

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

IN THE MATTER OF THE CLAIM OF

MERCEDES B. ALTONAGA

Claim No. **CU** -1356

Decision No. **CU** - 4121

Under the International Claims Settlement
Act of 1949, as amended

Counsel for claimant:

Gioffre & Gioffre
By Paul D. Jaffe, Esquire

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 \$130,000.00, was presented by MERCEDES B. ALTONAGA and is based upon the asserted loss of improved and unimproved real property and personal property. Claimant, MERCEDES B. ALTONAGA, 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.

Claimant contends that she lost an interest in improved real property consisting of an apartment house, a house, and land valued at \$100,000.00; an additional parcel of land valued at \$10,000.00; and personal property valued at \$20,000.00.

The record contains information furnished to the Commission from sources in Cuba; and claimant's affidavit and a photograph of the real property; and an itemized list of the personal property.

Based upon the entire record, the Commission finds that the claimant and her husband, Juan G. Altonaga each owned a one-half interest in the following:

- 1) Apartment building at 50th Street and 37th Avenue, Nicanor del Campo, Marianao, Cuba, situated on a lot 100 by 150 feet and consisting of 17 apartments;
- 2) House at 5th Avenue F, 98th Street, Miramar, Marianao, consisting of 10 rooms;
- 3) A vacant lot measuring approximately 50 by 100 feet at 5th Avenue F and 95th Street, Miramar, Marianao;

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- 4) Personal property, consisting of household furnishings, clothing, jewelry, a 1955 Buick and assorted tools and equipment for building maintenance;

which were confiscated by the Government of Cuba on May 15, 1961, pursuant to Law 715 of January 26, 1960 (purported unjust enrichment). Upon the death of Juan G. Altonaga intestate on March 11, 1959, pursuant to the Cuban laws of descent and distribution, his interest was inherited equally by their 2 children, Caridad and Juan Altonaga who were not United States nationals on the date of loss, with a life estate in one-third of his estate in favor of the claimant.

In arriving at the value of the property, consideration was given to all of the evidence of record, including the reports from abroad, claimants affidavits, a photograph of the apartment building, and the October 1961 National Dealers Official Used Car Guide.

The Commission finds that at the time of loss the property had the following values:

1) Vacant lot at 5th Avenue F, 98th Street, Miramar, Marianao	\$ 10,000.00
2) Apartment building at 50th Street and 37th Avenue, Nicanor del Campo, Marianao	\$ 80,000.00
3) House at 5th Avenue F, 98th Street, Miramar, Marianao	\$ 20,000.00
4) Claimant's own personal effects after depreciation	\$ 8,800.00
5) Personal effects owned jointly by claimant and her husband, now deceased, after depreciation	\$ 8,460.00
Total	<u>\$127,260.00</u>

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As stated above, one third of the estate was encumbered with a life estate in favor of the claimant. According to evidence of record she was 44 years old at the time of taking. The claimant's interest in one-third of the estate was, therefore, a life interest. The value of the life estate must be determined.

The Commission has adopted as a basis for valuation of life and remainder interests the Makehamized mortality table, appearing as Table 38 of United States Life Tables and Actuarial Tables 1939-41, and a 3-1/2% interest rate, compounded annually, as prescribed by United States Treasury Department regulations of June 24, 1958, for the collection of gift and estate taxes, respectively. (See 23 F. F. 4547, 26 C.F.R. 2031-7.) According to that method of valuation, a life estate in property so encumbered is valued at .58751 of one third of the entire estate. Therefore, since the value of one-third of the estate in question is \$19,743.33 the life estate thereon is valued at \$11,599.40 which is .58751 of that amount.

Therefore, the Commission finds that the interests of MERCEDES B. ALTONAGA in the property which was taken by the Government of Cuba, had the following value:

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| 1. One-half interest in improved and unimproved real property and personal property owned jointly by claimant and her late husband, Juan G. Altonaga | \$59,230.00 |
| 2. Claimant's own personal effects | 8,800.00 |
| 3. Claimant's interest of life estate in 1/3 of the Estate of Juan G. Altonaga, Deceased | <u>11,599.40</u> |
| Total | <u>\$79,629.40</u> |

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 the Claim of Lisle Corporation, FCSC Claim No. CU-0644).

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CERTIFICATION OF LOSS

The Commission certifies that MERCEDES B. ALTONAGA 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 Seventy-Nine Thousand Six Hundred Twenty-nine Dollars and Forty Cents (\$79,629.40) with interest thereon at 6% per annum from May 15, 1961 to the date of settlement.

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

21 OCT 1969

Leonard v. B. Sutton

Leonard v. P. Sutton, Chairman

Theodore Jarfe

Theodore Jarfe, 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).)

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