

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

IN THE MATTER OF THE CLAIM OF

FRANK EDWARD HIDALGO GATO

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU - 4445

Decision No. CU 6240

Counsel for claimant:

William C. Lewis, Esq.

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, in the amount of \$42,250.00, was presented by FRANK EDWARD HIDALGO GATO, based upon the asserted loss of cash, real and personal property. 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.

Claimant states that he owned the following property which was taken by the Government of Cuba:

(1) Cash in a savings account	\$ 7,709.31
(2) Real property and mortgages	18,913.86
(3) Furniture, furnishings and musical collection	<u>15,897.71</u>
Total	\$42,520.88

In support of the claim, the Commission has obtained claimant's sworn statement dated January 5, 1967, executed before a Notary Public in Havana, Cuba; an appraisal of the personal property in his apartment at No. 2612 Avenida 23, La Sierra, Havana, where he resided until 1967; an affidavit of J.Y. Porter, an attorney-at-law of Key West, Florida, to the effect that claimant's father, Frank Hidalgo Gato y Weatherford, was a natural born citizen of the United States and a resident of Key West, Florida, and that he died on February 16, 1966 in that city, leaving surviving his widow, Ardel L. Gato, and the claimant, the only child of a previous marriage. Claimant submitted the death certificate of his father and an appraisal for the real property involved in this claim.

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 must 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.

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The question, in all cases, will be to determine the basis of valuation which, under the particular circumstances, is "most appropriate to the property and equitable to the claimant". This phraseology does not differ from the international legal standard that would normally prevail in the evaluation of nationalized property. It is designed to strengthen that standard by giving specific bases of valuation that the Commission shall consider.

On the basis of the evidence of record, the Commission makes its findings of fact regarding the various property items under separate headings as set forth below.

(1) Cash in Bank

Claimant, in his sworn statement executed before a Notary Public in Cuba to whom he presented the evidence, indicated that he owned as of January 5, 1967 the following savings accounts:

- (a) No. 12918, Pass Book No. 987407 deposited with Agency No. 4-10-30 of the Banco Nacional de Cuba in the amount of \$5,690.03
- (b) No. 12919, Pass Book No. 987408 deposited with the same agency of the Banco Nacional de Cuba in the name of the claimant and of his mother, Maria Emma de la Concepcion Isabel Nadal y Marrill, \$4,038.56, of which claimant's share was \$2,019.28

The Commission therefore finds that claimant had on deposit with the Banco Nacional de Cuba an aggregate amount of \$7,709.31 (the Cuban peso being considered to be at par with the United States dollar). On December 6, 1961, the Government of Cuba published in the Official Gazette Law No. 989 which provided for confiscation of assets, real and personal property, rights, shares of stock, bonds and other property of persons who left Cuba. The Commission was informed that claimant left Cuba for the United States on or about October 9, 1968; that before leaving he had to surrender the passbooks to the Cuban authorities; and the Commission concludes that claimant's bank accounts in the amount of \$7,709.31 were taken by the Government of Cuba on October 9, 1968.

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Although the claim for loss of the bank accounts arose in 1968, subsequent to the close of the period for filing claims of this nature against the Government of Cuba, the Commission has held that it will consider on their merits claims for losses sustained subsequent to the deadline, so long as consideration thereof does not impede the determination of claims which arose prior to the close of the filing period. (See Claim of Vivian Morales, Claim No. CU-8739.)

(2) Real Property and Mortgages

The record shows that claimant's father, Frank Hidalgo Gato y Weatherford, owned a 1/30 interest in the following property:

- (a) Part of a former ranch, known as "La Josefita" situated at Santiago de las Vegas, province of Havana, and now consisting of land only;
- (b) Building lot measuring 193.61 square meters with house thereon numbered 25 Malecon (General Maceo Avenue), in the center of the city of Havana;
- (c) Building lot measuring 509.30 square meters with house thereon numbered 516 and 518 (formerly 110 and 112) San Nicolas Street, in the center of the city of Havana;
- (d) Building lot measuring 1,133.33 square meters with a hotel building (Hotel Presidente) erected thereon, located at the intersection of Calle 7 (Calzada) and Avenida G (Avenida de los Presidentes) in the Vedado section of the city of Havana;
- (e) Six mortgages in the original amount of \$28,600.00, reduced to \$23,209.48, secured by improved real property situated in Havana, Marianao, Jaruco and Guayabal, Cuba;
- (f) Building lot measuring 9,651.01 square meters situated in Santiago de las Vegas, unimproved.

