

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

IN THE MATTER OF THE CLAIM OF

ELSA T. KARMAN

Under the International Claims Settlement  
Act of 1949, as amended

Claim No. CU - 1928

Decision No. CU

4452

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 ELSA T. KARMAN for \$89,378.32 based upon asserted ownership and loss of a one-half interest in real and personal property in Cuba and a pension.

The claimant, ELSA T. KARMAN, 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.

Claimant describes her losses as follows:

1. real properties at (a) No. 9009 Avenue 3 in Havana, (b) No. 1512, 72nd Street in Havana, and (c) parcel of land known as lot No. 13 in block C in Camarioca, District of Matanzas;
2. mortgage bond of \$6,000.00, secured by real property in Havana;
3. four saving accounts with the Banco Nacional de Cuba;
4. automobile, electrical appliances, and furnishings of claimant's residence at No. 9009 Avenue 3 in Havana; and
5. pension from the Caja General de Jubilaciones y Pensiones de Agentes, Empleados y Obreros del Comercio (General Retirement and Pension Fund of the Agents, Employees, and Workers in Commerce).

The evidence establishes and the Commission finds that Robert Christophe Henry Karman, claimant's husband, acquired title to various items of property in Cuba, discussed in detail below, during his marriage to claimant. The Commission finds that pursuant to the community property laws of Cuba, the claimant acquired a one-half interest in such property, claimed herein (See Claim of Robert L. Cheaney and Marjorie L. Cheaney, Claim No. CU-0915.), with the exception of the pension mentioned below.

The taking of the various properties by the Government of Cuba is discussed in each item below.

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 valuation of nationalized property. It is designed to strengthen that standard by giving specific bases of valuation that the Commission shall consider.

The record includes a substantial amount of supporting evidence which is discussed under the heading of the item of property to which it relates.

Upon consideration of the entire record, the Commission finds that the valuations most appropriate to the properties and equitable to the claimant are those set forth hereafter, the Cuban peso being on a par with the United States dollar.

1. Real Properties

Based upon evidence of record, the Commission finds that claimant owned a one-half interest in real properties in Cuba as follows:

(a) No. 9009 Avenue 3 in Havana, consisting of land of 177.27 square meters and improved by a two story dwelling house;

(b) No. 1512, 72nd Street in Havana, consisting of a building lot of 396.94 square meters, improved by a two story building having a total of 5 apartments;

(c) parcel of land, known as lot No. 13 in block C in Camarioca, District of Matanzas, purchased in 1959 for 1,173.33 pesos.

The Commission finds that items a and b above were within the purview of the Urban Reform Law, published in the Cuban Official Gazette on October 14, 1960. In the absence of evidence to the contrary, the Commission finds that these real properties in question were taken by the Government of Cuba on October 14, 1960. (See Claim of Henry Lewis Slade, Claim No. CU-0183, 1967 FGSC Ann. Rep. 39.)

However, the Commission finds that item c above, came within the scope of Cuban Law 989, published in the Official Gazette on December 6, 1961.

In the absence of evidence to the contrary, the Commission finds that this item was taken on December 6, 1961. (See Claim of Wallace Tabor and Catherine Tabor, Claim No. CU-0109, 25 FCSC Semiann. Rep. 53 [July-Dec. 1966].)

The Commission further finds that the entire fee in the real properties in question and claimant's one-half interest therein, had the following values:

<u>Property:</u>	<u>Value:</u>	<u>Claimant's one-half interest:</u>
No. 9009 Avenue 3, Havana	\$15,000.00	7,500.00
No. 1512, 72nd Street, Havana	30,000.00	15,000.00
Lot No. 13 in block C, Camarioca	1,200.00	600.00

2. Mortgage Bond

The record further shows, and the Commission finds that claimant owned a one-half interest in a mortgage bond issued in the amount of 6,000.00 pesos, secured by the improved real property at Nos. 706 and 708 Second Street in Principe, City of Havana, which was taken by the Government of Cuba on October 14, 1960, by virtue of the Urban Reform Law (supra). The Commission concludes that claimant sustained a loss thereby within the purview of Title V of the Act in the amount of \$3,000.00.

3. Saving Accounts

The record including an affidavit made by certain attorneys-at-law in Havana, also shows, and the Commission finds that claimant owned a one-half interest in four accounts with the Banco Nacional de Cuba, having balances of 9,650.00, 15,800.00, 1,013.88, and 1,141.11 pesos, respectively, on October 15, 1966, the date of the above mentioned affidavit.

On December 6, 1961, the Cuban Government published its Law 989 (supra) which confiscated 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 four bank accounts in question were taken by the Government of

Cuba on or about October 15, 1966, the date when claimant's husband, Robert Christophe Henry Karman, co-owner of the accounts in question left Cuba.

The Commission concludes that claimants loss sustained in connection with the four bank accounts in question amounted to a total of \$13,802.50.

4. Automobile, Electrical Appliances, Home Furnishings

The evidence establishes and the Commission finds that claimant's residence at No. 9009 Avenue 3 in Marianao was fully furnished, and claimant owned a one-half interest in such furnishings and in a Renault passenger car of 1959 vintage. The record includes descriptions and detailed listings of said items of property.

