

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

IN THE MATTER OF THE CLAIM OF

MIGUEL HERNANDEZ

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-2033

Decision No. CU 2037

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, for \$10,490.00 was presented by MIGUEL HERNANDEZ based upon the asserted loss of improved realty in Cuba. Claimant has been a national of the United States since his naturalization in 1943.

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 contends that he has lost an investment in real property in Cuba valued at \$10,490.00. He describes this property as follows:

A house and lot located at Calle 3rd #389 between 4th Street and Nestor Aranguren (Lot 23, Block 12), Reparto Casino Deportivo, Havana, Cuba.

The record establishes that claimant owned this property and that it was being rented.

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 and business office properties (Article 15). The law further provided that if a tenant did not occupy the property, or had subleased or transferred its use to another, the property could be sold to the occupant; and further, that an occupant, whether a tenant or subtenant, or not, could purchase the property in the manner outlined (Article 9). Article 21 of the law provided that present owners of urban buildings sold under the law should receive the assigned price; however, under Article 25 ownership of so-called tenement houses would be transferred to the State without compensation to the erstwhile owners. Moreover, Article 30 provided that if urban buildings transferred under the law were mortgaged, execution of the contract of sale should have the effect of canceling the mortgage. Following Chapter VI of the law appears a section entitled "Temporary Provisions" and the third paragraph thereof provides that citizens of foreign countries who do not have the status of legal residents shall be excluded from the rights and benefits conferred by this law.

Claimant states that he has not been in Cuba since 1959 and that he learned of the actions of the Cuban Government at the end of 1960 from the party to whom the property was leased.

Based on the foregoing and the evidence of record, the Commission finds that claimant's real property in Havana, Cuba, 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 Official Gazette.

Accordingly, the Commission concludes that as a result of the above Law claimant suffered a loss of his real property within the meaning of Title V of the Act. (See Claim of Henry Lewis Slade, Claim No. CU-0183).

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 has valued his real property as follows:

(1) Land Plot	\$1,490.00
(2) House built by claimant on the above lot	<u>9,000.00</u> \$10,490.00

Claimant states that he acquired the lot in 1951 by purchase and that the deed was registered in 1954. Information available to the Commission confirms these facts. As to the house, claimant asserts that he built it in March, 1956 at a cost of \$9,000.00, and describes it as a one story brick house with a reinforced concrete ceiling, consisting of a garden, porch, living room, dining room, two bedrooms, bathroom, kitchen, maid's bathroom, and backyard. Claimant, in support of the \$9,000.00 value placed on the house, has submitted a picture of the subject property, his own affidavit, and the affidavit of a third party who asserts personal knowledge as to claimant's ownership of the

claimed property.

The record also includes a building permit for the construction of the house, and a copy of a map showing the plot of land in question.

With respect to the land, which claimant has stated measured 10 varas by 25 varas, the Commission finds that the value thereof, considering acquisition expenses and the like, was \$1,940.

Further, as to the house, considering the type of construction, number of rooms, utilities and the like, the Commission finds that claimant's asserted value of \$9,000 is fair and reasonable.

Accordingly, the Commission finds that claimant suffered a loss in the total amount of \$10,940 as a result of the taking of his property by the Government of Cuba on October 14, 1960.

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 Claim of Lisle Corporation, Claim No. CU-0644).

CERTIFICATION OF LOSS

The Commission certifies that MIGUEL HERNANDEZ 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 Four Hundred Ninety Dollars (\$10,490.00) with interest thereon at 6% per annum from the date of loss to the date of settlement.

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

26 JUN 1968

Leonard v. B. Sutton
Leonard v. B. Sutton, Chairman

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).)