

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

IN THE MATTER OF THE CLAIM OF

HELEN R. DE BUSTAMANTE

Claim No. CU -3466

Decision No. CU 4682

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 HELEN R. DE BUSTAMANTE for \$288,940.00 based upon asserted loss of real and personal property in Cuba. Claimant, HELEN R. DE BUSTAMANTE, 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.

The claim is based upon a one-half interest in property in Cuba

described as follows:

- | | |
|--|---------------------------------|
| 1. Furniture, household furnishings, silverware, jewelry, apparel and a bank account | \$ 38,000.00 |
| 2. Bonds issued by Cia. Cubana de Electricidad and the Government of Cuba | 45,715.00 |
| 3. Improved real property at No. 611 Virtudes, No. 777 Animas, No. 16 Conde, Nos. 102-104 Lugareno, Nos. 18-20 Luaces, Nos. 452-454 Paseo, and No. 212 Castillo Streets in Havana, No. 35 of November 27 Street in Regla, and unimproved land at Country Club Park in Marianao | 196,500.00 |
| 4. Mortgages on properties known as No. 39 Jose A. Cortina Street, No. 100 San Lazaro Street, and No. 701 Fifth Avenue, Havana | <u>8,725.00</u>
\$288,940.00 |

1. Furniture, household furnishings, silverware, jewelry, apparel and bank account

The evidence establishes and the Commission finds that pursuant to the community property laws of Cuba, the claimant acquired a one-half interest in the furniture and furnishings of her home in Havana, Cuba, consisting of items described in detail in the record.

On the basis of the bank statement on record, the Commission further finds that on and prior to December 6, 1961, the claimant owned a one-half interest in an account with the Banco Nacional de Cuba, Agencia No. B-2, in Vedado, with a balance of 9,370.71 pesos. Inasmuch as the peso was on a par with the United States dollar on December 6, 1961, the Commission holds that claimant's one-half interest in such account had the value of \$4,685.35.

The evidence further shows, and the Commission finds that the claimant was the sole and exclusive owner of jewelry, silverware, china, and personal apparel, all described in detail in the record.

On December 6, 1961, the Government of Cuba published Law 989 in its Official Gazette, which effected a confiscation of all goods and chattels, property rights, shares, stocks, bonds, bank accounts and other securities of persons who left Cuba. The claimant had left Cuba before that date and the Commission finds that this law applied to her personal property, and that it was taken on December 6, 1961, by the Government of Cuba. (See Claim of Wallace Tabor and Catherine Tabor, Claim No. CU-0109, 25 FCSC Semiann. Rep. 53 [July-Dec. 1966].)

In arriving at the value of the property in question, consideration was given to all of the evidence of record, including detailed descriptions and the statements by O. A. Beach and Gordon L. Luke who were familiar with the above mentioned property on the basis of their personal acquaintance with the claimant. Accordingly, the Commission finds that on December 6, 1961, the date of loss, the property in question had the following value:

<u>Property</u>	<u>Value of entire fee</u>	<u>Claimant's interest</u>	<u>Value thereof</u>
furniture, furnishings	\$3,000.00	1/2	\$1,500.00
jewelry, silverware, china, glassware	9,500.00	1/1	9,500.00
apparel	800.00	1/1	800.00
bank account	9,370.71	1/2	<u>4,685.35</u>
			\$16,485.35

2. Bonds

On the basis of the submitted statement by the broker, the Commission finds that pursuant to the community property law of Cuba, (supra), the claimant owned a one-half interest in bonds known as 5% First Mortgage Bonds of the Cuban Electric Company, due 1980, with a total face value of 10,000.00 pesos.

In our decision entitled the Claim of EBASCO Industries, Inc. (Claim No. CU-3548), which we incorporate herein by reference, we held that the properties mortgaged by the Company and serving as a security for the repayment of the debt evidenced by the bonds in question, were nationalized or otherwise taken by the Government of Cuba on August 6, 1960, and that this type of claim is compensable to an American national under the facts and conditions set forth therein. We need not again detail here the reasons or the method used in determining that the value of the bonds equaled their face amount in United States dollars. (See Claim of Frederick Snare Corporation, et al., Claim No. CU-2035.)

Accordingly, the Commission holds that claimant's loss concerning her one-half interest in the bonds in question amounted to \$5,000.00.

The portion of the claim which is based upon bonds issued by the Government of Cuba is discussed below.

3. Real Property

A portion of the claim is based upon asserted loss of ownership interest in improved real properties at No. 611 Virtudes, No. 777 Animas, No. 16 Conde, Nos. 102-104 Lugareno, Nos. 18-20 Luaces, Nos. 452-454 Paseo, and No. 212 Castillo Streets in Havana, No. 35 of November 27 Street in Regla, and in certain unimproved land at Country Club Park in Marianao.

