

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

IN THE MATTER OF THE CLAIM OF

ANTONIA NELIA TOLEDO LARRUBIA  
Individually,  
and as Mother and Natural  
Guardian of MANUEL DIONISIO LARRUBIA,  
a Minor

Under the International Claims Settlement  
Act of 1949, as amended

Claim No. CU-1453  
Claim No. CU-1454  
Decision No. CU -  
**5893**

Counsel for claimants:

H. S. Wood, Esq. and  
H. L. Wood, Esq.

PROPOSED DECISIONS

These claims against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, were presented by ANTONIA NELIA TOLEDO LARRUBIA, Individually and as Mother and Natural Guardian of MANUEL DIONISIO LARRUBIA, a Minor, in the amended aggregate amount of \$238,000. Claimants have both been nationals of the United States since birth.

Claim No. CU-1453 was presented by ANTONIA NELIA TOLEDO LARRUBIA based on a furnished home at No. 254 Bancaribe, Guadalupe Subdivision, Santiago de las Vegas, Havana, Cuba, which property she states was in her name. Claim No. CU-1454 was filed by her as widow and for her minor child based on their interests in a farm known as "Itabo" in the San Francisco section of Consolation del Sur, in Pinar del Rio, Cuba, including livestock and other personalty, securities and insurance policies, said to have been inherited from the husband and father, Col. Manuel de los Angeles Larrubia, a Cuban national, who was executed by Castro forces on April 5, 1959.

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.

Section 504 of the Act provides, as to ownership of claims, that

(a) A claim shall not be considered under section 503(a) of this title unless the property on which the claim was based was owned wholly or partially, directly or indirectly by a national of the United States on the date of the loss and if considered shall be considered only to the extent the claim has been held by one or more nationals of the United States continuously thereafter until the date of filing with the Commission.

On the basis of evidence of record, further discussed below, the Commission finds that ANTONIA NELIA TOLEDO LARRUBIA and her husband owned certain real and personal property in Cuba, described below. Claimant has asserted that the properties were taken in January, 1959. On her claim forms and in her affidavit of May 29, 1969, she has described in detail the circumstances surrounding the ransacking and taking of the home at #254 Bancaribe, Santiago de las Vegas. The Commission finds that this property, and the farm Itabo, were confiscated by the Castro Revolutionary Forces in January, 1959, and in the absence of evidence to the contrary, finds that this occurred on January 15, 1959.

Pursuant to the Community Property Law of Cuba, the spouses had equal rights in property acquired after their marriage in 1947, specifically the property in Santiago de las Vegas, which was purchased in 1953 and improved thereafter. On the other hand, the farm known as Itabo was

acquired by Col. Larrubia in 1940, prior to their marriage, and claimant ANTONIA NELIA TOLEDO LARRUBIA had no interest therein pursuant to said laws.

Accordingly, since the farm "Itabo" and a one-half interest in the property at #254 Bancaribe were the property of a nonnational of the United States on the date of taking, the loss suffered thereby is not certifiable under the Act and the Claim No. CU-1454, based thereon, must be and hereby is denied. The Commission deems it unnecessary to make determinations with respect to other elements of said claim.

There remains for determination the interests of ANTONIA NELIA TOLEDO LARRUBIA hereafter referred to as claimant, in the property at #254 Bancaribe, Santiago de las Vegas.

The record contains original documentation and a report from abroad which clarifies that the cost of the land was \$26,683.09, and that a building loan of \$38,000 had been procured to assist in building the residence. The Commission finds that at the time of taking, there were no encumbrances on this property.

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 the documentation as to original costs, in part, as well as photographs, detailed descriptions, and a sketch. On the basis of this record the Commission finds that this improved realty, consisting of about 8,972 square vara, a 2-story house of about 18 rooms, with all usual facilities, a summer cabana, a supervisor's 3-room house, and a maintenance building, had an aggregate value of \$92,585 on the date of loss and claimant thereby suffered a loss of \$46,292.50.

With respect to the personalty at the residence, claimant has detailed the items, without however, cost or depreciated figures. On the other hand

she states that the home was furnished with all new furniture and equipment prior to the take-over. On the basis of this record, and evidence available to the Commission as to the value of similar properties in Cuba, and considering the affidavit of a former caretaker as to certain livestock, the Commission finds that at the time of loss the personalty had a value of \$7,785 and claimant thereby suffered a loss of \$3,892.50.

Claimant has been unable to give any specifics as to cash or bank accounts, or insurance policies which may have been taken from her on January 15, 1959. 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 in that she has failed to establish ownership of rights and interests in property such as bank accounts and insurance policies which was nationalized, expropriated, or otherwise taken by the Government of Cuba. Accordingly, the Commission is constrained to deny these portions of the claim and they are hereby denied.


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 ANTONIA NELIA TOLEDO LARRUBIA 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 Fifty Thousand One Hundred Eighty-Five Dollars (\$50,185.00) with interest at 6% per annum from January 15, 1959 to the date of settlement.

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

OCT 14 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).)