

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

IN THE MATTER OF THE CLAIM OF

MARGARITA VILLAVERDE

Under the International Claims Settlement
Act of 1949, as amended.

Claim No. CU -2094

Decision No. CU -5748

Appeal and objections from a Proposed Decision entered on August 19, 1970.
No hearing requested.

Hearing on the record held on May 19, 1971

FINAL DECISION

Under date of August 19, 1970, the Commission issued its Proposed Decision certifying a loss in favor of claimant in the amount of \$25,728.78. A portion of the claim based upon a one-half interest in cash in the amount of \$102,500.00 was denied for failure to sustain the burden of proof. The decision was entered as final on October 6, 1970.

Claimant objected to the Proposed Decision. The objections were received late due to a change in claimant's address. The Commission has determined to consider them. No evidence in support of the objections was submitted. The objections were: (1) that the house and lot, which were found to have been taken by Cuba on October 14, 1960 in the Proposed Decision, were actually taken on December 6, 1961, claimant having used that property as her home until May 1961 when she left Cuba; and (2) that she had requested the Internal Revenue Service to reconsider her claim for the loss, of cash as a tax deduction.

Upon consideration of claimant's objections in the light of the entire record, the Commission now finds that the improved real property at Vibora, Havana, Cuba, owned by Cia. Inmobiliaria Mavisa, S.A. (which was owned by

claimant and her husband) and which realty was used as claimant's home, was taken by the Government of Cuba on December 6, 1961 pursuant to Law 989.

Accordingly, the Final Decision of October 6, 1970 and the Certification of Loss in the Proposed Decision are set aside. The following Certification of Loss will be entered, and the Proposed Decision is affirmed in all other respects.

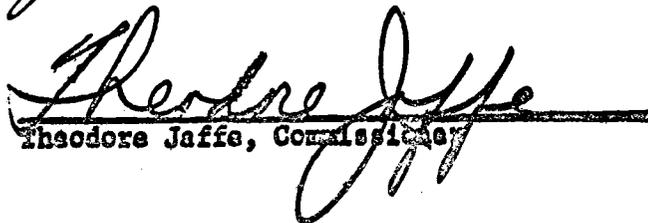
CERTIFICATION OF LOSS

The Commission certifies that MARGARITA VILLAVARDE 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 Twenty-five Thousand Seven Hundred Twenty-eight Dollars and Seventy-eight Cents (\$25,728.78) with interest at 6% per annum from December 6, 1961 to the date of settlement.

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

JUN 2 1971


Lyle S. Garlock, Chairman


Theodore Jaffe, Commissioner

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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 \$76,978.78, was presented by MARGARITA VILLAVERDE based upon the asserted loss of certain real and personal property in Cuba. Claimant 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 asserts the following losses:

Land	\$ 7,528.78
Building	8,200.00
Cash	51,250.00
Gia. Territorial Chicalto S.A. Stock	<u>10,000.00</u>
Total	<u>\$76,978.78</u>

The evidence includes copies of original deeds; reports from abroad; a copy of a declaration by a Cuban attorney who participated in the transactions on behalf of claimant and her former husband, a nonnational of the United States; and affidavits from claimant and her former husband.

On the basis of the entire record, the Commission finds that claimant owned interests in certain real and personal property in Cuba pursuant to the community property laws of Cuba. (See Claim of Robert L. Cheaney and Marjorie L. Cheaney, Claim No. CU-0915.)

On December 6, 1961, the Cuban Government published in its Official Gazette its Law 989, which effected the confiscation of all assets, personal property and other rights of persons who had left the country. The Commission finds that this law applied to claimant who had left Cuba prior to that date, and that her property interests in Cuba were taken by the Government of Cuba on December 6, 1961 pursuant to Law 989 except as noted below. (See Claim of Wallace Tabor and Catherine Tabor, Claim No. CU-0109, 25 FCSC Semi-ann. Rep. 53 [July-Dec. 1966].)

LAND

The Commission finds on the basis of the evidence of record that claimant acquired one-half interests in two pieces of land in the City of Havana, Cuba, pursuant to a deed of April 9, 1957.

Claimant asserts valuation of the properties on the basis of the purchase prices. Based upon the evidence of record, the Commission finds that the values of these properties on December 6, 1961, the date of loss, were

\$1,600.00 and \$300.00, respectively. Therefore, the aggregate value of claimant's one-half interests therein was \$950.00.

The Commission finds on the basis of the evidence of record that claimant owned a one-half interest in certain land in Marianao, Havana, having an area of about 613.49 square meters. Based upon the evidence of record, the Commission finds that the value of the land on December 6, 1961, the date of loss, was \$4,457.55. Therefore, claimant's one-half interest therein had a value of \$2,228.78.

CIA. INMOBILIARIA MAVISA S.A.

The evidence establishes and the Commission finds that claimant owned a one-half interest in Cia. Inmobiliaria Mavisa, S.A., a Cuban corporation.

