

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

IN THE MATTER OF THE CLAIM OF

DOROTHEA TANENBAUM

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-1423

Decision No. CU-6203

Counsel for claimant:

Shapiro, Fried, Weil & Scheer
By Herbert S. Shapiro, Esq.

AMENDED PROPOSED DECISION

This claim was denied by Proposed Decision issued May 19, 1971. Claimant through counsel has submitted additional evidence. The matter having been re-examined, the Proposed Decision is amended as follows.

Calle 40A, Miramar, Havana

On the basis of the record the Commission finds that claimant was the owner of a 1/4 interest in improved real property at Calle 40A, Miramar, Havana. In the Claim of Carol Betty Siegler, Claim No. CU-1727, Amended Proposed Decision No. CU-6204, the Commission found that this property was taken by the Government of Cuba on October 14, 1960 pursuant to the Urban Reform Law and that at the time of loss the equity in the property had a value of \$190,000.00.

Claimant was married at the time she acquired her interest in this property. Under the Community Property Law of Cuba her husband, Harold Tanenbaum (Claim No. CU-1423), thus had a 1/2 share in his wife's interest, or a 1/8 interest in the whole.

The Commission concludes that claimant, DOROTHEA TANENBAUM, sustained a loss in the amount of \$23,750.00 for her 1/8 interest in the property. The interest of Harold Tanenbaum in this property and as it appears in other parts of this claim will be considered in the claim filed by him individually.

Realty at La Coronela, Havana

The record reflects and the Commission finds that claimant and her husband each owned a 1/2 interest in improved real property at La Coronela, Havana, Cuba which was taken by the Government of Cuba on October 14, 1960 pursuant to the Urban Reform Law.

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.

The property is described as a lot of 6,273.72 square meters improved with a one story residence of masonry. It was a four bedroom house with terrance, servant quarters and a two car garage. The house was newly constructed sometime after 1951. It was estimated that prior to its taking by the Government of Cuba the land had a value of \$12,000.00 and the improvements, \$70,000.00. Claimant asserts its value in 1960 was \$115,000.00. Counsel has submitted the affidavit of James S. Knopke who lived in the neighborhood of La Coronela and who had built his home there. Said affidavit appraises the realty at \$75,000.00. The Commission has considered the description of the property and also the values of comparable property. It finds the value of \$75,000.00 to be reasonable. The Commission concludes that claimant sustained a loss in the amount of \$37,500.00 for her 1/2 interest therein.

Personal Property of Residence and Automobile

Claimant had an interest in certain personal property relative to the use of her residence and an automobile, all hereinafter more fully described. The Commission finds that these items were also taken by the Government of Cuba on October 14, 1960.

With respect to the personalty in the property, claimant has submitted a list of furniture, appliances, furnishings, and antiques totaling \$34,775.00. The date and manner of acquisition has been noted. These cover the period from 1927 to 1960 and include wedding gifts, inherited items and purchases. The Commission has determined that apart from antiques not subject to depreciation, furniture and appliances must be depreciated at a rate of 5 per cent per annum; and furnishings including drapes, lamps, clothing, must be depreciated at 10 per cent per year. Accordingly, the Commission finds that the personalty at La Coronela, Havana, equally owned by claimant and her spouse, had a value of \$26,729.00 on the date of loss, and that claimant DOROTHEA TANENBAUM thereby suffered a loss of \$13,364.50 within the meaning of Title V of the Act.

Further, claimant was the sole owner of a 1956 Oldsmobile Holiday Sedan which had a value of \$2,000.00 at the time of loss, October 14, 1960.

Insurance Policy

Claimant asserts that the Occidental Life Insurance Company on December 28, 1949 issued to her a \$10,000.00 life policy and that in 1960 its cash surrender value was \$4,120.00.

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) (1970).)

The record does not establish that the Government of Cuba took any proceeds of the subject policy. Accordingly, this part of the claim is denied.

