

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

IN THE MATTER OF THE CLAIM OF

MYRIAM ISABELLE ORTIZ

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-2961

Decision No. CU 4353

Counsel for claimant:

Adolfo del Castillo, Esq.

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 MYRIAM ISABELLE ORTIZ, a national of the United States at all times pertinent to this claim, and is based upon the asserted loss of two pensions from the Government of Cuba.

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.

It is asserted by the claimant, MYRIAM ISABELLE ORTIZ, that she was entitled to a pension of 2,400.00 pesos per annum due from the Fondo del Retiro Civil (Civil Service Retirement Fund) and an additional pension of 900 pesos per annum from the Seguro del Procurador y sus Beneficiarios (Insurance Fund for Attorneys and their Dependents).

On the basis of official documentation submitted by the claimant, the Commission finds that the Fondo del Retiro Civil awarded a pension to claimant in the amount of 2,400.00 pesos per annum from December 21, 1957, the date when claimant's late father, Adolfo Regino del Castillo, died to the date of her marriage. Claimant married her present husband on October 25, 1964.

The Fondo del Retiro Civil is regulated by Cuban Law No. 12 of November 11, 1946 and Decrees No. 591 of March 10, 1947, No. 3138 of September 27, 1950, and No. 1771 of May 17, 1948.

The Commission further finds that the claimant was also awarded a pension by Seguro del Procurador y sus Beneficiarios in the amount of 900.00 pesos per annum from December 21, 1957, to the date of her marriage.

The Seguro del Procurador y sus Beneficiarios was regulated by Cuban Law No. 4 of October 9, 1947, as amended by Law-Decrees No. 932 of June 30, 1953, No. 2100 of January 27, 1955, and Decree No. 2752 of August 25, 1955.

On May 29, 1959, Law No. 351 was enacted which provided for the establishment of the Banco de Seguros Sociales de Cuba (Social Insurance Bank of Cuba) as an agency of the Government of Cuba to supervise and administer social insurance, as well as to direct the policy concerning all social security matters. The law also provided for the transfer of the assets and liabilities of all pension funds to the Banco de Seguros Sociales de Cuba. Information also shows that retired employees received their monthly retirement benefits (pensions) from the Banco de Seguros Sociales de Cuba up to the time of their departure from Cuba. After their departure from Cuba the benefits remained unpaid.

On the basis of evidence of record, the Commission finds that on account of the two pensions in question the claimant was entitled to benefit payments for the period from December 21, 1957, the date of Adolfo Regino del Castillo's death, until October 25, 1964, claimant's marriage to her present husband, as follows:

Fondo del Retiro Civil	6 years, 10 months	
2,400 pesos per annum	and 4 days	16,426.64 pesos
Seguro del Procurador	6 years, 10 months	
y sus Beneficiarios	and 4 days	
900 pesos per annum		<u>6,160.00 pesos</u>
		22,586.64 pesos

The record also reflects that during the period from November 4, to November 14, 1960, claimant's mother in Cuba, acting on behalf of the claimant, then a minor, collected a total of 3,035.80 pesos on account of the two pensions. In view of such fact, the amount of

3,035.80 pesos should be deducted from the amount of pension benefits the claimant was entitled to amounting to a net claim of 22,586.64 less 3,035.80, or 19,550.84 pesos.

It is stated by claimant that since it was impossible to transfer the 3,035.80 pesos in question to the United States, her mother left it with an uncle, and it is now considered by claimant as lost.

The Commission however, finds no valid basis for concluding that the 3,035.80 pesos in question were lost to claimant within the meaning of Title V of the Act. While claimant may have suffered a loss, it was not a loss resulting from the nationalization or other taking of her property by the Government of Cuba. Accordingly, the portion of the claim which is based upon 3,035.80 pesos left with a relative in Cuba is denied. (See Claim of W. H. Schaum and Elizabeth H. Schaum, Claim No. CU-2331.)

In our decision entitled the Claim of A. M. Joy de Pardo (Claim No. CU-1906 which we incorporate herein by reference), we held that the refusal of the Government of Cuba to transfer retirement benefits to claimant constituted a taking of her property within the purview of Section 503(a) of the Act. Therefore, the Commission finds that claimant's claim for the loss based upon such takings in the instant claim arose on November 14, 1960, the date when claimant's mother returned from her unsuccessful attempt in Cuba to transfer the pension benefits to claimant in the United States.

Inasmuch as the peso being at par with the United States dollar, the Commission concludes that claimant sustained a loss within the meaning of Title V of the Act in the total amount of \$19,550.84 as a result of actions of the Government of Cuba.

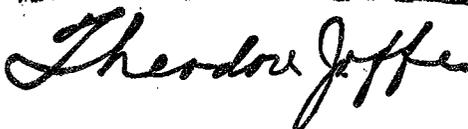
The Commission has decided that in certification of losses on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be included at the rate of 6% per annum from the date of loss to the date of settlement (see Claim of Lisle Corporation, Claim No. CU-0644), and in the instant case it is so ordered.

CERTIFICATION OF LOSS

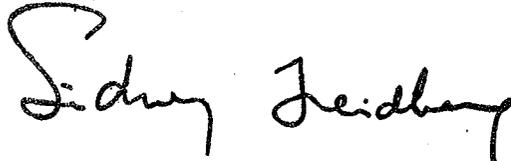
The Commission certifies that MYRIAM ISABELLE ORTIZ sustained a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Nineteen Thousand Five Hundred Fifty Dollars and Eighty-four Cents (\$19,550.84) with interest thereon at 6% per annum from November 14, 1960, to the date of settlement.

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

7 JAN 1970



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).)

CU-2961