

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

IN THE MATTER OF THE CLAIM OF

GILBERT R. CUSTIN
CARMEN I. CUSTIN

Claim No. CU -0026

Decision No. CU 5393

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 GILBERT R. CUSTIN and CARMEN I. CUSTIN for \$69,603.14 based upon the asserted ownership and loss of real and personal property in Cuba. Claimant GILBERT R. CUSTIN has been a national of the United States since birth but no evidence has been submitted to establish the nationality of claimant CARMEN I. CUSTIN.

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.

Claim is made herein for the loss of the following property:

1. Farm, Los Cocos, Santiago de las Vegas
2. Lot 30, Block 15, Santa Fe Park, Isle of Pines
3. Beach Lot, Jibacoa
4. Farm, La Loma, Santa Maria del Rosario
5. Building, 609 San Lazaro Street, Havana
6. Sanatorium, Iruretagoyena, Avenue 69, Marianao
7. Bank accounts and insurance

In support of the claim for property listed as No. 1, claimant GILBERT R. CUSTIN has submitted evidence establishing his purchase of a one-half interest in that property by deeds dated December 10, 1946 and March 8, 1955. By deed dated December 10, 1946, he received a one-half interest in a plot containing 2,326 varas of land with a one-story house having brick walls, Cuban tile roofs, and containing a living room, dining room, kitchen, two bedrooms, four closets, bathroom and porch. In 1955, an adjoining plot of land with an area of 6,961 square meters was purchased, GILBERT R. CUSTIN again acquiring a one-half interest in the property.

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

Accordingly, the Commission finds that GILBERT R. CUSTIN's interest in the real property known as Los Cocos was taken by the Government of Cuba on December 6, 1961.

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.

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.

Based upon the value of the property at the time of purchase and the value of similar properties in Santiago de las Vegas, the Commission finds that the value of the house and land known as Los Cocos on December 6, 1961 was \$18,634.00, and concludes that GILBERT R. CUSTIN suffered a loss in the amount of \$9,317.00 for his one-half interest within the meaning of Title V of the Act, as a result of the taking of the property by the Government of Cuba on December 6, 1961.

Evidence has been submitted which establishes an ownership interest in properties listed as items 4, 5, and 6 by CARMEN I. CUSTIN, which had been inherited from her mother in 1931. Inasmuch as CARMEN I. CUSTIN had inherited her interest in these properties, they were not subject to the community property laws of Cuba and no ownership interest was obtained by GILBERT R. CUSTIN and his claim therefor must be and hereby is denied.

Claimants state that the items claimed were taken by the Government of Cuba in 1960 under Urban Reform Laws, at which time the owner of record, CARMEN I. CUSTIN, was not a national of the United States.

Section 504 of the Act provides, as to ownership of claims, that

(a) A claim shall not be considered under section 503(a) of this title unless the property on which the claim was based was owned wholly or partially, directly or indirectly by a national of the United States on the date of the loss and if considered shall be considered only to the extent the claim has been held by one or more nationals of the United States and continuously thereafter until the date of filing with the Commission.

Section 502(1) of the Act defines the term "national of the United States" to mean "(A) a natural person who is a citizen of the United States, . . . The term does not include aliens."

Thus, in order for the Commission to favorably consider claims under Section 503(a) of Title V of the Act, it must be established that 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. Since CARMEN I. CUSTIN is not a national of the United States, it is clear that her claim was not owned by a United States national on the date of nationalization or other taking.

Claim has been asserted also for Lot 30, Santa Fe Park, Isle of Pines; Beach Lot at Jibacoa; and bank accounts and insurance. However, no evidence has been submitted to establish claimants' ownership of such items, their value or their taking by the Government of Cuba. Accordingly, claim for such property must be and hereby is 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.


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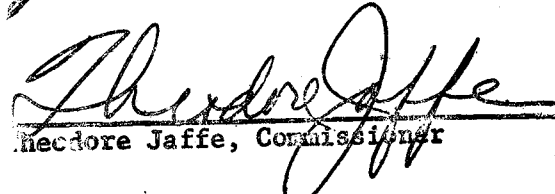
CERTIFICATION OF LOSS

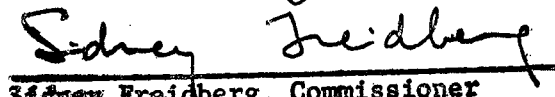
The Commission certifies that GILBERT R. CUSTIN suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Nine Thousand Three Hundred Seventeen Dollars (\$9,317.00) with interest at 6% per annum from December 6, 1961 to the date of settlement.

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

JUL 29 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).)

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