The record further shows that claimant's father owned a 598/10,000 share in the following property:

- (g) Building lot measuring 788.77 square meters with two houses erected thereon, numbered 418 and 420 Calzada del Monte (formerly Calzada de Maximo Gomez), in the center of the city of Havana.

Additionally, claimant's father owned a 922/10,000 share in the following property:

- (h) Building lot measuring 277.20 square meters with a house thereon numbered 1502 Calzada de Bejucal, in the Arroyo Apolo section of Havana.

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Finally, claimant's father owned a 1/5 interest in:

- (i) Building lot measuring 180.79 square meters with a house thereon, numbered 3 Gertrudis Street in the Arroyo Apolo section of Havana.

The record shows that all of the above described real property was subject to the Law on Urban Reform published in the Official Gazette of October 14, 1960, and the Commission finds that this property was taken by the Government of Cuba on October 14, 1960 (see Claim of Henry Lewis Slade, Claim No. CU-0183, 1967 FCSC Ann. Rep. 39).

The record further shows that claimant's father was married twice; at the time of his death in 1966 he was married to Ardel L. Gato; neither claimant's mother, who was divorced, nor Ardel L. Gato had an interest in the property described above which claimant's father inherited from his ancestors; however, since Frank Hidalgo Gato y Weatherford died intestate in Key West, Florida, his claim for the loss of property against the Government of Cuba descended under the laws of intestacy of the State of Florida, where the deceased was domiciled, as follows: one-half to his widow, Ardel L. Gato, and one-half to his son, the claimant herein.

The Commission, therefore, finds that claimant is entitled to certification of losses under Title V of the Act with respect to the real property and mortgages, as stated below.

The value of the property is based upon an appraisal made by Rafael Garcia Bango, architect and engineer in Havana, who evaluated the properties in 1950.

1 Property	2 Father's Interest in Appraised Value	3 Claimant's Interest (1/2 of 2)
(a) La Josefita	1/30: \$ 675.88	\$ 337.94
(b) 25 Malecon	1/30: 1,342.33	671.16
(c) 516/518 S. Nic.	1/30: 3,714.33	1,857.16
(d) H. Presidente	1/30: 16,866.67	8,433.33
(e) 6 mortgages	1/30: 773.66	386.83
(f) Lot Santiago	1/30: 675.88	337.94
(g) 418/20 C. Monte	5.98%: 6,975.07	3,487.54
(h) 1502 C. Bejucal	9.22%: 1,305.97	652.98
(i) 3 Gertrudis	1/5: 1,702.34	851.17
	Total	\$17,016.05
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(3) Furniture, Furnishings and Musical Collection

The record indicates that the claimant was the owner of certain furniture and furnishings in his residence at No. 2612 Avenida 23, La Sierra, Havana, consisting of 186 items listed in detail, and of a musical collection of several hundred records of classical and popular music, including albums with series of records. A professional appraiser evaluated the furniture, furnishings and musical collection in the amount of \$15,897.71.

The Commission finds that this personal property was taken by the Government of Cuba under Law 989 on October 9, 1968, the date of departure of the claimant from Cuba to the United States. (See Morales, supra.)

The Commission further finds that the evaluation in the amount of \$15,897.71 is equitable and that claimant suffered a loss in that amount.

Recapitulation

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

<u>Property</u>	<u>Date of Loss</u>	<u>Amount</u>
(1) Cash	October 9, 1968	\$ 7,709.31
(2) Real property and mortgages	October 14, 1960	17,016.05
(3) Furniture, furnishings and musical collection	October 9, 1968	<u>15,897.71</u>
	Total	\$40,623.07

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, FCSC Claim No. CU-0644), and in the instant case it is so ordered as follows:

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<u>From</u>	<u>On</u>
October 14, 1960	\$17,016.05
October 9, 1968	<u>23,607.02</u>
Total	\$40,623.07

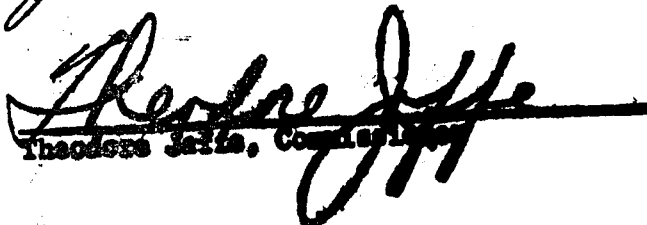
CERTIFICATION OF LOSS

The Commission certifies that FRANK EDWARD HIDALGO GATO 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, in the amount of Forty Thousand Six Hundred Twenty-Three Dollars and Seven Cents (\$40,623.07) with interest thereon at 6% per annum from the respective dates of the loss to the date of settlement.

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

JUN 23 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).)

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