

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

IN THE MATTER OF THE CLAIM OF

HENRY E. CABALLERO, EXECUTOR
OF THE ESTATE OF
ENRIQUE P. CABALLERO, DECEASED

Claim No. CU-3159

Decision No. CU - 4454

Under the International Claims Settlement
Act of 1949, as amended

Counsel for claimant:

Sibley, Giblin, Levenson & Ward
By Allan M. Glaser, Esq.

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 \$80,000.00, was presented by HENRY E. CABALLERO, EXECUTOR OF THE ESTATE OF ENRIQUE P. CABALLERO, DECEASED, based upon the asserted loss of certain real property in Cuba. The decedent's heirs are United States nationals.

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 record shows that the deceased, ENRIQUE P. CABALLERO, a national of the United States since birth, inherited from his brother in 1951 a one-fourth interest in certain items of real property in Cuba subject to the life estate of his brother's widow. All of the said items of real property were located in Havana, Cuba. The properties consisted of a two-story house and lot at 168 Figuras Street, a one-story house and lot on Remedios Street, and a two-story house and lot on Third Street between Fomento and Lindero Streets. Each item of property contained apartments.

On the basis of the entire record, including reports from abroad, the Commission finds that these urban properties in Havana, Cuba were taken by the Government of Cuba on October 14, 1960 pursuant to the Urban Reform Law of 1960. (See Claim of Henry Lewis Slade, Claim No. CU-0183, 1967 FCSC Ann. Rep. 39.)

The deceased died on May 13, 1962 and his will was duly admitted to probate under the laws of Florida. Pursuant to his will, his claim for the loss of his interests in the said items of real property was inherited by his widow and his three children, all nationals of the United States since birth. This claim was filed by one of the children as executor of the estate.

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 evaluation of nationalized property. It is designed to strengthen that

standard by giving specific bases of valuation that the Commission shall consider.

The evidence includes descriptions of the several items of real property, appraisals of the properties made in connection with the inheritance proceedings of the deceased's predecessor in interest, and reports from abroad.

Upon consideration of the entire record, the Commission finds that the valuations most appropriate to the properties and equitable to the claimant are those indicated by the appraisals. Accordingly, the Commission finds that the aggregate value of the items of real property on October 14, 1960, the date of loss, was \$80,000.00; namely, \$20,000.00 for the property at 168 Figuras Street, \$25,000.00 for the property on Remedios Street, and \$35,000.00 for the property on Third Street. The record shows that the widow of the deceased's predecessor in interest, who had a life estate in all of the real properties herein, was 92 years of age on the date of loss.

With respect to the values of life estates and remainder interests, the Commission has adopted the Makehamized mortality table used by the United States Treasury Department in connection with the collection of gift and estate taxes. (See Claim of Richard Franchi Alfaro and Anna Alfaro, Claim No. CU-0048, 1967 FCSC Ann. Rep. 71.) Pursuant to that method of valuation, a life estate in property of a person 92 years of age is valued at 7.964% of the estate. Since the encumbered properties had an aggregate value of \$20,000.00 (1/4 of the estate inherited by the deceased), the aggregate value of the deceased's remainder interests (92.036%) was \$18,407.20 on October 14, 1960, the date of loss.

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.

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CERTIFICATION OF LOSS

The Commission certifies that HENRY E. CABALLERO, EXECUTOR OF THE ESTATE OF ENRIQUE P. CABALLERO, DECEASED, 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 Eighteen Thousand Four Hundred Seven Dollars and Twenty Cents (\$18,407.20) with interest 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

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).)

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