

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

IN THE MATTER OF THE CLAIM OF

RICHARD FRANCHI ALFARO
ANNA ALFARO

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU - 0048

Decision No. CU - 813

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, for \$150,000.00 was presented by RICHARD FRANCHI ALFARO individually and on behalf of ANNA ALFARO based upon the asserted loss of improved real property in Cuba. Claimants have been nationals of the United States since their births in the United States.

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.

Claimants contend that they lost an investment in real property in Cuba valued at \$150,000.00.

The record reflects and the Commission finds that RICHARD FRANCHI ALFARO inherited the real property, at Avenida de Italia 552-554, in Havana, Cuba; one-half thereof being subject to a life estate in favor of his mother, ANNA ALFARO.

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). The law further provided that if a tenant did not occupy the property, or had subleased or transferred its use to another, the property could be sold to the occupant; and further, that an occupant, whether a tenant or subtenant, or not, could purchase the property in the manner outlined (Article 9). Article 21 of the law provided that present owners of urban buildings sold under the law should receive the assigned price; however, under Article 25 ownership of so-called tenement houses would be transferred to the State without compensation to the erstwhile owners. Moreover, Article 30 provided that if urban buildings transferred under the law were mortgaged, execution of the contract of sale should have the effect of canceling the mortgage. Following Chapter VI of the law appears a section entitled "Temporary Provisions" and the third paragraph thereof provides that citizens of foreign countries who do not have the status of legal residents shall be excluded from the rights and benefits conferred by this law.

Claimant states that after the Urban Reform Law was published, he has heard nothing and has received no compensation for his property.

Based on the foregoing and the evidence of record, the Commission finds that the said real property in Havana, Cuba, 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 Official Gazette.

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 asserts the value of this real property as \$150,000.00. He describes the property as a lot of 482.7 square meters improved by a two-story building consisting of four stories and twenty-four apartments on the upper floors. In support of his evaluation he offers an affidavit of a Cuban lawyer (presently in the United States) assertedly familiar with Havana real estate and with the property subject of this claim, copies of letters purporting to establish an offer to purchase the property for that amount, and his assertion that its location in the heart of the Havana business district (facing three corners and two other streets) made the land much more valuable than the building on it.

The record shows that in the Registration Books in Havana, Cuba, the subject property was valued at \$45,000.00 in Registration No. 27, and at \$60,000.00 in Registration No. 28. Furthermore, the record shows that the building was insured for \$40,000.00 from 1949 to 1959.

On the basis of the entire record the Commission finds that the aforesaid property had a value of \$60,000.00.

Accordingly, the Commission finds that RICHARD FRANCHI ALFARO and ANNA ALFARO suffered losses within the meaning of Title V of the Act as a result of the taking of the above described real property by the Government of Cuba on October 14, 1960.

As stated above, one-half of the property was encumbered with a life estate in favor of ANNA ALFARO. According to evidence of record she was 83 years old at the time of taking. The claimant's interest in one-half of the property was, therefore, a remainder interest. The value of the life estate and of the remainder interest must be determined.

The Commission has adopted as a basis for valuation of life and remainder interests the Makehamized mortality table, appearing as Table 38 of United States Life Tables and Actuarial Tables 1939-41, and a 3-1/2% interest rate, compounded annually, as prescribed by United States Treasury Department regulations of June 24, 1958, for the collection of gift and estate taxes, respectively. (See 23 F. R. 4547, 26 C.F.R. 2031-7.) According to the method of valuation, a life estate in property so encumbered is valued at .14123 of the entire estate, and the remainder interest is valued at .85877 of the entire estate. Therefore, since the value of one-half of the property in question is \$30,000.00 the life estate thereon is valued at \$4,236.90 which is .14123 of that amount and the remainder is valued at \$25,763.10 which is .85877 of that amount.

Therefore, the Commission finds that the interests of RICHARD FRANCHI ALFARO and ANNA ALFARO in the improved real property which was taken by the Government of Cuba, had values of \$55,763.10 and \$4,236.90, respectively.

The Commission has decided that in the 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 the Claim of Lisle Corporation, EGSC Claim No. (CJ-0644).

Accordingly, the Commission concludes that the amount of the loss sustained by each claimant shall be increased by interest thereon at the rate of 6% per annum from the date on which the loss occurred to the date on which provisions are made for the settlement thereof.

CERTIFICATION OF LOSS

The Commission certifies that RICHARD FRANCHI ALFARO 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 Fifty-Five Thousand Seven Hundred Sixty-Three Dollars and Ten Cents (\$55,763.10) with interest thereon at 6% per annum from October 14, 1960 to the date of settlement; and

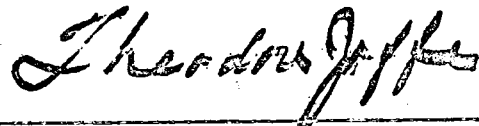
The Commission certifies that ANNA ALFARO suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Four Thousand Two Hundred Thirty-Six Dollars and Ninety Cents (\$4,236.90) with interest thereon at 6% per annum from October 14, 1960 to the date of settlement.

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

14 DEC 1967



Edward D. Re, Chairman



Theodore Jaffe, Commissioner



Lavern R. Dilweg, Commissioner

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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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.

COMMUNICATIONS
This is a true and correct copy of the decision
of the Commission which was entered as the final
decision on _____
JUL 15 1953

José M. M. M.
Chief of the Commission