Since Cia. Inmobiliaria Mavisa S.A. was organized under the laws of Cuba it does not qualify as a corporate "national of the United States" defined under Section 502(1)(B) of the Act as a corporation or other legal entity organized under the laws of the United States, or any State, the District of Columbia, or the Commonwealth of Puerto Rico, whose ownership is vested to the extent of 50 per centum or more in natural persons who are citizens of the United States. In this type of situation, it has been held that an American stockholder is entitled to file a claim for the value of his ownership interest. (See Claim of Parke, Davis & Company, Claim No. CU-0180, 1967 FCSC Ann. Rep. 33.)

The record shows that the Cuban corporation was formed for the sole purpose of dealing in real estate, and that its only assets were a house and lot in Vibora, Havana, and certain land in Marianao, Havana, having an area of 20,330 square meters. The corporation had no liabilities of record.

The Commission finds that the improved property in Vibora, Havana, was 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 the property was 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.)

The Commission further finds that the land in Marianao belonging to the corporation was taken on December 6, 1961, pursuant to Law 989.

Claimant has asserted valuations based on the purchase prices of the properties in question. On the basis of the entire record, the Commission finds that the value of the house and lot at Vibora was \$16,100.00 on October 14, 1960, the date of loss; and that the value of the land in Marianao on December 6, 1961, the date of loss, was \$9,000.00. Therefore, the Commission finds that claimant's one-half interest in this corporation had a value of \$12,550 of which \$8,050.00 was lost on October 14, 1960, and \$4,500.00 was lost on December 6, 1961.

CASH

Claimant asserts the loss of \$51,250.00 for a one-half interest in cash maintained at Banco Continental Cubano, Cuba. She states that she has no documentary evidence to support this portion of the claim. According to claimant's letter of April 22, 1968, the cash was kept in a safety deposit box at the bank.

In support of this portion of the claim, claimant submitted a joint affidavit from her and her former husband, dated November 18, 1965, in which they state that the cash was kept at the named bank. The record also includes an affidavit, dated June 24, 1968, from a former officer of Banco Continental Cubano in Havana, Cuba. Affiant states that he does not "remember in detail what the contents of the box was, except that there were some notarial instruments or deeds, some securities, and a large amount of cash in United States and Cuban currency, in excess but not much over \$100,000.00."

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 claimant has failed to sustain the burden of proof with respect to the portion of the claim based on cash. The Commission appreciates the difficulties encountered by some claimants in establishing

their claims against the Government of Cuba. However, the Commission must be guided by evidence of record pertaining to ownership, loss and value of the property included in each claim. The Commission finds that the evidence of record is not of such probative value as to permit a finding that claimant owned cash in the amount of \$51,250.00 which was taken by the Government of Cuba. It is noted, moreover, that a claim for a tax deduction based upon this asserted loss by claimant was disallowed by the Internal Revenue Service.

For the foregoing reasons, the portion of the claim based upon cash is denied.

CIA. TERRITORIAL CHICALTO, S.A.

The evidence establishes and the Commission finds that claimant and her former husband jointly owned a one-half interest in Cia. Territorial Chicalto, S.A., a Cuban corporation. For the reasons previously stated with respect to Cia. Inmobiliaria Mavisa, S.A., claimant is entitled to file a claim for the value of her ownership interest.

The record shows that this Cuban corporation's only asset was 140,266 square meters of land in Marianao, Havana. The corporation had no liabilities of record. The Commission finds that on December 6, 1961, the date of loss, the land had a value of \$40,000.00. Therefore, the Commission finds that claimant's one-fourth interest in the corporation had a value of \$10,000.00.

RECAPITULATION

Claimant's losses within the meaning of Title V of the Act are summarized as follows:

<u>Item of Property</u>	<u>Date of Loss</u>	<u>Value</u>
Land in City of Havana	December 6, 1961	\$ 950.00
Land in Marianao	December 6, 1961	2,228.78
Cia. Inmobiliaria Mavisa, S.A. House and lot at Vibora	October 14, 1960	8,050.00
Land in Marianao	December 6, 1961	4,500.00
Cia. Territorial Chicalto, S.A. Land in Marianao	December 6, 1961	<u>10,000.00</u>
TOTAL		<u>\$25,728.78</u>

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), and in the instant case it is so ordered as follows:

<u>FROM</u>	<u>ON</u>
October 14, 1960	\$ 8,050.00
December 6, 1961	<u>17,678.78</u>
TOTAL	<u>\$25,728.78</u>

CERTIFICATION OF LOSS

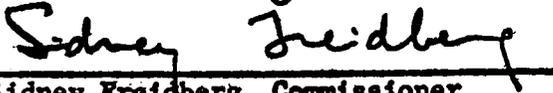
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Dated at Washington, D. C.,
and entered as the Proposed
Decision of the Commission

AUG 19 1970


S. Garlock, Chairman


Theodore Jaffe, Commissioner


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).)