The detailed listing shows that claimant's home at No. 9009 Avenue 3 in Marianao contained furniture and related personal property, electrical equipment and appliances and miscellaneous personal property valued by claimant at an aggregate amount of \$8,050.00, and the Renault automobile at \$1,600.00. The age or condition of said property is not indicated. The Commission has customarily applied a depreciation factor of 5% per annum for such property. In the absence of evidence to the contrary, the Commission finds that the personal property and Renault automobile had an aggregate value of \$7,000.00 on or about October 15, 1966, the date when such property was taken by the Government of Cuba under Cuban Law No. 989 of December 6, 1961 (supra) in consequence of the departure of claimant's husband from Cuba. The Commission further concludes that claimant's one-half interest in such loss amounted to \$3,500.00.

5. Pension

It is asserted by claimant that she was entitled to a pension from the General Retirement Fund of the Agents, Employees, and Workers in Commerce.

On the basis of evidence submitted by claimant, the Commission finds that the General Retirement Fund of the Agents, Employees, and Workers in

Commerce awarded and paid to claimant at least until 1964 a retirement pension in the amount of 849.30 pesos per annum.

The General Retirement Fund of the Agents, Employees, and Workers in Commerce was organized and administered under Cuban Law No. 17 of November 22, 1949, Decrees No. 40 of January 11, 1950, No. 625 of February 22, 1950, and No. 1802 of June 23, 1950, and Law-Decree No. 1682 of September 6, 1954.

On May 29, 1959, Law No. 351 was enacted which provided for the establishment of the Banco de Seguros Sociales de Cuba (Social Insurance Bank of Cuba) as an agency of the Government of Cuba to supervise and administer social insurance, as well as to direct the policy concerning all social security matters. The law also provided for the transfer of the assets and liabilities of all pension funds to the Banco de Seguros Sociales de Cuba. Information also shows that retired employees received their monthly retirement benefits (pensions) from the Banco de Seguros Sociales de Cuba up to the time of their departure from Cuba. After their departure from Cuba the benefits remained unpaid. On the basis of evidence of record the Commission finds that from August 1, 1964, and thereafter the Government of Cuba, refused to transfer any pension benefits to claimant, who was then residing in the United States.

In our decision entitled the Claim of A. M. Joy de Pardo (Claim No. CU-1906 which we incorporate herein by reference), we held that the refusal of the Government of Cuba to transfer retirement benefits to claimant constituted a taking of her property within the purview of Section 503(a) of the Act. Therefore, the Commission finds that claimant's claim for the loss based upon such taking in the instant claim arose on August 1, 1964.

The Commission has adopted as a basis for the valuation of annuities the Makehamized mortality table, appearing as Table 38 of the 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,

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respectively. (See 23 F.R. 4547, 26 C.F.R. 2031-7.) According to that method of valuation, the value of the annuity for a person of the age of 61 amounts to 10.9776 times the yearly sum of the annuity. Since on August 1, 1964, claimant was 61 years of age, the value of her discounted annuity on that date amounted to \$849.30 (the peso being on a par with the United States dollar) times 10.9776 or \$9,323.28.

A further portion of the claim is based upon the allegation that claimant's husband, Robert Christophe Henry Karman was also entitled to a retirement pension from the above-mentioned Fund of Workers in Commerce, and in case of his death the claimant would have been entitled to receive 40% of such annuity in monthly payments for life.

Section 503(a) of Title V of the Act makes it clear that the Commission shall determine the amount and validity of timely filed claims of United States nationals which have arisen since January 1, 1959. The Act does not provide for the determination of losses not sustained by a claimant. Claimant's husband is living and no loss has been sustained. Accordingly, the portion of the claim which is based upon a widow's asserted right to a pension granted to claimant's husband, must be and it is hereby denied.

Recapitulation of losses:

<u>Property:</u>	<u>Value of claimant's 1/2 interest therein:</u>
No. 9009 Avenue 3	\$ 7,500.00
No. 1512, 72nd Street	15,000.00
Building lot in Camarioca	600.00
Mortgage bond	3,000.00
Four saving accounts	13,802.50
Personal property, including automobile	3,500.00
Pension	<u>9,323.28</u>
	\$52,725.78

In view of the foregoing, the Commission concludes that claimant sustained losses within the purview of Title V of the Act in the aggregate amount of \$52,725.78.

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 the Claim of Lisle Corporation, FCSC Claim No. CU-0644), and in the instant case, it is so ordered as follows:

<u>FROM:</u>	<u>ON:</u>
October 14, 1960	\$25,500.00
December 6, 1961	600.00
August 1, 1964	9,323.28
October 15, 1966	<u>17,302.50</u>
	52,725.78

CERTIFICATION OF LOSS

The Commission certifies that ELSA T. KARMAN sustained 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-Two Thousand Seven Hundred Twenty-Five Dollars and Seventy-Eight Cents (\$52,725.78) with interest thereon at 6% per annum from the respective dates of loss to the date of settlement.

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

29 JAN 1970

*Theodore Jaffe*

Theodore Jaffe, Commissioner

*Sidney Freidberg*

Sidney Freidberg, 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).)