

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

IN THE MATTER OF THE CLAIM OF

NEMESIO F. ALVARE  
CARMEN C. ALVARE

Claim No. CU -1972  
CU- 1973

Decision No. CU 4210

Under the International Claims Settlement  
Act of 1949, as amended

Counsel for claimant:

Juan Silva, Esquire

PROPOSED DECISION

These claims against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, for a total of \$34,273.33 were presented by NEMESIO F. ALVARE and CARMEN C. ALVARE based upon the asserted loss of certain real property in Cuba. Claimants NEMESIO F. ALVARE and CARMEN C. ALVARE have been nationals of the United States since their naturalization on November 10, 1947 and November 7, 1957 respectively.

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.

Real Property in Guanabacoa

Claimant, NEMESIO F. ALVARE contends that he lost an investment in real property in Cuba. He has submitted a copy of an agreement dated August 12, 1957 which reflects that he agreed to purchase the lot in question covering 1204.55 square varas, located in Guanabacoa, Havana, Cuba, for \$7,829.58.

Under Cuban law, a sale is consummated and becomes binding on the purchaser and seller if there has been a meeting of the minds on the object and price, even though neither the thing nor the price has been delivered (Lanzas, A Statement of the Laws of Cuba, 78 (1958)). Registration is not necessary for the transfer of ownership or rights in rem between the parties concerned, but it is required if the transaction is to be binding on third parties (Lanzas, supra. 277).

On the basis of the record and the state of Cuban law at the time of the transaction, the Commission finds that claimant became the owner of the lot in question.

On December 6, 1961 the Cuban Government published Law 989 in its Official Gazette which confiscated all assets including real estate of persons who left the country of Cuba. The Commission finds, in the absence of evidence to the contrary, that subject real property 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]).

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Based on the entire record the Commission finds that the land in question had a value of \$7,829.58 but that the claimant has paid only \$3,840.00, which is the amount claimed. According, the Commission concludes that pursuant to the Community Property laws of Cuba claimants, NEMESIO F. ALVARE and CARMEN C. ALVARE suffered a loss in the amount of \$3,840.00 within the meaning of Title V of the Act.

Real Property in Vedado and Corralillo

Claimant, CARMEN C. ALVARE, contends that she inherited a fractional interest in 2 cemetery lots and 2 houses in Cuba in 1923 and 1954 upon the deaths of her father and mother. Based on the entire record including copies of a purchase agreement and declaration of inheritance, and receipts for tax payments, the Commission finds that pursuant to the Community Property laws of Cuba claimants NEMESIO F. ALVARE and CARMEN C. ALVARE owned a 1/3 interest in a cemetery lot in Corralillo, Havana, measuring about 3 2/3 square meters; a 1/21 interest in a cemetery lot in Vedado, Havana, measuring about 25 1/3 square meters and a 1/3 interest in two houses as follows:

House 255 at 10th Street Vedado:

2 floors, 16 rooms, 4 baths, servants quarters, usual facilities; on a lot of 385.22 square meters

House 965 at 11th Street Vedado

2 floors, 22 rooms, 4 baths, servants quarters and other usual facilities; on a lot of 747.78 square meters.

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 was outlawed (Article 2). The law covered residential, commercial, industrial

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and business office properties (Article 15). In the absence of evidence to the contrary, the Commission finds that the improved real properties were taken by the Government of Cuba on October 14, 1960 (See Claim of Henry Lewis Slade, Claim No. CU-0183, 1967 FCSC Ann. Rep. 39); and that the cemetery plots passed to the Government of Cuba on December 6, 1961 pursuant to the provisions of Law 989, supra.

Accordingly, the Commission concludes that claimants suffered a loss of their real property in Vedado and Corralillo within the meaning of Title V of the Act.

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.

Claimant, CARMEN C. ALVARE has valued the real properties as follows:

(1) House No. 255 at 10th Street, Vedado	\$39,000.00
(2) House No. 965 at 11th Street, Vedado	51,000.00
(3) Cemetery Lot and Monument, Corralillo	1,000.00
(4) Cemetery Lot and Pantheon, Vedado	2,100.00

Based on the entire record including the aforesaid descriptions, establish monthly rentals of \$90 for House No. 255, and \$130 for House No. 965, the Commission finds that House 255 on 10th Street had a value of \$21,600.00, that House 965 on 11th Street had a value of \$23,400.00 and that the cemetery lots in Corralillo and Vedado had values of \$1,000.00 and \$2,100.00 respectively.

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Accordingly the Commission concludes that pursuant to the Community Property laws of Cuba, claimants, NEMESIO F. ALVARE and CARMEN C. ALVARE, suffered a loss in the aggregate amount of \$19,273.33 within the meaning of Title V of the Act, as the result of the taking of their fractional interests in the properties in question located in Vedado and Corralillo by the Government of Cuba as of October 14, 1960.

Recapitulation

Claimants' losses within the meaning of Title V of the Act may be summarized as follows:

<u>Real Property</u>	<u>Amount</u>
Located in Guanabacoa	\$ 3,840.00
Cemetery plots	433.33
House No. 255	7,200.00
House No. 965	<u>7,800.00</u>
	\$19,273.33

The Commission has decided that in certification of losses 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>
10-14-60	\$15,000.00
12-6-61	4,273.33

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CERTIFICATION OF LOSS

The Commission certifies that NEMESIO F. ALVARE and CARMEN C. ALVARE 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 Nineteen Thousand Two Hundred Seventy-three Dollars and Thirty-three Cents (\$19,273.33) 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

NOV 26 1969

*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).)

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