

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

IN THE MATTER OF THE CLAIM OF

EMILIO DIAZ  
JOSEFA DIAZ

Claim No. **CU-0200**  
Claim No. CU-0201

Decision No. **CU-3365**

Under the International Claims Settlement  
Act of 1949, as amended

Counsel for claimants:

Rufus King, Esq.

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Appeal and objections from a Proposed Decision entered on December 11, 1968.  
No hearing requested.

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Hearing on the record held on September 15, 1971.

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FINAL DECISION

Under date of December 11, 1968, the Commission issued its Proposed Decision certifying losses in favor of EMILIO DIAZ and JOSEFA DIAZ in the amounts of \$65,760.00 and \$14,500.00, respectively, plus interest. These certifications covered three items of real property determined to have had an aggregate value of \$51,260.00 and interests in a Cuban partnership valued at the aggregate amount of \$29,000.00.

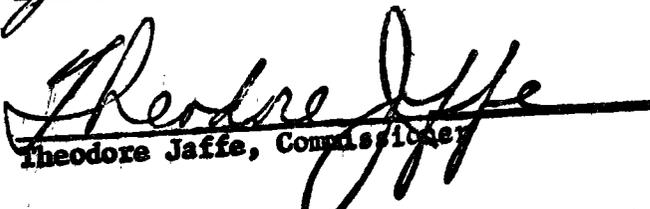
Claimants objected to the valuations assigned to the real properties and requested increases in the valuations. However, no evidence was submitted in support of the objections.

Upon consideration of claimants' objections in light of the entire record, the Commission finds no valid basis for altering the decision previously entered. Accordingly, the Proposed Decision of December 11, 1968 is affirmed in all respects.

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

SEP 15 1971

  
Lyle S. Garlock, Chairman

  
Theodore Jaffe, Commissioner

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PROPOSED DECISION

These claims against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, in the total claimed amount of \$216,624.00, were presented by EMILIO DIAZ and his wife, JOSEFA DIAZ. The claim of EMILIO DIAZ, in the amount of \$196,572.00, is based upon the loss of improved real properties in the District of Guanabacoa, Province of Havana, and his interest in a partnership known as Diaz y Compania, Sociedad Limitada, hereinafter referred to as Diaz & Company. The claim of JOSEFA DIAZ, in the amount of \$20,052.00, is based solely on her interest in the aforesaid business enterprise, Diaz & Company. Claimants, EMILIO DIAZ and JOSEFA DIAZ, have been nationals of the United States since their naturalization on November 16, 1931, and April 14, 1947, respectively.

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)]<sup>7</sup>, 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<sub>a</sub> 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.

OWNERSHIP

The claim of EMILIO DIAZ includes real property located in the District of Guanabacoa, Province of Havana, Cuba, which he has described as follows:

- (1). #160 Carretera Central, also known as #74 Calzada de Guines, between Mato and Perkins Streets, Barrio de Luyano, Reparto Luyano, District of Guanabacoa, Province of Havana, with office or commercial building and eight (8) apartments, retaining wall, fence, water and plumbing facilities;
- (2). Perkins Street, near Carretera Central, Barrio de Luyano, Reparto Luyano, Guanabacoa, Province of Havana, lot with one-story building for warehousing and factory facilities; and
- (3). Fifth and A Streets, Reparto Habana Nueva, Barrio Cojimar, District of Guanabacoa, Province of Havana, with one-story commercial building.

Claimants, EMILIO DIAZ and JOSEFA DIAZ, have asserted their respective claims for loss of their interests in the partnership known as Diaz & Company, located at 214 Lombillo Street, Cerro, near Calzada del Cerro, District of Guanabacoa, Havana, Cuba. This business enterprise was doing business as a gasoline service station and as the "Garage Lombillo", including a service station, garage, mechanical and body shops, with painting, electrical, lubricating and washing facilities.

The claimants have submitted various affidavits of former Cuba residents, copies of contracts of sale and an Agreement pertaining to Diaz & Company, dated July 20, 1959. Further, the Commission has additional information available to it concerning the ownership, loss and value of the properties, subject of these claims. Based on the entire record, the Commission finds that claimant EMILIO DIAZ was the sole registered owner of the improved real properties, listed above, located in the District of Guanabacoa, Province of Havana; and that EMILIO DIAZ and JOSEFA DIAZ owned the controlling interests in the business enterprise Diaz & Company, as discussed hereafter in this decision.

