

FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
WASHINGTON, D.C. 20547

IN THE MATTER OF THE CLAIM OF

MARIE F. de SILVA

Under the International Claims Settlement
Act of 1949, as amended

Claim No. **CU** -3160

Decision No. **CU** -1852

Counsel for claimant:

Juan Silva, Esq.

Petition to Reopen; Proposed Decision entered May 8, 1968; Final Decision entered September 15, 1971.

AMENDED FINAL DECISION

This claim based on the asserted ownership and loss of interests in real and personal property in Cuba, was denied by Proposed Decision entered May 8, 1968, for failure of proof. Objections were entered and on the basis of certain evidence entered, a Certification of Loss was entered in the amount of \$24,500 for her one-half interest in property owned by claimant with her spouse, and which was taken by the Government of Cuba on December 6, 1961.

Claimant has now submitted evidence concerning her inheritance from her parents. It appears from a notarial document submitted with translations of pertinent parts, that certain real properties were held by Compania Tropical de Fomento, S.A., which was dissolved in 1955. It had no liabilities. The real properties were appraised at that time in a total value of \$430,350. However, two items valued at \$17,100 were distributed to a person other than the claimant and her two siblings. The remaining properties are described as follows:

| | | |
|-------|--|---------------|
| III. | Improved real property in Miramar | \$ 80,000 |
| | Properties in District of Cienfuegos: | |
| IV. | Lots of land "Los Delicias" | 520 |
| V. | 48 caballeria of farm land adjacent to an industrial sugar mill | 192,000 |
| VI. | 47 caballeria "La Sortija" | 50,000 |
| VII. | 10 caballeria "Los Conucos" | 1,700 |
| VIII. | 20 caballeria "La Madrid" | 20,000 |
| IX. | "El Batey" - industrial sugar mill property with three cabs | 19,030 |
| X. | 16 caballeria "Casa de Alto" | <u>50,000</u> |
| | | \$413,250 |

The Commission finds that claimant received distribution of a one-third interest in the properties above described, and that these were taken by the Government of Cuba on December 6, 1961, pursuant to Law 989. Claimant's spouse had no interest in these properties.

The Commission has considered the descriptions afforded in the notarial document, and finds that improvements should be subjected to 2 per cent depreciation from 1952 to about 1960, whereas subsequent to that time depreciation and appreciation would be about equivalent. Accordingly, the Commission finds that the properties, as further described below, had the values set out below, at the time of loss:

| | | |
|-------|--|------------------|
| III. | Improved real property in Miramar | |
| | Land (1/3 asserted value) | \$ 26,667.00 |
| | Improvements | 47,999.70 |
| IV. | Lots of land "Los Delicias" | 520.00 |
| V. | 48 caballeria "San Lino" used in connection with sugar mill | 192,000.00 |
| VI. | 47 caballeria "La Sortija" | 50,000.00 |
| VII. | 10 caballeria "Los Conucos" | 1,700.00 |
| VIII. | 20 caballeria "La Madrid" | 20,000.00 |
| IX. | Sugar mill property with machinery and houses: | |
| | Land of 3 cabs (1/4 asserted value) | 4,757.50 |
| | Improvements | 12,845.25 |
| X. | 16 caballeria "Casa de Alto" | <u>50,000.00</u> |
| | | \$406,489.45 |

The Commission finds that claimant's interests in these properties had a value of \$135,496.48 on the date of loss.

The Commission affirms its holding that interest shall be included in the Certification from the date of loss to the date of settlement.

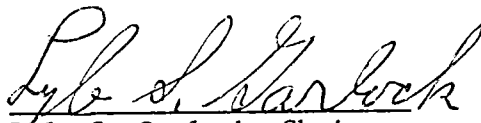
Accordingly, the Certification of Loss in the Final Decision is set aside, the following Certification of Loss is entered, and in all other respects the Final Decision is affirmed.

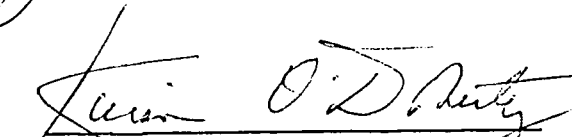
CERTIFICATION OF LOSS

The Commission certifies that MARIE F. de SILVA 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 One Hundred Fifty-Nine Thousand Nine Hundred Ninety-Six Dollars and Forty-Eight Cents (\$159,996.48) with interest thereon at 6% per annum from December 6, 1961 to the date of settlement.

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

JUN 30 1972
... 1972


Lyle S. Garlock, Chairman


Kieran O'Doherty, Commissioner

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

IN THE MATTER OF THE CLAIM OF

MARIE F. de SILVA

Claim No. CU-3160

Decision No. CU-1852

Under the International Claims Settlement
Act of 1949, as amended

Counsel for claimant:

Juan Silva, Esq.

Appeal and objections from a Proposed Decision entered May 8, 1968. Oral hearing scheduled and cancelled, not further requested.

Hearing on the record held September 15, 1971.

FINAL DECISION

This claim was based on a one-half interest in properties assertedly owned by claimant with her husband in community property; a one-third interest in property inherited from her parents; and a one-half interest in the income from property which her husband inherited in one-fifth part. Claimant was married in 1920. She has been a national of the United States since her naturalization on March 23, 1960. The claim was denied on May 8, 1968 for failure of proof.

