

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

IN THE MATTER OF THE CLAIM OF

RUPERTO ALBERT MAYOR
MARTHA REAL MAYOR

Claim No. CU-3437

Decision No. CU 6058

Under the International Claims Settlement
Act of 1949, as amended

Counsel for claimants:

Eugene T. Mullen, Esq.

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 RUPERTO ALBERT MAYOR and MARTHA REAL MAYOR in the amended amount of \$52,391.50 based upon the asserted loss of various properties. Claimants have been nationals of the United States at all times pertinent to this claim.

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 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) (1970).)

Claimants have described their losses as follows:

1. House at 15A Calle C, Sueno, Santiago	\$ 8,200.00
2. Lot at Jucarito, Santiago	5,100.00
3. Lot at Santa Maria del Rosario	13,700.00
4. 300 shares of Cuban Venezuelan Oil Voting Trust	900.00
5. 150 shares of Trans-Cuba Oil Company	450.00
6. 5 shares of Petrolera Nacional de Motembo	50.00
7. Bank Account	176.50
8. Loan to Mr. Montaner	1,000.00
9. Loan to La Zarzuela (store)	10,000.00
10. Taking of \$10,865	10,865.00
11. Currency	<u>1,950.00</u>
Total	\$52,391.50

The Community Property Law of Cuba provides that spouses have equal interests in property acquired during coverture, except for inherited property or that acquired by one as a gift.

REAL PROPERTY

Based on evidence of record, including reports from abroad, the Commission finds that MARTHA REAL MAYOR was the sole owner of the realty in items (1) and (2), which formerly belonged to her father. Further, the Commission finds that claimants had equal interests in item (3), which had been purchased by MARTHA REAL MAYOR subsequent to marriage.

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).

On December 6, 1961, the Cuban Government published its Law 989 which effectively confiscated all assets, personal property and real estate, rights, shares, stocks, bonds and securities of persons who left the country.

Based on the evidence of record, and considering the nature of the properties, the Commission finds that the property in item (1) 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) Further, the Commission finds that the properties in items (2) and (3) were taken by the Government of Cuba on December 6, 1961, pursuant to the provisions of Law 989. (See Claim of Wallace Tabor and Catherine Tabor, Claim No. CU-0109, 25 FCSC Semiann. Rep. 53 [July-Dec. 1966]).

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.

Claimant has described the property in (1) as a one-story house of brick, with about eight rooms and usual facilities. Based on this record and the report from abroad which describes the site as of 283.48 square meters, the Commission finds that this property had a value of \$12,000 at the time of loss.

The property in item (2) is of 1,000 square meters, and the Commission finds that at the time of loss, it had a value of \$12,000.

Regarding item (3), the record includes a copy of a letter of January 19, 1956, reporting to MARTHA REAL MAYOR the recording in her name of a piece of property of 3,150 varas which was acquired for a price of \$3,720. Accordingly, the Commission finds that the property had a value of \$3,720 and each claimant suffered a loss of \$1,860 in this connection.

STOCK INTERESTS

The Commission finds on the evidence of record that claimants owned equal interests in 300 shares of the Cuban Venezuelan Oil Voting Trust (item 4) and in 150 shares of Trans-Cuba Oil Company (item 5).

In our decisions entitled the Claim of Felix Heyman (Claim No. CU-0412) and the Claim of D. R. Wimberly (Claim No. CU-3417) which we incorporate herein by reference, we held that the properties of the Trust and Company were nationalized or otherwise taken by the Government of Cuba on November 23, 1959, and that this type of claim is compensable to American nationals under the facts and conditions set forth therein. We need not again detail here the reasons or method used in determining the value per unit of the Trust as \$0.11971 and per share of Trans-Cuba as \$0.1198.

The Commission finds that claimants suffered a loss of \$35.91 in connection with the Trust, and \$17.97 in connection with Trans-Cuba.

The record also shows that claimants submitted five certificates, each for one share of Petrolera Nacional de Motembo S.A. These were issued to bearer on February 20, 1939. Claimants value these shares at \$10 each for a total of \$50. It appears that this company was organized in Cuba in 1938 with an authorized capital of \$900,000 divided into 180,000 shares with a par value of \$5.00.

The Commission has no evidence as to the value of this entity on the possible date of taking by the Government of Cuba, nor have claimants submitted any such evidence, although this has been suggested. Any assumption that the stock had a value of even \$5 per share would be purely

speculative and cannot form the basis for a finding of value by the Commission. Accordingly, the Commission is constrained to deny this item of claim and it is denied.

BANK ACCOUNT

Claimants have submitted a passbook of the Banco Franco Cubana reflecting a balance of \$176.50 in Account No. 032. In the absence of evidence to the contrary, the Commission finds that claimants' bank account, totalling \$176.50 was taken by the Government of Cuba on December 6, 1961, pursuant to Law 989, supra. (See Claim of Floyd W. Auld, Claim No. CU-0020, 25 FCSC Semiann. Rep. 55 [July-Dec. 1966].)

LOANS

Claimants state that they made a loan to Mr. Montaner, (item 8) who had a pineapple farm in Matanzas, in March 1958 of \$1,000; and also a loan of \$10,000 to La Zarzuela, a department store (item 9).