Recapitulation

Claimant's losses on October 14, 1960 are summarized as follows:

| <u>Property</u> | <u>Amount</u> |
|------------------------|-----------------------------|
| Calle 40A | \$ 23,750.00 (1/8 interest) |
| La Coronela, residence | 37,500.00 (1/2 interest) |
| Personalty | 13,364.50 (1/2 interest) |
| Automobile | <u>2,000.00</u> |
| | \$ 76,614.50 |

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 Claim of Lisle Corporation, Claim No. CU-0466), and in the instant case it is so ordered.

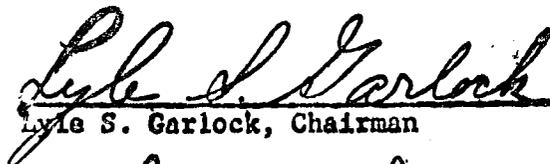
Accordingly the following Certification of Loss will be entered and in all other respects the Proposed Decision as amended herein is affirmed.

CERTIFICATION OF LOSS

The Commission certifies that DOROTHEA TANENBAUM 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-six Thousand Six Hundred Fourteen Dollars and Fifty Cents (\$76,614.50) with interest thereon at 6% per annum from October 14, 1960 to the date of settlement.

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

AUG 4 1971


Lyle S. Garlock, Chairman


Theodore Jaffe, 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 (1970).)

CU-1423

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IN THE MATTER OF THE CLAIM OF

DOROTHEA TANENBAUM

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Act of 1949, as amended

Claim No. CU-1423

Decision No. CU **6203**

Counsel for claimant:

Shapiro, Fried, Weil & Scheer
By Herbert S. Shapiro, Esq.

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 DOROTHEA TANENBAUM in the amount of \$143,620.00 based upon the asserted ownership and loss of interests in improved real property and personal property in Cuba. Claimant 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 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) (1970).)

Claimant, through counsel, asserts that she owned a one-fourth interest in an apartment house at Calle 40A, Miramar, Havana, Cuba, valued at \$62,500.00; a 1956 Oldsmobile valued at \$2,000.00 and an insurance policy with the cash surrender value of \$4,120.00.

In addition claimant asserts that she and her husband each owned a one-half interest in their private home and the furnishings therein at La Coronela, Havana, Cuba, valued at \$75,000.00.

By Commission letter of June 6, 1967, claimant was advised, through counsel, as to the type of evidence proper for submission to establish this claim under the Act. Thereafter, by letter of January 5, 1971, the Commission made additional suggestions to claimant, through counsel, concerning the submission of supporting evidence in this matter.

In support of the claim counsel has submitted affidavits from an attorney who handled all legal matters for claimant and her family in Cuba. In addition the record includes a report from abroad relating to the subject real properties.

In the aforementioned Commission letter of January 5, 1971 it was suggested to counsel that he clarify and further identify the realties listed in the report from abroad with the properties being claimed herein. This has not been done.

No evidence has been submitted in support of those parts of the claim based on the personal property of the residence, the automobile and the insurance policy.

The Commission finds that the evidence submitted in support of the part of the claim based on real property is not persuasive in establishing

claimant's ownership of rights and interests in property which was nationalized, expropriated or otherwise taken by the Government of Cuba. Thus the Commission is constrained to deny this part of the claim and it is hereby denied.

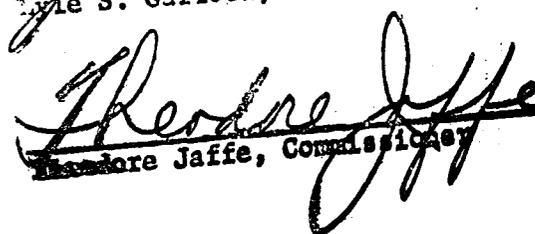
As to the parts of the claim based on household personalty, the automobile and the insurance policy, these parts are denied in their totality since no evidence has been submitted in support of any elements of any part of the claim.

The Commission deems it unnecessary to make determinations with respect to other elements of the claim.

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

MAY 19 1971


Lyle S. Garlock, Chairman


Theodore Jaffe, Commissioner

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