

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

IN THE MATTER OF THE CLAIM OF

ANA C. VARRELMANN
ANA V. MONSERRAT

Claim No. CU-1455

Decision No. CU 6017

Under the International Claims Settlement
Act of 1949, as amended

Counsel for claimant:

Chamberlin & Hobbie
By Gilbert D. Chamberlin

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 ANA C. VARRELMANN in the amount of \$42,000 based upon the asserted ownership and loss of real property in Cuba. As the record discloses that ANA V. MONSERRAT has an interest in the subject matter of this claim she has been added as claimant herein. Claimants have been nationals of the United States at all times pertinent to this claim.

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).)

The losses subject of this claim were described as follows:

1) a plot of land at Olvido 1504, Cristo y Universidad, Biltmore, Marianao, Havana	\$10,000
2) 2-story house on the above plot	30,000
3) unimproved plot at Vista del Mar, Mariel, Pinar del Rio	<u>2,000</u>
Total	\$42,000

Evidence of record, including a report from abroad, discloses that the property at Olvido 1504 was registered in the name of George Varrelmann, married to ANA C. VARRELMANN. Under the community property law of Cuba ANA C. VARRELMANN held a one-half interest in said property.

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 were outlawed (Article 2). The law covered residential, commercial, industrial and business office properties (Article 15).

Based on the foregoing the Commission finds that the real property at Olvido 1504 was 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.)

George Varrelmann, a national of the United States since birth, died intestate in Puerto Rico on February 10, 1963, survived by his spouse ANA C. VARRELMANN and daughter ANA V. MONSERRAT. ANA C. VARRELMANN suffered the loss of her one-half interest in the property on October 14, 1960, and the claim held by George Varrelmann (now deceased) arising from the loss of his one-half interest on October 14, 1960 passed in one-half part (one-fourth of the whole) to his daughter, and the remaining one-half part (one-fourth of the whole) also passed to his daughter subject to a life estate in favor of ANA C. VARRELMANN.

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 property has been described as a plot 30 yards by 50 yards, improved by a two-story brick house containing on the first floor a living room, dining room, kitchen, den, back porch, two bedrooms, two and one-half bathrooms, and large one-car garage; and on the second floor, a living room, dining room, two bedrooms, one bathroom and balcony.

On the basis of this record and considering evidence available as to the value of similar properties in Cuba, the Commission finds that the asserted value is fair and reasonable and that the property had a value of \$40,000 on October 14, 1960. However, the aforementioned report from abroad indicates that it was subject to a mortgage of \$16,000. Evidence submitted by claimant indicated that this had been reduced to \$13,526.83. After deduction of this amount the equity in the property is found as \$26,473.17.

As stated above, one-fourth of the property was encumbered with a life estate in favor of ANA C. VARRELMANN. According to evidence of record, she was 53 years old, according to her nearest birthday, at the time of taking.

The value of the life estate and remainder in this one-fourth part 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.R. 4547, 26 C.F.R. 2031-7.) According to that method of valuation, a life estate in property so encumbered is valued at .48377 of the estate and the remainder interest is valued at .51623 of the estate. Therefore, since the value of the one-fourth part in question is \$6,618.29, the life estate thereon is valued at \$3,201.73 which is .48377 of that amount and the remainder is valued at \$3,416.56 which is .51623 of that amount.

Therefore the Commission finds that the interest in the real property which ANA C. VARRELMANN owned and succeeded to had a value of \$16,438.32, and the interest which ANA V. MONSERRAT succeeded to had a value of \$10,034.85.

Claim was also asserted for a plot of land in Mariel, Pinar del Rio. The Commission attempted to obtain evidence as to this item of claim, on behalf of claimants. However, the report received from abroad reflects that it remains recorded in the name of the asserted vendor. As claimants have submitted no probative evidence in support of this item of claim, the Commission is constrained to hold that the burden of proof has not been sustained. Accordingly, this item of claim is 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 as follows:

	<u>FROM</u>	<u>ON</u>
ANA C. VARRELMANN	October 14, 1960	\$16,438.32
ANA V. MONSERRAT	October 14, 1960	\$10,034.85

CERTIFICATIONS OF LOSS

The Commission certifies that ANA C. VARRELMANN 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 Sixteen Thousand Four Hundred Thirty-Eight Dollars and Thirty-Two Cents (\$16,438.32) with interest thereon at 6% per annum from October 14, 1960 to the date of settlement; and

The Commission certifies that ANA V. MONSERRAT 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 Ten Thousand Thirty-Four Dollars and Eighty-Five Cents (\$10,034.85) 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 Proposed
Decision of the Commission

JAN 6 1971


Lyle S. Carlock, 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 (1970).)