

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

IN THE MATTER OF THE CLAIM OF

THOMAS MARSHALL FINDLAY
ALICE A. FINDLAY

Claim No. CU-3316

Decision No. CU- 6167

**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 THOMAS MARSHALL FINDLAY for \$59,000.00 based upon the asserted ownership and loss of certain real and personal property in Cuba. MR. FINDLAY has been a national of the United States since birth.

The record establishes that ALICE A. FINDLAY, the wife of claimant THOMAS MARSHALL FINDLAY, has been a national of the United States since birth. Since, pursuant to the community property law of Cuba, she had a one-half interest in property acquired by her husband in Cuba subsequent to their marriage she is joined as claimant in this matter.

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 losses are described as follows:

Home in Marianao, Havana	
(less \$26,000.00 reimbursed)	\$39,000.00
Cash	<u>20,000.00</u>
	\$59,000.00

The record contains a report from abroad with regard to the home in Marianao, a receipt for repairs to the home dated May 18, 1964, a letter by claimant THOMAS MARSHALL FINDLAY dated July 6, 1960 to the American Embassy in Cuba, a letter from an official of The Chase Manhattan Bank dated April 17, 1967, copies of three affidavits, one from an Assistant Vice President of The Chase Manhattan Bank in Cuba, another from his wife, and a third from an employee of the bank; and a copy of a receipt, release and assignment dated May 23, 1961 and signed by claimants and by the vice president of The Chase Manhattan Bank. In addition the record includes a letter from counsel for The Chase Manhattan Bank (CU-2685) dated July 3, 1969 in which counsel states that at the time partial payment of \$26,000 was made to claimant THOMAS MARSHALL FINDLAY for his realty it was agreed between him and the bank that he was entitled to seek recovery of the difference between the appraised value and the \$26,000.

The record establishes that claimant THOMAS MARSHALL FINDLAY was the Vice President in charge of bank's Cuban branches and that The Chase Manhattan Bank paid him \$73,121.00 for the loss of his home and personal property with the express exception of the property in his safe deposit box.

Based on the foregoing and the evidence of record, the Commission finds that claimants lost the money in the safe deposit box and the difference in value between the value of their home in Marianao and \$26,000.00 which was received.

Safe Deposit Box

The assistant vice president of The Chase Manhattan Bank in Cuba certifies that claimant THOMAS MARSHALL FINDLAY turned over \$20,000 in United States 100 dollar bills for safe keeping in July 1960 and that he gave the money to his wife to put in his safety deposit box in the main branch of the Royal Bank of Canada in Havana. His wife certifies that she received this sum and placed it in her safe deposit box with a note attached that the funds belonged to claimant, THOMAS MARSHALL FINDLAY.

By an Administrative Instruction of February 15, 1961, issued by the President of the National Bank of Cuba (pursuant to his Order No. 26 of January 25, 1961), all contracts for the hire of safe deposit boxes in Cuban banks were declared null and void as of February 17, 1961. Lessees were given thirty banking business days to remove the contents of the boxes, in the presence of the director of the bank or banking agency. Foreign currency found in such boxes was to be converted to pesos at the legal rate of exchange. As to securities or other negotiable instruments expressed in foreign currency, found in such boxes, the National Bank reserved the right to dispose of them. If boxes were not opened within the stipulated time, they were to be forced open on April 3, 1961. (See Claim of Anna Littner et al, Claim No. CU-3655.)

In view of the foregoing and in the absence of evidence to the contrary, the Commission finds that the safety deposit box contained \$20,000 which belonged to claimant THOMAS MARSHALL FINDLAY and that it was taken by the Government of Cuba on April 3, 1961 pursuant to the above-mentioned Administrative Instruction of February 15, 1961.

House in 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. It also provides that citizens of foreign

countries who do not have the status of legal residents shall be excluded from the rights and benefits conferred by this law.

Claimant states that he and his wife left Cuba on September 18, 1960.

Based on the foregoing and the evidence of record, the Commission finds that claimants' real properties in Marianao were 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 in the 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 a description of the realty as a two-story, old Spanish Colonial house on a lot 3,000 square meters. It had 29 rooms, 3-1/2 baths, a carriage house, a semi-detached two rooms and bath for servants' quarters, and a detached stable with upstairs bedroom for a chauffeur. The record also includes evidence that this home was appraised at \$60,000 in 1958, that THOMAS MARSHALL FINDLAY used this value in his letter of July 6, 1960 to the American Embassy in Cuba and that The Chase Manhattan Bank had paid THOMAS MARSHALL FINDLAY \$73,121.00 for his personalty and real property and that of this sum \$26,000 represented a partial payment on his home.

On the basis of the evidence of record the Commission finds that on October 14, 1960, the date of loss, the improved realty had a value of \$60,000.00 and that claimant had received \$26,000 as partial reimbursement for this loss.

Accordingly, the Commission concludes that claimants suffered a loss in the total amount of \$54,000.00 within the meaning of Title V of the Act. Claimants' losses may be summarized as follows:

<u>Item</u>	<u>Date of Loss</u>	<u>Amount</u>
Home in Márianao	October 14, 1960	\$34,000.00
Money in Safe Deposit box	April 3, 1961	<u>20,000.00</u>
		\$54,000.00

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.


CERTIFICATIONS OF LOSS

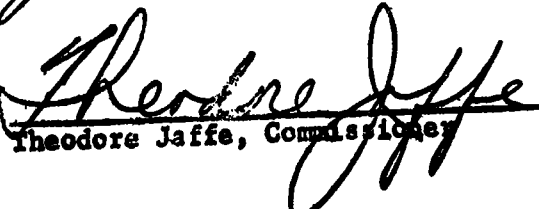
The Commission certifies that THOMAS MARSHALL FINDLAY suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Twenty-Seven Thousand Dollars (\$27,000.00) with interest at 6% per annum from the respective dates of loss to the date of settlement; and

The Commission certifies that ALICE A. FINDLAY 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-Seven Thousand Dollars (\$27,000.00) with interest at 6% per annum from the respective dates of loss to the date of settlement.

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

APR 21 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.

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).)