satisfied and that claimant, therefore, was not entitled to a further allowance for the land. The portions of the claim for the loss of livestock, equipment and a mortgage interest were denied for lack of proof.

On November 3, 1971, Frederick A. Resnick, Esquire, acting for the claimant, requested that the claim be reopened for the reason that the judicial settlement between claimant and his first wife Isabel eliminated all future interests Isabel may have had with respect to the community property. He also stated that claimant has numerous instruments in support of the claim, but in spite of the fact that claimant was invited to submit such documents, no further evidence was received.

The judicial instrument in question indicates that the court held that the properties belonging to the community partnership should belong to them individually, whereas the land in question was acquired prior to the first marriage and did not become part of the community property.

In view of the foregoing, the Commission now concludes that the property which had been recorded in 1952 in claimant's name, remained his individual property after the divorce and that he is therefore entitled to an allowance reflecting the full value of the property, that is \$40,000.00.

The Commission further concludes that no allowance should be made for the loss of personal property, because claimant failed to submit any evidence in support of this portion of the claim.

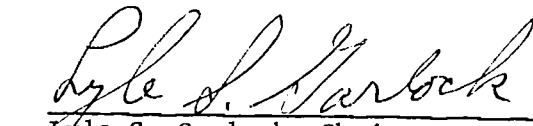
Accordingly, the Certification of Loss in the Amended Proposed Decision is set aside, the following Certification is entered, and in all other respects the Amended Proposed and Final Decisions are affirmed.

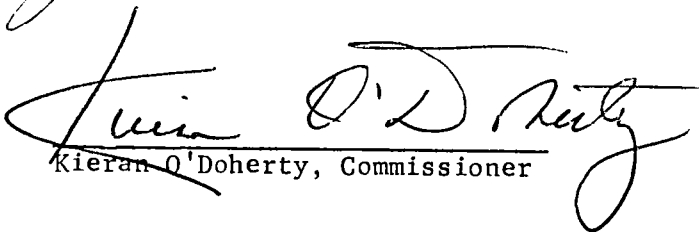
CERTIFICATION OF LOSS

The Commission certifies that ARAEL MEDINA 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 Forty Thousand Dollars (\$40,000.00), with interest at the rate of 6% per annum from February 15, 1960, to the date of settlement.

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

JUN 30 1972


Lyle S. Garlock, Chairman


Kieran O'Doherty, Commissioner

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

IN THE MATTER OF THE CLAIM OF

ARAEI MEDINA

Claim No. CU - 1174

Decision No. CU - 1908

Under the International Claims Settlement
Act of 1949, as amended

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, in the amount of \$154,420.00, was presented by ARAEL MEDINA, and is based upon the asserted loss of improved real property, personal property, and debts. Claimant asserts that he has been a national of the United States since his naturalization.

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).)

Claimant asserts the ownership of certain debts and improved real property and personal property located in Cuba. However, other than one affidavit and a request for Commission assistance in obtaining evidence, claimant has submitted no documentary evidence in support of his claim. By Commission letter of March 24, 1967, claimant was advised as to the type of evidence proper for submission to establish his claim under the Act.

On March 19, 1968, claimant was invited to submit any evidence he might have within 20 days from that date. Claimant responded by letter of March 27, 1968, stating that his affairs were handled by an attorney in Cuba. He was again advised, by Commission letter of April 1, 1968, as to the type of evidence necessary to establish the claim, referring to the Commission's letter of March 24, 1967. Claimant was also advised that, should he be unable to submit further evidence in support of this claim, a determination of the claim would

be made on the basis of the present record. Claimant has not responded, nor has additional evidence been received by the Commission.

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. Accordingly, this claim is hereby denied. The Commission deems it unnecessary to determine other elements of this claim.

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

MAY 22 1968

Leonard V. B. Sutton

LEONARD V. B. SUTTON, Chairman

Theodore Jarre

Theodore Jarre, Commissioner

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- 1174