

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

IN THE MATTER OF THE CLAIM OF

HENRY J. BELLINI

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -2227

Decision No. CU- 4453

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 HENRY J. BELLINI for \$23,000.00 based upon the asserted ownership and loss of real and personal property 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 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 his loss as follows:

Residence in Mariano, Havana, Cuba	\$12,000.00	
Less mortgage	<u>3,000.00</u>	\$ 9,000.00
Apartment house in Mariano, Havana,	\$21,000.00	
Less mortgage	<u>9,000.00</u>	\$12,000.00
Household furnishings in residence		<u>2,000.00</u>
		\$23,000.00

Based upon the entire record, including the original bill of sale dated January 2, 1958 for the residence in question, a copy of the official approval for the monthly rental of the apartment in question on August 26, 1959; original water receipts and tax assessment, reports from abroad, and claimant's affidavit, and considering the community property laws of Cuba, the Commission finds that claimant owned a one-half interest in the real and personal property in question.

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). Moreover, Article 30 provided for the cancellation of mortgages. 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 left Cuba with his family on January 7, 1961 and that according to information he received from sources in Cuba, his residence, including the household furnishings therein were seized by the Cuban Government about five days after departure of claimant and his family.

Based on the foregoing and the evidence of record, the Commission finds that claimant's apartment house in Mariano, Havana 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 Gazette (see Claim of Henry Lewis Slade, Claim No. CU-0183, 1967 FCSC Ann. Rep.39); and his residence in Mariano, Havana including the household furnishings therein were taken on January 12, 1961. (See Claim of Jack Moss, Claim No. CU-0225, 25 FCSC Semiann. Rep. 52 [July-Dec. 1966].)

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 record includes a photograph and description of the residence as of concrete construction having about eight rooms and usual facilities, located on a lot of 294 square meters. Claimant states that he paid \$10,000.00 for the residence taking a \$3,000.00 mortgage and added \$2,000.00 worth of improvements after the purchase.

The apartment house is described as a two-story concrete structure consisting of four apartments in front and four in back. He states that he purchased the apartment house in 1958 for \$21,000.00, taking a \$9,000.00 mortgage. The record reflects that its official monthly rental was established as \$227.96 in September 1959.

Based on the entire record including evidence available to the Commission as to the value of similar properties in Cuba, the Commission finds that the value of the residence including improvements was \$12,000.00, and the value of the apartment house was \$21,000.00 on the date of loss. After deduction of the mortgages, the Commission finds that the equity in these properties was \$9,000.00 and \$12,000.00 respectively.

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With regard to the personalty, claimant has submitted an itemized list of the furniture and appliances and their estimated value, and the Commission finds upon consideration of evidence of value of similar items, that the sum of \$2,000.00 is the fair and reasonable value thereof.

The Commission therefore concludes that claimant sustained an aggregate loss of \$11,500.00 as a result of the taking by the Government of Cuba of his one-half interest in the above described properties.

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	\$ 6,000.00
January 12, 1961	<u>5,500.00</u>
	\$11,500.00

CERTIFICATION OF LOSS

The Commission certifies that HENRY J. BELLINI 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 Eleven Thousand Five Hundred Dollars (\$11,500.00) with interest 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).)