

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

IN THE MATTER OF THE CLAIM OF

PHYLLIS JEAN CABEZA

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -3307

Decision No. CU 4498

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, in the amount of \$84,425.00, was presented by PHYLLIS JEAN CABEZA based upon the asserted loss of 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.

Real Property

The record includes copies of deeds, reports from abroad, and statements made to the Internal Revenue Service by claimant and individuals with personal knowledge of the facts in connection with claimant's Federal tax deductions for her Cuban losses. Claimant asserts that a loss was allowed in the claimed amount.

Based upon the foregoing evidence, the Commission finds that claimant and her husband, a nonnational of the United States at all pertinent times, each owned a one-half interest in two pieces of real property in Marianao, Cuba. It further appears from the record that in 1953 claimant and her husband caused a residence to be built on one of the pieces of real property at 13005 - 9th Avenue, Marianao. The other piece of property was located on la Ceiba Avenue, in another area of Marianao.

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 was outlawed (Article 2). The law covered residential, commercial, industrial and business office properties (Article 15).

The evidence includes a letter from claimant's former Cuban attorney who states that claimant's residence was taken by Cuba under the Urban Reform Law and that her other property was taken in February 1961, after she left Cuba, which was on or about December 3, 1960. On the basis of the entire record, the Commission finds that the residence was taken by the Government of Cuba pursuant to the Urban Reform Law of 1960, and in the absence of evidence to the contrary, the Commission finds 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 also finds that the unimproved realty was taken by the Government of Cuba on February 3, 1961.

Claimant has asserted that the value of the two parcels of land was \$15,000.00, and that the house had a value of \$45,000.00 on the date of loss.

Claimant has filed copies of statements from individuals with personal knowledge of the facts which she submitted to the Internal Revenue Service in support of her asserted tax deductions on account of her Cuban losses. The statements include descriptions of the house as having 10 rooms, four baths, equipped in an ultra-luxurious manner; as well as opinions as to the value of the property. Among the statements is one by the architect who built the house, certifying the cost of construction in 1953 as \$38,642.00. In addition, the record includes pictures of the property and copies of the deeds which show that the land on which the house was built cost \$3,013.99 on November 26, 1948, and that the other piece of land cost \$7,796.26 on October 7, 1955. Moreover, the letter of claimant's former attorney in Cuba relates that in December 1958, pursuant to a conversation with claimant, he caused the Banco Pedroso appraisers to evaluate claimant's residence. This resulted in a figure of \$45,000.00.

Upon consideration of the entire record, the Commission concludes that the value of the improved real property on October 14, 1960, the date of loss, was \$45,000.00. Claimant's one-half interest therein therefore had a value of \$22,500.00.

The record also shows, according to the letter of claimant's former attorney, that in 1955 he purchased a lot on la Ceiba for approximately \$7,000.00, and sold it in 1958 for \$15,000.00. This lot was adjacent to claimant's. The Commission finds that on February 3, 1961 this lot had a value of \$15,000.00 and claimant's interest therein was \$7,500.00.

Personal Property

The Commission finds on the basis of the evidence of record that claimant and her husband each owned a one-half interest in certain furniture, home

furnishings, household equipment, power and miscellaneous tools, clothing and two automobiles, a 1958 Oldsmobile 88 and a 1955 Hudson Hornet, all of which property was situated on the premises of their home in Marianao. The Commission further finds that said personal property was taken by Cuba on October 14, 1960 when the improved real property was taken.

The record includes a list of the various items of personal property thus taken, prepared by claimant indicating the purchase prices thereof but not the dates of purchase. In claimant's letter of August 1, 1968, she stated that she had resided in Cuba for 16 years. In determining the values of these items of property on the date of loss, the Commission considered that some of them must have been acquired in 1953 to furnish the new home of claimant and her husband, and that all of the said properties were subject to depreciation. Claimant's list shows that the aggregate purchase price for the properties, excluding the two automobiles, was \$20,225.00.

Based upon the entire record, the Commission finds that the aggregate value of all of the items of property, including the two automobiles, on October 14, 1960, the date of loss, was \$24,285.00. Claimant's one-half interest therein therefore had a value of \$7,142.50.

Accordingly, claimant sustained losses within the meaning of Title V of the Act in the aggregate amount of \$37,142.50.

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 PHYLLIS JEAN CABEZA 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-seven Thousand One Hundred Forty-two Dollars and Fifty Cents (\$37,142.50) with interest at 6% per annum on \$29,642.50 from October 14, 1960, and on \$7,500.00 from February 3, 1961 to the date of settlement.

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

12 FEB 1970

Theodore Jaffe

Theodore Jaffe, Commissioner

Sidney Friedman

Sidney Friedman, 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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