Since that time claimant has submitted evidence which establishes that she and her husband owned a dwelling and an adjacent plot of land at Punta Gorda, Caonao, Cienfuegos, Las Villas province, Cuba, which properties were acquired in 1922 and 1926.

On December 6, 1961, the Government of Cuba published its Law 989 which effected confiscation of all goods and chattels, and other property rights of persons who left Cuba. It appears that claimant left Cuba prior to December 6, 1961, and the Commission finds that this law applied to the Punta Gorda property, and that claimant's interest therein was taken on December 6, 1961, by the Government of Cuba. (See Claim of

Wallace Tabor and Catherine Tabor, Claim No. CU-0109, 25 FCSC Semiann. Rep. 53
[July-Dec. 1966].)

In arriving at the value of the aforesaid real property in Punta Gorda, the Commission has considered the descriptions in the registry certificates, and the description afforded by the claimant, and finds that the real property of two plots, measured about 5,798 square vara and that claimant's evaluation therefor of \$9,000 is fair and reasonable; and further, that the dwelling of about 20 rooms, with appurtenant facilities housing claimant, her spouse and their ten children, had a value of \$40,000 as asserted. Accordingly the Commission finds that claimant suffered a loss of \$24,500 for her one-half interest in this improved realty and adjacent plot, within the scope of Title V of the Act.

With respect to the de Silva estate, in which claimant's spouse would apparently have a one-fifth interest, and as to which interest claimant asserts a one-half interest in the income thereof, the record now includes a copy of an affidavit of April 27, 1968, by the five heirs, said to have been filed by Roberto Silva, Sr. (one of the five siblings), for capital loss credit in withholding income tax. This document lists the properties of the Succession de Felipe Silva and gives valuations, which it is said were made by different appraisers at different times and from different aspects. The document also sets out the annual rental income of each property. Some of these properties are farms and probably were taken pursuant to the Agrarian Reform Law of June 1959; several are rental houses, and a theatre. It would appear that the houses would have passed to the Government of Cuba under its Urban Reform Law effective October 14, 1960. If the theatre did not pass under that law, it would likely have been taken about October 1960, with other business enterprises.

There is no evidence of record, however, from which it may be concluded that any rentals were due and owing in October, 1960, in which claimant might have a one-tenth interest, and which were taken by the Government of Cuba. After these properties were taken in

October, 1960, they belonged to the Government of Cuba and no rentals accrued thereafter to the interest of these spouses. Accordingly the denial of claim on the income of the de Silva estate is affirmed.

No evidence has been submitted with respect to properties assertedly inherited by claimant from her parents, and the denial of this part of the claim is affirmed; as well as the items of claim for personal property, securities, and all other items of claim.

The Commission has decided that in certifications of loss 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.

It may be noted, however, that upon receipt of evidence warranting a change in any part of the decision denying certain items of claim, the Commission will reopen the matter provided however, that such evidence is received by May 1, 1972, to permit consideration thereof prior to the close of the program on June 30, 1972.


Accordingly, the following Certification of Loss will be entered and in all other respects the Proposed Decision, as amended herein, is affirmed.

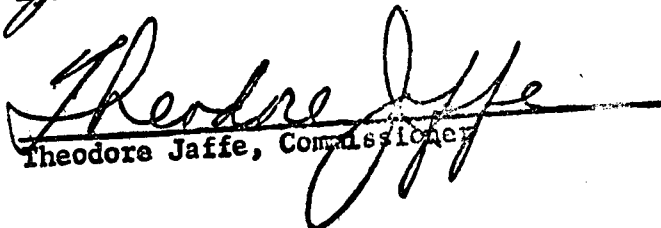
CERTIFICATION OF LOSS

The Commission certifies that MARIE F. de SILVA 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 Five Hundred Dollars (\$24,500.00) with interest thereon at 6% per annum from December 6, 1961 to the date of settlement.

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

SEP 15 1971


Lyle S. Garlock, Chairman


Theodore Jaffe, 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.

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

IN THE MATTER OF THE CLAIM OF

MARIE F. DE SILVA

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-3160

Decision No. CU 1852

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 \$157,528.00, was presented by MARIE F. DE SILVA and is based upon the asserted loss of an interest in improved real property, personal property and securities. Claimant stated that she has been a national of the United States since her naturalization on March 23, 1960.

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.

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 Regulations of the Commission provide:

The claimant shall be the moving party and shall have the burden of proof on all issues involved in the determination of his claim. (FCSC Reg., 45 C.F.R. §531.6(d) (Supp. 1967).)

Claimant asserts the ownership of certain interests in improved real property, personal property and securities. By Commission letter of July 3, 1967, claimant was advised as to the type of evidence proper for submission to establish this claim under the Act. However, no evidence in response to this correspondence has been received to date.

On September 29, 1967, claimant was invited to submit any evidence available to her within 45 days from that date, and she was informed that, absent such evidence, it might become necessary to determine the claim on the basis of the existing record. No evidence has since been submitted.

The Commission finds that claimant has not met the burden of proof in that she has failed to establish ownership of rights and interests in property which was nationalized, expropriated or otherwise taken by the Government of Cuba. Thus, the Commission is constrained to deny this claim and it is hereby denied. The Commission deems it unnecessary to make determinations with respect to other elements of the claim.

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

MAY 8 1968

Leonard v. B. Sutton

Leonard v. B. Sutton, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

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-3160