

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

IN THE MATTER OF THE CLAIM OF

JOSE DIAZ

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

Claim No. CU-1193

Decision No. CU 3481

Counsel for claimant:

Kreindler & Kreindler
By Daniel Donnelly, Esq.

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, for \$54,180.00 was presented on March 24, 1967 by Lettie Higinson Diaz based upon the asserted loss of improved real property in Cuba, and accrued rentals. Lettie Higinson Diaz, a national of the United States by birth, died on July 8, 1968, survived only by her husband, JOSE DIAZ, who is substituted as claimant herein.

Under Title V of the International Claims Settlement Act of 1949, as amended [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.

This claim is based on two items of improved realty described as follows:

(1) a rental property at #6 486th Avenida, Playa Cuba, Guanabo, assertedly having a value of \$16,000.00;

(2) a residence at #13925 Sur Reparto Manana, Guanabacoa, Havana, Cuba, assertedly having a value of \$10,640.00.

Additionally claim is made for \$27,540.00 for rents assertedly due in connection with the #6 486th Avenida property.

The record includes documents pertaining to both real properties establishing that they were owned by Lettie Wanamaker (Higinson) Diaz, a national of the United States, and her spouse, Jose Diaz Basallo, a Cuban citizen.

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). The law further provided that if a tenant did not occupy the property, or had subleased or transferred its use to another, the property could be sold to the occupant; and further, that an occupant, whether a tenant or subtenant, or not, could purchase the property in the manner outlined (Article 9). Article 21 of the law provided that present owners of urban buildings sold under the law should receive the

assigned price; however, under Article 25 ownership of so-called tenement houses would be transferred to the State without compensation to the erstwhile owners. Moreover, Article 30 provided that if urban buildings transferred under the law were mortgaged, execution of the contract of sale should have the effect of canceling the mortgage. 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 the property at #6 486th Avenida, Playa Cuba, Guanabo, 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 Official Gazette. (See in the Matter of the Claim of Henry Lewis Slade, Claim No. CU-0183, 1967 FCSC Ann. Rep. 39.)

Law 989, published in the Cuban Official Gazette on December 6, 1961, in its terms nationalized by confiscation all goods and chattels, rights, shares, stocks, bonds and other securities of persons who left the country of Cuba. In the absence of evidence to the contrary, the Commission finds that the property known as #13925 Sur Reparto Manana was taken by the Government of Cuba on December 6, 1961. (See in the Matter of the Claim of Floyd W. Auld, Claim No. CU-0020, 25 FCSC Semi-ann. Rep. 55 [July-Dec. 1966].)

Accordingly the Commission finds that Lettie H. Diaz, now deceased, suffered a loss of her one-half interest in the said real properties within the meaning of Title V of the Act. Upon her death subsequent to filing this claim, JOSE DIAZ succeeded to her interest. On the other

hand, any loss which may have been suffered by JOSE DIAZ directly is not certifiable under Title V inasmuch as he does not qualify as a United States national.

Value of #6 486th Avenida

The value of this rental property has been asserted as \$16,000.00, consisting of the down payment of \$6,000.00 and satisfaction of a \$10,000.00 mortgage. It is described as of two stories with eighteen apartments. The rentals are given as \$120.00 per month. Information received from sources in Cuba indicates that it was purchased for the sum of \$14,000.00. On the basis of the entire record, the Commission finds that an amount of \$16,000.00 is a fair value for this property at the time of its taking.

Value of #13925 Sur Reparto Manana

The value of this residential property is asserted as \$10,640.00, consisting of a down payment of \$2,640.00 and satisfaction of an \$8,000.00 mortgage. It appears to have consisted of 326.04 square meters improved by a three bedroom house. Based on the entire record, the Commission finds that at the time of taking this property had a value of \$10,374.00.

Accordingly, the Commission finds that JOSE DIAZ succeeded to a loss in the amount of \$13,187.00 within the meaning of Title V of the Act.

Claim is also made for \$27,540.00 for rents assertedly due in connection with the #6 486th Avenida property. However, the record does not reflect that any rents were due and owing to the former owners and moreover, after October 14, 1960, the property was no longer theirs. However, the Commission has decided that in certification 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 the 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 JOSE DIAZ succeeded to and 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 Thirteen Thousand One Hundred Eighty-seven Dollars (\$13,187.00) with interest at 6% per annum on \$8,000.00 from October 14, 1960, and on \$5,187.00 from December 6, 1961 to the date of settlement.

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

JAN 23 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).)