

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

IN THE MATTER OF THE CLAIM OF

WARDEN F. JOHNSON

Claim No.CU -3123

Decision No.CU 4584

Under the International Claims Settlement
Act of 1949, as amended

PROPOSED DECISION

This claim against the Government of Cuba, filed under Title V of the International Claims Settlement Act of 1949, as amended, in the amount of \$82,760.00, was presented by WARDEN F. JOHNSON based upon the asserted loss of interests in 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 describes his losses as follows:

(1) House and land at 409 Carmen Street, Vibora, Havana	\$15,000.00
(2) Corner lot in Alamar residential development near Guanabacoa	7,000.00
(3) Apartment house on south or south- east corner of 5th and C Streets, Guanabacoa	6,000.00
(4) House and land at 111 Santa Irene Street, Santos Suarez	15,000.00
(5) House and land at 1806 5th Avenue, Santa Fe	25,000.00
(6) Personal belongings	10,320.00
(7) Income from properties	<u>4,440.00</u>
	\$82,760.00

(1) House and Lot at Vibora

Claimant asserts a loss of real property located at 409 Carmen Street, Vibora, Havana, Cuba. The record establishes that said property was owned by claimant's mother-in-law, a nonnational of the United States who died on July 31, 1965.

The Commission finds that the property 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.)

Section 504 of the Act provides, as to ownership of claims, that

(a) A claim shall not be considered under section 503(a) of this title unless the property on which the claim was based was owned wholly or partially, directly or indirectly by a national of the United States on the date of the loss and if considered shall be considered only to the extent the claim has been held by one or more nationals of the United States continuously thereafter until the date of filing with the Commission.

The Commission finds that the portion of the claim based upon the real property at Vibora, Havana, was owned by claimant's mother-in-law, a non-national of the United States on the date of loss. Accordingly, this portion of the claim is denied. (See Claim of Sigridur Einarsdottir, Claim No. CU-0728, 25 FCSC Semiann. Rep. 45 [July-Dec. 1966].)

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(2) Lot near Guanabacoa

The evidence establishes that the parcel of land in the Alamar section near Guanabacoa, Cuba was also owned by claimant's mother-in-law.

On December 6, 1961, 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 Commission finds that this law applied to claimant's mother-in-law who had left Cuba with claimant before that date. In the absence of evidence to the contrary, the Commission finds that the lot near Guanabacoa was taken by the Government of Cuba on December 6, 1961. (See Claim of Floyd W. Auld, Claim No. CU-0020, 25 FCSC Semiann. Rep. 55 [July-Dec. 1966]; and Claim of Wallace Tabor and Catherine Tabor, Claim No. CU-0109, id. at 53.)

For the reasons stated with respect to the real property at Vibora mutatis mutandis, the portion of the claim based upon the lot near Guanabacoa is denied.

(3) Apartment House at Guanabacoa

The evidence establishes that the apartment house and lot at 5th and C Streets, Guanabacoa was owned by claimant's wife, a nonnational of the United States, and that she acquired the property prior to her marriage to claimant. Since title to the property had vested in claimant's wife prior to their marriage, claimant could not acquire an interest in the property under the community property laws of Cuba. The record fails to disclose that claimant acquired an interest therein through some other means.

Under date of December 9, 1969, the Commission brought to claimant's attention the fact that according to the record the real property at Vibora and the lot near Guanabacoa were owned by his mother-in-law, and that the apartment house at Guanabacoa was owned by his wife. The Commission indicated that the two owners, being nonnationals of the United States, were ineligible under Title V of the Act, and suggested the submission of evidence in support of the portions of the claim based upon said three items

of real property. Claimant's response of February 15, 1970 was that he had no comments to make and that the Commission's information was correct.

The Commission finds in the absence of evidence to the contrary that the apartment house at Guanabacoa was taken by the Government of Cuba on October 14, 1960 pursuant to the Urban Reform Law (supra). For the reasons stated with respect to the real properties owned by claimant's late mother-in-law mutatis mutandis, the portion of the claim based on the apartment house at Guanabacoa is denied.

