

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

IN THE MATTER OF THE CLAIM OF

HUMBERTO HERNANDEZ

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -1448

Decision No. CU 5838

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 HUMBERTO HERNANDEZ for \$331,430.55 based upon the asserted ownership and loss of real and personal property, including stock interests 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) (1969).)

Claimant describes his losses as follows:

Land	\$113,416.55
Personalty	12,450.00
Securities	<u>203,680.00</u>
	\$331,430.55

Real Property

Claimant has asserted loss of the following realties:

(1) Lot 2, Block 8, Reparto Oasis Varadero	\$ 9,386.55
(2) Lot 8, Block 76, Reparto Habana Biltmore	17,030.00
(3) An interest in a lot in Havana, purchased from Mario Suarez and Co.	12,450.00

Based upon the entire record, including a report from abroad, copy of the contract for item (1) and an affidavit of Alberto Mendoza who affirms that he acted for the corporation which sold claimant items (1) and (2) above, the Commission finds that claimant owned Lot 2, Block 8, Reparto Oasis and Lot 8, Block 76, Reparto Havana Biltmore.

On December 6, 1961, the Cuban Government published its Law 989 (Official Gazette, XXIII, No. 237, p. 23705) which effected confiscation of all assets, personal property and real estate, rights, shares, stocks, bonds and securities of persons who had left the country.

The Commission finds, in the absence of evidence to the contrary, that the subject real property in items (1) and (2) above was taken by the Government of Cuba on December 6, 1961 pursuant to the provisions of 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, the aforesaid copy of a contract and the affidavit of the seller.

Based on the entire record, the Commission finds that item (1) Lot 2, Block 8 had a value of \$9,386.55 and that item (2) Lot 8, Block 76, had a value of \$17,030.00.

The record reflects that claimant is married and was at the time the realties were acquired. Under the community property law of Cuba, his spouse had a one-half interest in properties acquired during coverture, except those inherited or acquired with inherited funds. In the absence of evidence as to the nationality of claimant's spouse, so much of the claim as is based on her interest must be and is denied.

Accordingly, the Commission concludes that claimant suffered a loss in the amount of \$13,208.28 within the meaning of Title V of the Act, as the result of the taking of his real property by the Government of Cuba on December 6, 1961.

Claimant has submitted no evidence in support of his asserted interest of \$12,500.00 in a plot in Plaza Civica in Havana which he states cost \$86,000.00. The Commission has attempted to obtain evidence of this interest on behalf of claimant, but the report received is negative. In the absence of substantiating evidence, the Commission is constrained to and does deny this part of the claim.

Personalty

Claimant has submitted no evidence whatsoever in support of this part of his claim although it was suggested to him several times that he do so,

specifically listing the items, indicating age, condition, and value, and submitting affidavits for consideration. In the absence of evidence upon which to make a finding of ownership, taking by the Government of Cuba, and value at such time, this item of claim is also denied.

Securities

Claimant has asserted claim for \$203,680.00 for his interest in the following:

- (1) Automoviles Heriberto Hernandez S.A.
- (2) Agencia de Autos 23 y P
- (3) Cia. Financiera Internacional

He states he left Cuba in 1959, and the corporations were intervened in March 1960.

In connection with these items of claim, claimant has submitted the affidavit of his brother Heriberto Hernandez, the affidavit of Juan Acosta, Secretary of the three entities, and a balance of December 31, 1959, in the Spanish language, for item (1) above.

This balance sheet would appear to indicate the net worth of the corporation for 1959, as \$224,014.68, although in the absence of a translation, and supporting data such determination is not made. Moreover, other considerations are determinative of this part of the claim.

Heriberto Hernandez indicates that claimant's interest in the corporation (1) was 25%. He also states that claimant loaned money to the company in 1957 to form the entity in item (2) and that in 1958 they formed the third entity and purchased a lot with the purpose of erecting their own building.

Juan Acosta states that to the best of his knowledge the cash value of claimant's interests in the three enterprises very conservatively would be between \$250,000 and \$300,000. Further, he states the enterprises were intervened in 1960, and confiscated in 1961. Although he was secretary of the corporations he does not clarify the extent of the claimant's asserted interest in the entites, nor offer anything in support of his estimated value.

In several letters from September 7, 1967 through February 3, 1970, it was suggested that claimant submit evidence of his ownership interests and the value on the date of loss, which was apparently two years after the date of the proffered balance sheet.

The Commission appreciates the difficulties encountered by some claimants in establishing their claims against the Government of Cuba. However, the Commission must be guided by the evidence of record pertaining to the ownership, loss and value of the property included in each claim. Thus, the Commission finds that claimant has not met the burden of proof with respect to the business enterprises in that he has not submitted evidence sufficiently probative to establish ownership and the extent thereof, of rights and interests in such property or the value thereof. Accordingly, the Commission is constrained to deny these portions of the claim and they are hereby denied. The Commission deems it unnecessary to make determinations with respect to other elements of these portions of the claim.


The Commission has decided that in certifications 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-0644), and in the instant case it is so ordered.


CERTIFICATION OF LOSS

The Commission certifies that HUMBERTO HERNANDEZ 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 Two Hundred Eight Dollars and Twenty-eight Cents (\$13,208.28) with interest at 6% per annum from December 6, 1961 to the date of settlement.

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

SEP 16 1970


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 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-1448