

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

IN THE MATTER OF THE CLAIM OF

CLARENCE WILLIAM BEAMAN

Claim No. CU -3112

Decision No. CU 4527

Under the International Claims Settlement  
Act of 1949, as amended

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 CLARENCE WILLIAM BEAMAN for \$288,226.00 based upon the asserted ownership and loss of certain improved real property and personal property, including Cuban Government bonds, in Cuba. Claimant, CLARENCE WILLIAM BEAMAN, has been a national of the United States since his 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.

The claim is based upon property in Marianao, Cuba, as follows:

- (1) improved real property at Nos. 1810 and 1812 Avenida 41 in Marianao;
- (2) furniture and furnishings of claimant's residence at the same address; and an Oldsmobile 1957 automobile;
- (3) 127 bonds of the External Debt of the Republic of Cuba, due June 30, 1977, in the total face amount of \$127,000.00;
- (4) rental income.

The evidence establishes and the Commission finds that pursuant to the community property laws of Cuba, the claimant acquired a one-half interest in the real property at Nos. 1810 and 1812 Avenida 41 in Marianao, the furniture and furnishings of claimant's residence at the same address, and the Oldsmobile 1957 automobile, subject of this claim. (See Claim of Robert L. Cheaney and Marjorie L. Cheaney, Claim No. CU-0915.)

The Commission finds that the real property was within the purview of the Cuban 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 this 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.)

On December 6, 1961, the Government of Cuba published Law 989 in its Official Gazette, which effected a confiscation of all goods and chattels, property rights, shares, stocks, bonds, bank accounts and other securities of persons who left Cuba. The claimant had left Cuba before that date and the Commission finds that this law applied to the furniture and furnishings of claimant's residence at Nos. 1810 and 1812 Avenida 41 in Marianao, and the automobile and that such property was taken by the Government of Cuba on

December 6, 1961. (See Claim of Wallace Tabor and Catherine Tabor, Claim No. CU-0109, 25 FCSC Semiann. Rep. 53 [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 question, in all cases, will be to determine the basis of valuation which, under the particular circumstances, is "most appropriate to the property and equitable to the claimant." This phraseology does not differ from the international legal standard that would normally prevail in the valuation of nationalized property. It is designed to strengthen that standard by giving specific bases of valuation that the Commission shall consider.

The improved real property at Nos. 1810 and 1812 Avenida 41 in Marianao consisted of a parcel of land of undetermined area, improved by a duplex house of two floors with separate entrance and a two-story, three bedroom and three bath residence, built in or about October, 1951.

The record includes an affidavit by Manuel J. Carrera, an architect, who designed and built the above-mentioned improvements. In addition to verifying claimant's ownership, affiant states that according to his personal knowledge the approximate cost of the land and the improvements was \$17,900.00 and \$50,100.00, respectively, in 1950-1951.

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The claimant values the real property at \$90,000.00. The Commission has customarily applied a depreciation factor of 2% per annum for improvements of real property. In the absence of evidence to the contrary, the Commission finds that on October 14, 1960, the date of loss, the real property at Nos. 1810 and 1812 Avenida 41 in Marianao had the following value:

Land		\$17,900.00
Improvements	\$50,100.00	
Less depreciation of 20% for the period 1951-1960	<u>10,020.00</u>	<u>40,080.00</u>
		\$57,980.00

Accordingly, the value of claimant's one-half interest in the real property in question amounted to \$28,990.00.

The personal property consisted of the furniture and furnishing of claimant's former residence at the above-stated address. The record includes a description and detailed listing of said items of property, indicating good quality furniture and household furnishings, with some antiques. The values, as indicated by claimant on the detailed listing, are, as far as the most valuable items are concerned, the price paid at the time of their acquisition, namely during the period from 1946 to 1952. The depreciation factor, applied by the Commission for such property, except antiques, is 5% per annum. Such depreciation factor, however, is a general guideline only, and it cannot be used with mathematical accuracy for lack of pertinent information concerning all items of personalty.

