

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

IN THE MATTER OF THE CLAIM OF

HAROLD GOTTLIEB
and
MARGARITA GOTTLIEB

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -2022

Decision No. CU 5947

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, in the amount of \$94,316.00, was presented by HAROLD GOTTLIEB and MARGARITA GOTTLIEB based upon the asserted loss of certain real and personal property in Cuba. Claimants, husband and wife, have been nationals of the United States since birth and July 12, 1960, 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.

Claimants assert the following losses:

1. Furnished apartment house at 3rd-A Street, between 172d and 174th Streets, Marianao, Havana, Cuba	\$ 29,908.00
2. Apartment house at 174th Street, between 1st and 2d Streets, Marianao, Havana, Cuba	25,908.00
3. House at 132 - 172d Street, Marianao, Havana, Cuba	17,500.00
4. Land at Carretera de Bauta, Santa Cruz, Cuba	12,000.00
5. Furniture, fixtures, air conditioners, etc. at the house in item 3 above	2,000.00
6. Personal effects at the above house	4,000.00
7. Standard Service Station at Autopista del Mediodia, Marianao, Havana, Cuba	<u>3,000.00</u>
Total	<u>\$ 94,316.00</u>

Improved Real Properties

The evidence includes a copy of claimants' joint affidavit of December 29, 1965, and a copy of an affidavit of April 15, 1966 from Dr. J. Hevia, Jr., claimants' former Cuban attorney, which affidavits were submitted in support of claimed tax deductions. It further appears that claimants were allowed tax deductions for their Cuban losses. Reports from abroad fail to support claimants' assertions concerning ownership of the three items of improved real property in question. However, Dr. Hevia's affidavit recites as follows on the basis of personal knowledge as a Cuban attorney who had access to the deeds to the properties:

a. that claimants jointly owned the two apartment houses claimed herein (Items 1 and 2); and

b. that claimants jointly owned the house (Item 3).

Based upon the foregoing, the Commission finds that claimants jointly owned the said two apartment houses and the house. Claimants state that these improved real properties were taken by the Government of Cuba on October 14, 1960 pursuant to the Urban Reform Law.

On October 14, 1960, the Government of Cuba published in its Official Gazette, Special Edition, its Urban Reform Law. Under Article 2 of this law the renting of urban properties and all other translations or contracts involving transfer of the total or partial use of urban properties was outlawed. The law covered residential, commercial, industrial and business office properties (Article 15). The Commission finds in the absence of evidence to the contrary that the three improved real properties herein were within the purview of the Urban Reform Law and 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.)

As noted above, claimants assert that the two apartment houses had values of \$29,908.00 and \$25,908.00, respectively; and that the value of their private house was \$17,500.00. Dr. Hevia's affidavit of April 15, 1966 sets forth that each of the two apartment houses had a value of \$24,000.00; and that the house was acquired at a cost of \$15,000.00 and that claimants improved the property at a cost of approximately \$2,000.00. It appears from claimants' statements of February 28, 1969 that they improved the apartment house on 3rd Street (Item 1) by the addition of a water tank, water pump, and fence; and that they furnished the three apartments therein, the total cost of which was about \$6,000.00. The other apartment house (Item 2) was also improved by a water tank, water pump, and fence, but the three apartments therein were not furnished.

On the basis of the entire record, the Commission finds that claimants' valuations are fair and reasonable. Accordingly, the Commission finds that on October 14, 1960, the date of loss, the furnished apartment house on 3rd Street (Item 1) had a value of \$29,908.00; the apartment house on 174th Street (Item 2) had a value of \$25,908.00; and the house on 172d Street (Item 3) had a value of \$17,500.00, aggregating \$73,316.00. Therefore, the value of each claimant's one-half interest therein was \$36,658.00.

Land

Claimants assert that they jointly owned certain land in Santa Cruz, Cuba, having an area of 8,000 square yards and costing \$12,000.00. However, claimants have submitted no evidence in support of their assertions although the Commission on several occasions suggested the submission of such documentation.

It is noted that Dr. Hevia's affidavit of April 15, 1966, concerning ownership of the two apartment houses and the residence, contains no reference to any other properties.

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) (1969).)

The Commission finds that claimants have failed to sustain the burden of proof with respect to the portion of their claim based upon land in Santa Cruz, Cuba. Accordingly, this portion of the claim is denied.

Furniture, Furnishings and Personal Effects

Based upon the evidence of record, the Commission finds that claimants jointly owned certain furniture, furnishings and personal effects maintained at their private home (Item 3) in Marianao, Havana, Cuba. The Commission further finds that these items of personal property were taken by the Government of Cuba on October 14, 1960, when the house was taken.

Claimants have submitted a copy of an itemized list of the personal property that accompanied their claim for tax deductions. That list sets forth the asserted fair market value of the items on the list.

In response to Commission inquiries concerning the approximate dates of acquisition and the approximate costs of the items of personal property, claimants stated that they had purchased them in 1956 and had used them only for about three years until sometime in 1959 when they left Cuba. Claimants state that their assertions in this respect were accepted by the Internal Revenue Service.

Upon consideration of the entire record, the Commission finds that claimants' valuations are fair and reasonable. Accordingly, the Commission finds that the aggregate value of the furniture, furnishings and items of personal effects on October 14, 1960, the date of loss, was \$6,000.00. Therefore, the value of each claimant's one-half interest therein was \$3,000.00.

Standard Service Station

Claimants assert the loss of \$3,000.00 based on a Standard Service Station at Autopista del Mediodia, Marianao, Havana, Cuba. No evidence has been submitted in support of this portion of the claim.

The Commission suggested the submission of appropriate evidence in this respect. Claimants' response under date of February 28, 1969 was that they had turned over all such documentation to an unnamed third party. Apparently, therefore, no evidence in support of this portion of the claim is available.

The Commission finds that the record is insufficient to warrant favorable action with respect to the portion of the claim based upon a Standard Service Station. Accordingly, this portion of the claim is denied.

RECAPITULATION

Claimants' joint losses on October 14, 1960 are summarized as follows:

<u>Item of Property</u>	<u>Amount</u>
Furnished apartment on 3rd Street	\$ 29,908.00
Apartment house on 174th Street	25,908.00
House on 172d Street	17,500.00
Personal property in the residence	<u>6,000.00</u>
Total	<u>\$ 79,316.00</u>

Therefore, each claimant sustained a loss in the amount of \$39,658.00.

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>
HAROLD GOTTLIEB	October 14, 1960	\$39,658.00
MARGARITA GOTTLIEB	October 14, 1960	\$39,658.00

CERTIFICATION OF LOSS

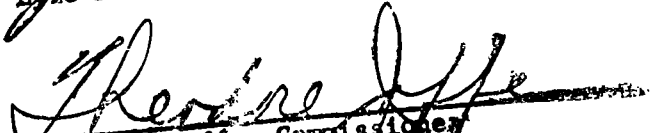
The Commission certifies that HAROLD GOTTLIEB suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Thirty-nine Thousand Six Hundred Fifty-eight Dollars (\$39,658.00) with interest thereon at 6% per annum from October 14, 1960 to the date of settlement; and

The Commission certifies that MARGARITA GOTTLIEB 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 Thirty-nine Thousand Six Hundred Fifty-eight Dollars (\$39,658.00) 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

NOV 10 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).)

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