

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

IN THE MATTER OF THE CLAIM OF

GARGIULO & AMENDOLA ASSOCIATES, INC.

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -1785

Decision No. CU 5825

Counsel for claimant:

Bigham, Englar, Jones & Houston

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, in the amended amount of \$71,279.90, was presented by GARGIULO & AMENDOLA ASSOCIATES, INC. based upon the asserted loss of an interest in a Cuban enterprise.

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 502(1)(B) of the Act defines the term "national of the United States" as a corporation or other legal entity which is organized under the laws of the United States, or of any State, the District of Columbia, or the Commonwealth of Puerto Rico, if natural persons who are citizens of the United States own, directly or indirectly, 50 per centum or more of the outstanding capital stock or other beneficial interest of such corporation or entity.

An officer of the claimant corporation has certified that, at all times since the firm was incorporated in 1957 in New York State, all of its outstanding capital stock has been owned by nationals of the United States. The Commission holds that claimant is a national of the United States within the meaning of Section 502(1)(B) of the Act.

Claim is asserted herein for \$71,279.90 for the loss of claimant's interest in Frutera Ganda, S.A. (hereafter referred to as Frutera), a Cuban corporation organized under the laws of Cuba in 1958. The record shows and the Commission finds that claimant was the sole owner of Frutera which was engaged in the growing and supervising of the production of pineapples and other fruits and vegetables in Cuba and the packing and shipping of same to the United States. In carrying out its functions, it appears that Frutera leased some land for growing its own produce and purchased other produce either in the growing stage or after ripening and packing. Payment of accounts was made by claimant through Frutera's officers on a weekly basis. Salaries and expenses of Frutera's employees were also paid by claimant directly.

The record shows that claimant was supplying expense money to Frutera through May, 1961 and that the president of the Cuban firm left Cuba in June, 1961. Accordingly, the Commission finds that the Cuban enterprise was taken by the Government of Cuba on June 1, 1961.

The properties claimed to have been lost by the actions of the Cuban Government and the asserted value of each are:

| | | |
|--|-----------------|------------------|
| Office Equipment, Havana Office | | \$ 1,975.90 |
| Pineapple Plantation | | |
| Pineapple Fields | \$ 9,679.00 | |
| Fertilizer | 2,500.00 | |
| Crates | 28,000.00 | |
| Nails | 2,700.00 | |
| Labels | 900.00 | |
| Wrapping Paper | 2,300.00 | |
| Pineapple Seeds (slips) | 8,225.00 | |
| Barrels | 2,500.00 | |
| 3 Bulldozers | 6,000.00 | |
| 1 Jeep | 750.00 | |
| Brining plant, tractor, packing house, dicing, corer & peeler machines | 3,650.00 | |
| Gasoline, oil, chemicals | 500.00 | |
| Polyethylene bags | 100.00 | |
| Miscellaneous equipment | <u>1,500.00</u> | <u>69,304.00</u> |
| Total | | \$71,279.90 |

In support of the items and values claimed, claimant has submitted copies of letters and statements of account covering the year 1958 and part of 1961 but no documentation for any portion of the years 1958 and 1960 has been submitted.

Based upon the evidence of record, the Commission finds that Frutera Ganda, S.A. was the owner of the following property which was taken by the Government of Cuba on June 1, 1961, with values as listed:

| | |
|---|-----------------|
| Office Equipment, Havana Office | \$ 1,975.90 |
| Pineapple Seeds and plants | 8,225.00 |
| Jeep | 750.00 |
| Brining Plant with tractor, packing house, dicing, coring and peeler machines | <u>3,650.00</u> |
| | \$14,600.90 |

The Commission concludes that by reason of its ownership interest in Frutera, claimant suffered a loss in the amount of \$14,600.90 on June 1, 1961 within the meaning of Title V of the Act when the Cuban corporation was nationalized by the Government of Cuba.

Claimant has asserted additional losses for property in Cuba. However, the evidence of record does not warrant a finding that Frutera owned land in Cuba or that expendable items such as fertilizers, packing materials and

chemicals purchased in 1958 were taken by the Government of Cuba. Accordingly, claim for these items must be denied.

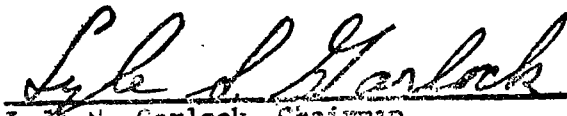
The Commission has decided that in certifications of loss on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be included at the rate of 6% per annum from the date of loss to the date of settlement (see Claim of Lisle Corporation, Claim No. CU-0644), and in the instant case it is so ordered.


CERTIFICATION OF LOSS

The Commission certifies that GARGIULO & AMENDOLA ASSOCIATES, INC. 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 Fourteen Thousand Six Hundred Dollars and Ninety Cents (\$14,600.90) with interest thereon at 6% per annum from June 1, 1961 to the date of settlement.

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

SEP 9 1970


Lytle 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).)