In her affidavit of June 1, 1968, as corrected by her letter of June 18, 1968, the claimant stated that the real properties now in question were inherited by claimant's husband, Gustavo S. de Bustamante, from his father, and consequently they constitute his separate property, except the unimproved land at Country Club Park in Marianao.

Information obtained by the Commission from abroad shows, and the Commission finds that the unimproved land, known as lot Nos. 417 and 460 of Section 18 in Country Club Park, Marianao, recorded in the name of Gustavo S. de Bustamante, was purchased by him on June 26, 1931,

by funds having the character of separate property and for that reason the land in question maintained the character of and remained his separate property.

It is further acknowledged by the claimant that the Cuban government bonds, known as 5% Internal Loan of the Republic of Cuba, issue of 1905, held in the total face amount of 49,500.00 pesos, constitute the separate property of her husband, Gustavo S. de Bustamante.

In view of the foregoing, the Commission finds that claimant has no ownership interest, by reason of Cuban community property laws, in the real properties and Cuban Government bonds mentioned above. Accordingly, the portion of the claim which is based upon said real property and Cuban Government bonds must be and it is hereby denied.

4. Mortgages

On the basis of information obtained by the Commission abroad, and a copy of a check drawn upon The Trust Company of Cuba by Graciela Calderon de Carrera, the Commission finds that pursuant to the community property laws of Cuba (supra) the claimant owned on and prior to October 14, 1960, an interest in a mortgage, secured by real property at No. 100 San Lazaro Street in Havana, having an outstanding, unpaid balance of 7,687.12 pesos.

The Commission finds that the real property now mentioned was within the purview of the Cuban Urban Reform Law, published in the Cuban Official Gazette on October 14, 1960. The law covered residential, commercial, industrial and business office properties (Article 15).

Moreover, Article 30 provided for the cancellation of mortgages.

Based upon the foregoing, the Commission finds that the mortgage in question was taken by the Government of Cuba on October 14, 1960, the date when the law was published in the Official Gazette of Cuba.

(See Claim of Henry Lewis Slade, Claim No. CU-0183, 1967 FCSC Ann. Rep. 39, and Claim of Robert F. Sanchez, Executor of the Estate of Marita Dearing de Lattre, Deceased, Claim No. CU-0116.)

The Commission further finds that on October 14, 1960, a date on which the Cuban peso was on a par with the United States dollar, claimant's one-half interest in the mortgage amounted to one-half of the outstanding balance of \$7,687.12 or \$3,843.56.

The remaining portion of the claim, based upon asserted ownership of mortgages secured by real properties at No. 39 Jose A. Cortina Street and No. 701 Fifth Avenue in Havana, is denied for claimant's failure to establish the existence of such mortgages and her interest therein.

In view of the foregoing, the Commission finds that claimant suffered losses, as a result of actions of the Government of Cuba, within the meaning of Title V of the International Claims Settlement Act of 1949, as amended, in amounts as follows:

Furniture, furnishings, jewelry, silverware, china, glassware, apparel, and bank account, total	\$16,485.35
Bonds of the Cuban Electric Company	5,000.00
Mortgage on No. 100 San Lazaro Street	<u>3,843.56</u>
	\$25,328.91

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, and in the instant case it is so ordered as follows:

<u>FROM</u>	<u>ON</u>
August 6, 1960	\$ 5,000.00
October 14, 1960	3,843.56
December 6, 1961	<u>16,485.35</u>
	\$25,328.91

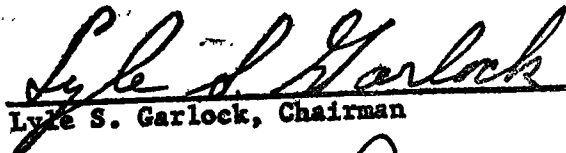
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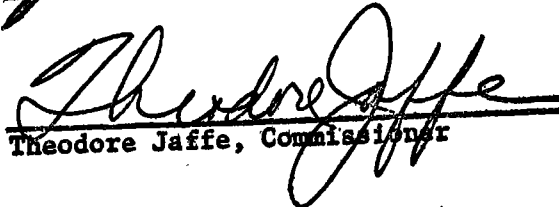
CERTIFICATION OF LOSS

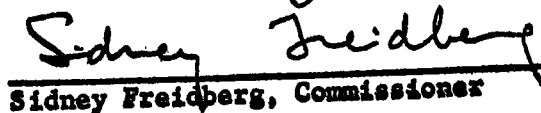
The Commission certifies that HELEN R. DE BUSTAMANTE suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Twenty-five Thousand Three Hundred Twenty-eight Dollars and Ninety-one Cents (\$25,328.91) with interest thereon 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

1 APR 1970


Lyle S. Garlock, 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).)