

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

IN THE MATTER OF THE CLAIM OF

OLINDA ARECES

Claim No. CU-4040

Decision No. CU

3941

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 opened by the Commission on behalf of OLINDA ARECES, who has since returned to the United States and processed the matter. The claim is now for \$25,435.13 and is based upon the asserted ownership and loss of 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.

Based upon the entire record, including notarial documents, the Commission finds that claimant and her husband, Narciso Areces, a Cuban national, were the joint owners, under the community property law of Cuba, of the following properties:

- (1) A plot of land in Arroyo Naranjo, Havana, improved by a house of about five rooms, with usual utilities.
- (2) A plot of land in Reparto Los Pinos, Havana, improved by
 - (a) a house of about six rooms, with usual facilities; and
 - (b) four apartments, each of four rooms, with attendant utilities.
- (3) A savings account in Banco Nacional.
- (4) Furniture and furnishings.

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).

Based on the foregoing and the evidence of record, the Commission finds that the above-described improved real property 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.)

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.

In the absence of evidence to the contrary, the Commission finds that the above-described bank account, totalling 2,105.07 pesos (which were on a par with United States dollars) and the furniture and furnishings were taken by the Government of Cuba on December 6, 1961. (See Claim of Floyd W. Auld, Claim No. CU-0020, 25 FCSC Semiann. Rep. 55 [July-Dec. 1966]; and 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 submitted a detailed description of the plots of land and the improvements thereon, and a list of the furnishings involved. The Commission has also considered evidence available to it as to the value of similar real properties, and personalty in Cuba.

Based upon the entire record, the Commission finds that the fair and reasonable values of the real and personal properties were as follows:

(1) Arroyo Naranjo plot and house	\$ 8,000.00
(2) Reparto Los Pinos plot and	
(a) house	6,000.00
(b) apartments	16,000.00
(3) Savings account	2,105.07
(4) Furniture and furnishings, less depreciation	<u>2,110.50</u>
	\$34,215.57

Claimant states, however, that pursuant to the provisions of the Urban Reform Law, she and her husband received the equivalent of \$2,468.40 against the expropriation of the house at Reparto Los Pinos (Item 2(a)) and \$6,546.54 against the expropriation of the apartments at that location (Item 2(b)).

Section 506 of the Act provides:

In determining the amount of any claim, the Commission shall deduct all amounts the claimant has received from any source on account of the same loss or losses.

In accordance with Section 506 of the Act, \$9,014.94, the amount received on account of the losses which constituted the basis of this claim in part must be deducted from the amount of loss sustained. The Commission finds that a certification of loss may be made with respect to claimant's interest, as shown below, in the amount of \$12,985.06 with respect to the two items involved. (See Claim of Richard G. Milk and Juliet C. Milk, Claim No. CU-0923, 1967 FCSC Ann. Rep. 63.)

The husband of claimant, Narciso Areces, owner of a one-half interest in the aforesaid real and personal property, including the business enterprise, in accordance with the Community Property Laws of Cuba, was not a national of the United States at the time of loss, or when this claim was filed. In order for the Commission to favorably consider a claim filed under Title V of the Act, it must be established that (1) the subject property was owned in whole or in part by a national of the United States on the date of nationalization or other taking; and (2) that the claim arising as a result of such nationalization has been continuously owned thereafter in whole or in part by a national of the United States to the date of filing claim with the Commission. (See Claim of Joseph Dallos Hollo, Claim No. CU-0101, 25 FCSC Semiann. Rep. 46 [July-Dec. 1966].)

Thus, while Narciso Areces has not asserted a claim herein for loss of his one-half interest in the subject properties, the instant claim was based upon the total value of all property included in the claim. Accordingly, the claim asserted herein for loss of properties owned by Narciso Areces, to the extent of a one-half interest, is hereby denied.

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, as follows:

<u>FROM</u>	<u>ON</u>
October 14, 1960	\$10,492.53
December 6, 1961	<u>2,107.79</u>
	\$12,600.32

CERTIFICATION OF LOSS

The Commission certifies that OLINDA ARECES suffered an uncompensated 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 Twelve Thousand Six Hundred Dollars and Thirty-two Cents (\$12,600.32) with interest thereon at 6% per annum from the dates of loss to the date of settlement.

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

OCT 1 1969

Leonard v. B. Sutton

Leonard v. B. Sutton, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

Sidney Freidberg

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).)