(4) House and Lot at Santos Suarez

The evidence establishes and the Commission finds that claimant and his wife each owned a one-half interest in a house and lot at 111 Santa Irene Street, Santos Suarez, Havana, Cuba.

On the basis of the evidence of record, the Commission finds that said real property was taken by the Government of Cuba on October 14, 1960 under the Urban Reform Law.

Claimant asserts that the property had a value of \$15,000.00. The record shows that the property was acquired in 1953 for \$3,000.00. However, claimant made substantial improvements by the addition of two bathrooms, the complete renovation of the kitchen and installation of new equipment, and by the rewiring of the entire electrical system of the house. The record includes a complete description of the house, and it appears that the property had been rented for \$1,200.00 per year.

On the basis of the entire record, including the values of similar property in Cuba, the Commission finds that claimant's valuation is fair and reasonable, and concludes that the value of the property on October 14, 1960, the date of loss, was \$15,000.00. Accordingly, claimant's one-half interest therein had a value of \$7,500.00.

(5) House and Lot at Santa Fe

The evidence establishes and the Commission finds that claimant and his wife each owned a one-half interest in a house and lot at 1806 5th Avenue, Santa Fe, Havana, Cuba.

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The Commission finds that said property was taken by the Government of Cuba on October 14, 1960 under the Urban Reform Law.

Claimant states that the property had a value of \$25,000.00. The record shows that the property was acquired in 1953 for \$8,000.00. It appears that the house had two apartments, one on each floor. Claimant and his wife occupied the first floor apartment, and rented the upper floor apartment for \$780.00 per year. In addition to a garage, the property included a stone sea wall, fruit trees, and a dock for boats, and was situated in a desirable section of the city.

On the basis of the entire record, including photographs of the property and the values of similar property in Cuba, the Commission finds that the value of the property on October 14, 1960, the date of loss was \$25,000.00. Accordingly, claimant's one-half interest therein had a value of \$12,500.00.

(6) Personal Belongings

The record shows that claimant and his wife had furnished their apartment in Santa Fe with furniture, furnishings and other personal belongings in which claimant and his wife each owned a one-half interest. In addition their apartment included items of property belonging exclusively to claimant, his wife and his mother-in-law. The record includes detailed lists of all the property, indicating which belonged to each of them, and showing dates of acquisition, approximate costs, and depreciated values as of the date of loss.

The Commission finds that the said personal property was taken by the Government of Cuba on October 14, 1960 when it took the house in which the property was situated.

On the basis of the entire record, the Commission finds claimant's evaluation of the various items of personal property fair and reasonable. Accordingly, the Commission finds that the aggregate value of the items of personal property belonging to claimant alone was \$547.00 on the date of loss; and that the aggregate value of the items of personal property in

which claimant owned a one-half interest was \$7,172.00 on the date of loss. Accordingly, claimant sustained a loss with respect to personal property in the aggregate amount of \$4,133.00.

The Commission finds no valid basis for allowing any amount on account of items of personal property which were owned by claimant's wife or by his late mother-in-law. The portion of the claim based upon such items of property is denied.

(7) Rental Income

Claimant has also asserted a loss of rental income in the amount of \$4,440.00. There is no evidence to establish that claimant owned any rental income that was taken by the Government of Cuba. With respect to any income which may have become due after the date of loss, the Commission finds that such income belonged to Cuba, the then owner of the rented property. Accordingly, the portion of the claim based upon rental income is denied.

Recapitulation

Claimant's losses on October 14, 1960 within the meaning of Title V of the Act are summarized as follows:

<u>Item of Property</u>	<u>Amount</u>
House and lot at Santos Suarez	\$ 7,500.00
House and lot at Santa Fe	12,500.00
Personal belongings	<u>4,133.00</u>
Total	\$24,133.00

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 WARDEN F. JOHNSON 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-four Thousand One Hundred Thirty-three Dollars (\$24,133.00) with interest thereon at 6% per annum from October 14, 1960 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
Lyle S. Garlock, 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).)

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