

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

IN THE MATTER OF THE CLAIM OF

HENA ELBA SILVA
MANUEL W. SILVA

Claim No. CU-1210

Decision No. CU 4789

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

Counsel for claimants:

Nestor Morales, Esq.

Van Buren Vickery, Esq.
of Counsel

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, was presented by HENA ELBA SILVA and MANUEL W. SILVA for \$59,200.00 based upon the asserted ownership and loss of certain real and personal property in Oriente, Cuba, some inherited by HENA ELBA SILVA and some held under the Community Property Law of Cuba. Claimant HENA ELBA SILVA has been a national of the United States since her naturalization in 1948. Claimant MANUEL W. SILVA has been a national 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.

The claim is based on the following, all real properties being in Santiago de Cuba, Oriente:

Both claimants

1. Farm in Santiago, "Finca Maboia"	\$25,000.00
2. House at No. 8, Calle 5	8,000.00
3. House at No. 12, Calle 5	3,000.00
4. Livestock (30 cows)	4,200.00
5. Piano	3,000.00
6. Household furniture	3,000.00
7. Automobile	2,000.00
8. Cash	1,000.00
	<u>\$49,200.00</u>

HENA ELBA SILVA

9. House at No. 369 Mariano Corono	\$ 5,000.00
10. House at No. 2, Calle 5	<u>5,000.00</u>
	\$59,200.00

Based upon the entire record, including reports from abroad, an affidavit from an individual who knew the claimants for many years in Cuba, and a copy of a document from the Urban Reform Office of the Government of Cuba addressed to claimant, HENA ELBA SILVA, the Commission finds that claimant, HENA ELBA SILVA, was the sole owner of items 9 and 10 above and that she and her husband jointly owned the other real and personal property with the exception of item 8 based on the loss of cash.

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 the rights and benefits conferred by this law.

Based on the foregoing and the evidence of record, the Commission finds that claimants' improved real properties in Santiago, Cuba except the farm, were 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.)

On December 6, 1961 the Government of Cuba published its Law 989 which confiscated all assets, personal property and real estate of persons who had left Cuba. The record establishes that claimants resided on the farm in question from 1952 until some time in 1960, and that they left Cuba before December 6, 1961. The Commission therefore finds, based on the evidence of record, that claimants' farm including the household furnishings therein, the piano, the livestock and the automobile were taken on December 6, 1961 by the Government of Cuba 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 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, reports from abroad regarding certain properties and an affidavit from a neighbor in Cuba who states that he resided in Cuabitas, Cuba for more than 30 years and knew the claimants for many years.

On the basis of the evidence of record the Commission finds that the real property in question, the Holstein cows, and the other personalty, except the cash, after appropriate depreciation where applicable, had the following values:

<u>Both claimants</u>	<u>Date of Loss</u>	<u>Value</u>
1. Farm known as Finca Maboá	Dec. 6, 1961	\$15,000.00
2. House at Calle 5, No. 8	Oct. 24, 1960	5,000.00
3. House at Calle 5, No. 12	Oct. 24, 1960	2,900.00
4. 30 Holstein cows	Dec. 6, 1961	4,200.00
5. Baldwin baby grand piano	Dec. 6, 1961	2,000.00
6. Household furnishings	Dec. 6, 1961	3,000.00
7. 1958 De Soto automobile	Dec. 6, 1961	2,000.00
		<u>\$34,100.00</u>
<u>HENA ELBA SILVA</u>		
9. House at No. 369 Mariano Coronó	Oct. 24, 1960	\$ 4,500.00
10. House at Calle 5, No. 2	Oct. 24, 1960	4,500.00
		<u>\$ 9,000.00</u>

With regard to the portion of the claim based on the loss of cash, no documents or other evidence have been submitted to support this item of the claim. The Commission is therefore constrained to hold that claimants have not established this portion of their claim, and accordingly it is denied for failure to meet the burden of proof.

In view of the foregoing, the Commission concludes that the claimants suffered a loss in the total amount of \$43,100.00 within the meaning of Title V of the Act as a result of the taking of their 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 as follows:

	<u>FROM</u>	<u>ON</u>
HENA ELBA SILVA	October 14, 1960	\$12,950.00
	December 6, 1961	<u>13,100.00</u>
		\$26,050.00
MANUEL W. SILVA	October 14, 1960	\$ 3,950.00
	December 6, 1961	<u>13,100.00</u>
		\$17,050.00

CERTIFICATION OF LOSS

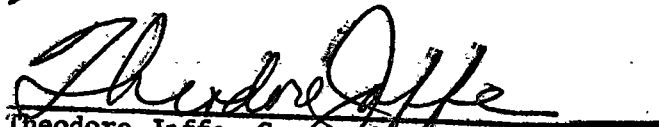
The Commission certifies that HENA ELBA SILVA suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Twenty-six Thousand Fifty Dollars (\$26,050.00) with interest at 6% per annum from the respective dates of loss to the date of settlement; and

The Commission certifies that MANUEL W. SILVA 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 Seventeen Thousand Fifty Dollars (\$17,050.00) 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 Proposed
Decision of the Commission

APR 29 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).)

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