There is of record the statement of RUPERTO ALBERT MAYOR that the \$10,000 was advanced at the request of Vicente Ares Martinez, which loan was to be secured by a note signed by said Vicente Ares Martinez, and that it was the understanding of RUPERTO ALBERT MAYOR that the security for the note was an interest in the business, the department store known as La Zarzuela. Claimant RUPERTO ALBERT MAYOR further states that to the best of his knowledge and belief, the store was seized by the Cuban Government on July 11, 1962. This statement (in photocopy) is countersigned by Vicente Ares Martinez.

The Commission finds as to item (8) that there is no evidence that the asserted loan constituted a charge on property taken by the Government of Cuba. With regard to item (9) there is no evidence that this loan was recorded in the books of the enterprise, nor is there any evidence that at the time of any taking by the Government of Cuba, the assets of the enterprise were more than sufficient to pay this loan.

Accordingly, the Commission is constrained to deny these items of claim and they are hereby denied.

UNITED STATES CURRENCY

Claimant contends that while Purser of the Steamship "Yarmouth Castle", berthed in Havana harbor, he had in his possession, on his person, on September 19, 1959 personal funds in amount of \$10,865. This money was for use in exchanging Cuban money of persons who returned aboard with such Cuban money. On that day he relates the ship was boarded by Cuban Militia, headed by one William Morgan, now deceased, who searched the office and claimant, and took the said United States currency. He further states that the incident was well known to the members of the crew.

The record in this matter has been considered and the Commission is constrained to hold that the evidence is not sufficiently probative to permit a finding of loss. Accordingly, this item of claim is denied.

CUBAN CURRENCY

Claim was made for \$1,950 or \$1,900 in Cuban currency (the peso being on a par with the dollar) which was in claimant's possession prior to August 6, 1961, at which time he was not in Cuba.

In support of this item he has submitted photocopies of pre-Castro Cuban currency totalling 1,900 pesos.

By Law 963, published in the Official Gazette on August 4, 1961, a currency exchange was ordered, to be carried out on August 6 and 7, 1961. All old currency was to be turned in at designated Centers in exchange for new Cuban bank notes. No one was allowed, under the Law, to receive more than 200 new pesos, and all currency in excess of that amount was placed in a special account in the individual's name. After the exchange old currency was of no value. A 60-day extension was provided in Article X for those showing good reason for their inability to surrender their money on the specified days of exchange. Article XI of Law 963 declared all currency which, at the time of promulgation, was outside the territory under the jurisdiction of the Cuban State to be null and of no legal force. Law

964, published on August 9, 1961, provided for the confiscation of all of the new special accounts over 10,000 pesos established pursuant to Law 963.

In this case, the Commission concludes that Cuban Law 963 and its implementation with respect to claimants constituted a taking of property by the Government of Cuba within the contemplation of Title V of the Act; that the loss in the amount of 1,900 pesos occurred on August 4, 1961; and the pesos had a value of \$1,900 on that date. (See Claim of Betty G. Boyle, Claim No. CU-3473, 1968 FCSC Ann. Rep. 81)

RECAPITULATION

Claimants' losses within the scope of Title V of the Act are summarized as follows:

	<u>Item of Claim</u>	<u>Date of Loss</u>	<u>Amount</u>
MARTHA REAL MAYOR			
	15A Calle C	October 14, 1960	\$12,000.00
	Jucarito Lot	December 6, 1961	12,000.00
	Santa Maria Lot	December 6, 1961	1,860.00
	Cuban Venezuelan		
	Participation	November 23, 1959	17.95
	Trans-Cuba stock	November 23, 1959	8.99
	Bank Account	December 6, 1961	88.25
	Cuban Currency	August 6, 1961	<u>950.00</u>
		Total	\$26,925.19
RUPERTO ALBERT MAYOR			
	Santa Maria Lot	December 6, 1961	\$1,860.00
	Cuban Venezuelan		
	Participation	November 23, 1959	17.96
	Trans-Cuba stock	November 23, 1959	8.98
	Bank Account	December 6, 1961	88.25
	Cuban Currency	August 6, 1961	<u>950.00</u>
		Total	\$2,925.19

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 as follows:

	<u>FROM</u>	<u>ON</u>	
MARTHA REAL MAYOR			
	October 14, 1960	\$12,000.00	
	November 23, 1959	26.94	
	August 6, 1961	950.00	
	December 6, 1961	<u>13,948.25</u>	\$26,925.19
RUPERTO ALBERT MAYOR			
	November 23, 1959	\$ 26.94	
	August 6, 1961	950.00	
	December 6, 1961	<u>1,948.25</u>	\$ 2,925.19

CERTIFICATIONS OF LOSS

The Commission certifies that MARTHA REAL MAYOR 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-Six Thousand Nine Hundred Twenty-Five Dollars and Nineteen Cents (\$26,925.19) with interest thereon at 6% per annum from the respective dates of loss to the date of settlement; and

The Commission certifies that RUPERTO ALBERT MAYOR 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 Two Thousand Nine Hundred Twenty-Five Dollars Nineteen Cents (\$ 2,925.19) 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

FEB 11 1971

John S. Gerlock
John S. Gerlock, Chairman

Theodore S. ...
Theodore S. ...

NOTICE TO TREASURY: The above-referenced securities may not have been submitted to the Commission or if submitted, may have been returned; accordingly, no payment should be made until claimant establishes retention of the securities or the loss here certified.

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).)