

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

IN THE MATTER OF THE CLAIM OF

CARMEN CAPE
and
IRENE CAPE PEREZ

Claim No. CU-3272

Decision No. CU - 6055

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 CARMEN CAPE in the amended amount of \$44,062.25 based upon the asserted ownership and loss of certain real and personal property in Cuba. The record discloses that claimant's daughter, IRENE CAPE PEREZ, inherited an interest in a claim based on the property subject of this claim, upon the death of her father, Jose Manuel Cape, a United States national since 1948, and she is joined as claimant in this matter. Claimants have been nationals 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, CARMEN CAPE, describes the loss as follows:

Home in Guanabacoa, Havana	\$27,893.25
Household furnishings and other personalty	<u>16,169.00</u>
	\$44,062.25

Based upon the entire record, including the original surveyor's report relative to the property, a copy of the purchase agreement, the original copies of the mortgage deed to the property and satisfaction thereof, the original receipt from the general contractor and a copy of an appraisal of the property and a detailed list of the household furnishings and other personal property, the Commission finds that pursuant to the Community Property Law of Cuba claimant, CARMEN CAPE, and her late husband each owned a 1/2 interest in Cuban real and personal property in Cuba. Upon the death of Jose Manual Cape intestate in Florida on December 11, 1967 his interest in the claim against the Government of Cuba was inherited equally by his surviving spouse and his daughter, IRENE CAPE PEREZ, pursuant to the Florida laws of descent and distribution.

On October 14, 1960, the Government of Cuba published in its Official Gazette, Special Edition, its Urban Reform Law. Under this law the renting of urban properties and all other transactions or contracts involving transfer of the total or partial use of urban properties were outlawed (Article 2). The law covered residential, commercial, industrial and business office properties (Article 15).

Based on the foregoing and the evidence of record, the Commission finds that the subject real property in Guanabacoa was taken by the Government of Cuba pursuant to the provisions of the Urban Reform Law; and, in the absence of evidence to the contrary, that the taking occurred on October 14, 1960,

the date on which the law was published in the Cuban Gazette. (See Claim of Henry Lewis Slade, Claim No. CU-0183, 1967 FCSC Ann. Rep. 39.) The Commission further finds that the furnishings and other personal property were also taken on that date.

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 record includes in support of the claimed values, a description of the residence as an 8-room brick house with concrete roof and an inside 2-car garage. The record discloses that the lot on which this residence was built was purchased on November 1, 1950 for \$6,263.95, that the lot measured 1,138.9 varas, and that the house was built in May, 1958 for \$21,629.30. The record also includes 5 photographs of various portions of the house, and the aforementioned list of the personal property.

Based on the entire record the Commission finds that on the date of loss the improved realty had a value of \$27,893.25, that the household furnishings and the other personal property including a 1955 Cadillac after appropriate depreciation had a total value of \$13,400.00, and that the aggregate value of the real and personal property was \$41,293.25.

Therefore, the Commission finds that the interest of CARMEN CAPE in the property in question which was taken by the Government of Cuba, had a value of \$30,969.94; and that the interest of IRENE CAPE PEREZ had a value of \$10,323.31.

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.

CU-3272

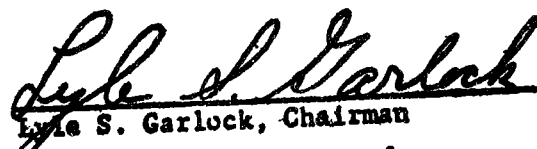
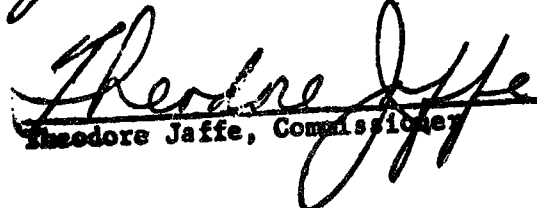
CERTIFICATIONS OF LOSS

The Commission certifies that CARMEN CAPE 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 Thousand Nine Hundred Sixty-Nine Dollars and Ninety-Four Cents (\$30,969.94) with interest at 6% per annum from October 14, 1960 to the date of settlement; and

The Commission certifies that IRENE CAPE PEREZ 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 Ten Thousand Three Hundred Twenty-Three Dollars and Thirty-One Cents (\$10,323.31) 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

FEB 3 1971


Lyle S. Garlock, Chairman

Theodore Jaffe, Commissioner

NOTICE TO TREASURY DEPARTMENT: This claimant may be the subject of another certification of loss in CU-3273 involving asserted losses not covered under this Proposed Decision.

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 (1970).)

CU-3272