In view of the foregoing, and on the basis of all evidence of record, the Commission finds that the furniture and household furnishings of claimant's former residence and the automobile had an aggregate value of \$15,000.00 on December 6, 1961, the date of its loss, of which the value of claimant's one-half interest amounted to \$7,500.00.

In view of the foregoing, the Commission concludes that the claimant sustained a loss within the purview of Title V of the International Claims Settlement Act of 1949, as amended, in the total amount of \$36,490.00.

A further portion of the claim is based upon bonds known as 4-1/2% bonds of the External Debt of the Republic of Cuba, due June 20, 1977, in the total face amount of \$127,000.00, plus interest.

The Commission has found that the Government of Cuba first defaulted with respect to these bonds on December 31, 1960, when it failed to make a semiannual payment of interest in the amount of \$22.50 for each bond issued in the face amount of \$1,000.00. (See Claim of Clemens R. Maise, Claim No. CU-3191, 1967 FCSC Ann. Rep. 68.)

In its letter of December 20, 1969, the claimant stated that he purchased the bonds in Havana, Cuba, at various times prior to December 31, 1960. However, claimant has been unable to submit evidence in support of his statement. It is noted that the 127 bonds, each in the face amount of \$1,000.00, submitted by claimant in support of this portion of his claim, are bearer bonds and they do not bear any notation indicating its owner or date of acquisition.

Section 507 of the Act provides, as to assignment of claims, that

(b) The amount determined to be due on any claim of an assignee who acquires the same by purchase shall not exceed (or, in the case of any such acquisition subsequent to the date of the determination, shall not be deemed to have exceeded) the amount of the actual consideration paid by such assignee, or in case of successive assignments of a claim by any assignee.

In view of the limitations provided in Section 507 of the Act, the claimant was advised by Commission letters of November 21, 1969, and January 14, 1970, as to the type of evidence proper for submission to establish that he owned the bonds in question on December 31, 1960, the date when the Government of Cuba defaulted in these bonds. In the latter communication claimant was also advised that if the suggested evidence were not submitted on or before February 10, 1970, it might become necessary for the Commission to make a determination on the basis of the record then available. In its reply of January 21, 1970, claimant, in essence, restated the information already submitted by him to the Commission. However, he

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failed to submit the suggested documentary evidence and this, as well as his previous communications to the Commission, made it clear that he does not have and does not expect to acquire in the near future any further evidence in support of this portion of his claim.

In view of the foregoing, the Commission finds that claimant has failed to prove that he acquired the 127 bonds in question prior to December 31, 1960, as asserted and thereby has failed to establish that the bonds were owned on December 31, 1960, the date of loss, by a national of the United States, as required for certification of a loss under Title V of the Act. Accordingly, the portion of the claim, based upon 127 bonds of the Republic of Cuba including interest, must be and it is hereby denied.

The remaining portion of the claim is based upon asserted loss of rental income from the real property at No. 1812 Avenida 41 in Marianao, Cuba, accrued but not collected since January 1, 1961.

The real property mentioned was taken by the Government of Cuba on October 14, 1960 (supra). Rents for any period of time after that date belong to the Government of Cuba rather than to the previous owner of the property, and are not a proper basis for a claim under the Act. However, the claimant was entitled, on the date his interest in the property was taken, to compensation in an amount equal to the value of his property interest. Thus, he suffered the loss of the use of money he was entitled to receive on October 14, 1960. Such loss of use can be compensated for in terms of interest, as stated below.

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:

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<u>FROM</u>	<u>ON</u>
October 14, 1960	\$28,990.00
December 6, 1961	7,500.00

CERTIFICATION OF LOSS

The Commission certifies that CLARENCE WILLIAM BEAMAN 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-Six Thousand Four Hundred Ninety Dollars (\$36,490.00) with interest thereon 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

**MAR 4 1970**

*Lyle S. Garlock*  


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 Lyle S. Garlock, Chairman

*Theodore Jaffe*  


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 Theodore Jaffe, Commissioner

*Sidney Freidberg*  


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 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).)