

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

IN THE MATTER OF THE CLAIM OF

OSCAR MARTINEZ

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -3330

Decision No. CU

3364

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 OSCAR MARTINEZ for \$226,442.35, based upon the asserted ownership and loss of an interest in improved real property and personal property. Claimant has been a national of the United States since his 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 contends that he and his wife who was not a United States national at the time of loss owned improved real property and household furnishings in Guatao Bauta, Havana, Cuba valued at \$226,442.35. The record contains a contract for the sale of the realty to claimant and his wife dated December 31, 1959; a sworn declaration made by the claimant before a Notary on August 19, 1966 setting forth the date of purchase of the land, and improvements thereon and listing the items of personal property and household furnishings and values thereof. The record further contains a complete description of the improvements, values thereof, several pictures of the improvements, and architects' appraisal of the improvements. Claimant states under oath that the property was free of encumbrances.

Under Cuban Law, a sale is consummated and becomes binding on the purchaser and seller if there has been a meeting of the minds on the object and price, even though neither the thing nor the price has been delivered (Lanzas, A Statement of the Laws of Cuba, 78 (1958). Registration is not necessary for the transfer of ownership or rights in rem between the parties concerned, but it is required if the transaction is to be binding on third parties (Lanzas, supra, 277).

On the basis of the entire record and the state of Cuban Law at the time of the transaction, the Commission finds that on December 31, 1959 the claimant and his wife, Hortensia Milagrosa Arroyo y Marquez, became the joint owners of improved real property known as "Kilometer 23 Country Club" located in the Borough of Guatao, Municipal District of Bauta, Province of Havana, Cuba. The Commission further finds that claimant and his wife jointly owned three automobiles (Ford Thunderbird, Plymouth, Willys Jeep) and household furnishings set forth in a sworn itemization included in the record.

On December 6, 1961 the Cuban Government published its Law 989 (Official Gazette, XXIII, No. 237, p. 23705) which confiscated all assets, personal property and real estate, rights, shares, stocks, bonds and securities of persons who had left the country.

Claimant left Cuba on December 26, 1966 and is resident in the United States. The Commission finds, in the absence of evidence to the contrary, that the subject real property and personal property were taken by the Government of Cuba on December 26, 1966 pursuant to the provisions of Law 989 when claimant left Cuba.

Based upon the entire record the Commission finds that the land, including the improvements thereon, had a value of \$157,619.92 at the time of loss. The Commission further finds that the automobiles and household furnishings, after depreciation, had an aggregate value at the time of loss of \$54,257.91. Accordingly, the Commission concludes that claimant suffered a loss in the amount of \$105,938.92 for his one-half interest in the claimed property within the meaning of Title V of the Act.

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 the Claim of Lisle Corporation, Claim No. CU-0644.)

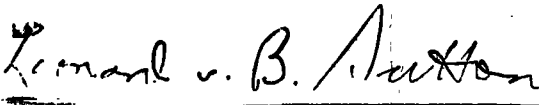
Accordingly, the Commission concludes that the amount of loss sustained by claimant shall be increased by interest thereon at the rate of 6% per annum from December 26, 1966, the date on which the loss occurred, to the date on which provisions are made for settlement thereof.

CERTIFICATION OF LOSS

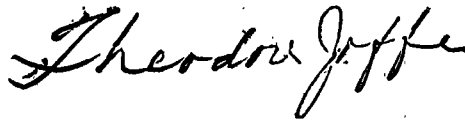
The Commission certifies that OSCAR MARTINEZ suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of One Hundred Five Thousand Nine Hundred Thirty-Eight Dollars and Ninety-Two Cents (\$105,938.92) with interest thereon at 6% per annum from the date of loss to the date of settlement.

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

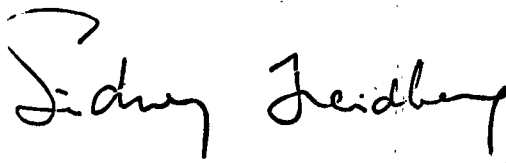
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Leonard v. B. Sutton, Chairman



Theodore Jaffe, Commissioner



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).)