NATIONALIZATION OF THE PROPERTY

The Government of Cuba published in its Official Gazette, Special Edition, on October 14, 1960, the Urban Reform Law. Under Article 2 of 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 15 covered residential, commercial, industrial and business office properties. Article 9 of 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. Following Chapter VI of the law appears a section entitled "Temporary Provisions" and the third paragraph thereof provided 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, EMILIO DIAZ, has submitted evidence to establish that his properties were rental properties and that claimant is a national of the United States not residing in Cuba; and that the properties, subject of his claim, were taken pursuant to the Urban Reform Law. Based on the foregoing and the evidence of record, the Commission finds that the properties of EMILIO DIAZ located in the District of Guanabacoa, consisting of rental properties, were 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 FGSC Ann. Rep. 39.)

Based on the evidence of record and the assertions of claimants herein, the Commission finds that the business enterprise known as Diaz & Company in which the claimants had controlling interests, was taken on July 1, 1962, pursuant to the provisions of Cuban Law 851 (Official Gazette, July 6, 1960). Law 851 authorized certain governmental officials of Cuba to nationalize the properties or concerns belonging to natural or juridical persons, nationals of the United States, or the concerns in which said persons have a majority interest or participation, even though the enterprise or firm was organized

under the laws of Cuba. (See Claim of Berwind White Coal Mining Company, Claim No. CU-0538.)

Accordingly, the Commission concludes that the claimants herein suffered losses of the aforesaid properties within the meaning of Title V of the Act.

VALUE

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, EMILIO DIAZ, states that he acquired the real properties in the District of Guanabacoa, Havana, in 1950, 1953 and 1956; that the total cost of the land was \$41,320.00 and the cost of the improvements was \$135,200.00; and that each of the claimants' interests in the business enterprise, Diaz & Company, was valued at \$20,052.00.

In letter of August 31, 1967, EMILIO DIAZ referred to the property at Perkins Street, Carretera Central, Block 3, comprising 950 square meters, stating that this property was purchased by him under Contract 261 of November 15, 1950, and Contract 201 of August 31, 1952, for a total purchase price of \$15,394.00.

Evidence of record available to this Commission, including information from the Cuban land register of Havana, discloses that EMILIO DIAZ paid approximately \$3,000.00 of the purchase price of property located at #160 Carretera Central, Havana, under Contract 261, dated November 15, 1950, with approximately \$5,394.00 in installments remaining to be paid the seller, Prima Blanco; that the balance of the purchase price on this property was paid under Contract 201 of August 31, 1952; that claimant paid \$2,800.00 for lot 39 and part of lot 37, Block 4 of Havana, Finca 8802 of Book 250, folio 337, Fifth & A Streets, Cojimar District; and that under Finca 8824, Book 251, folio 91, Inscription 2, claimant acquired a lot on Perkins Street for \$1,200.00. Thus, the record discloses that claimant apparently

paid \$12,394.00 for all of the lots, including the parcel on Carretera Central which already had a one-story concrete building standing on the lot. The evidence also discloses that following purchase of these properties claimant constructed an addition to the standing building, stated by claimant to include eight apartments, as well as certain improvements to the land; and that claimant added a commercial type structure to each of the two remaining lots.

Accordingly, with respect to the aforesaid real properties, registered in the name of EMILIO DIAZ, the Commission has considered the assertions of claimant herein and the evidence of record, including contracts of sale and three affidavits of former Cuban residents, familiar with the properties in question. Additionally, the Commission has considered the information discussed hereinabove and other information concerning the value of the aforesaid Cuban properties, as well as evidence of record available to the Commission concerning the value of similar properties located in Guanabacoa, Havana and elsewhere in Cuba.

Based on the evidence of record, the Commission finds that these properties had values, as shown hereafter, and concludes that claimant EMILIO DIAZ suffered a loss of the properties within the meaning of Title V of the Act when such real property was taken by the Government of Cuba on October 14, 1960.

(1). #160 Carretera Central, with improvements	\$32,500.00
(2). Perkins Street, with improvements	7,800.00
(3). Fifth and A Streets, with improvements	<u>10,960.00</u>
TOTAL	\$51,260.00

With respect to the partnership known as Diaz & Company, the evidence of record includes an informal balance sheet dated January 1, 1962, an Agreement dated July 20, 1959, affidavits of former residents of Cuba, including Jose C. Martin, and the assertions of claimants herein, as well as information available to this Commission concerning the value of the partnership in question. This data discloses that Diaz & Company was formed by claimants on November 25, 1957, and that on December 13, 1957, claimants purchased the garage business of Antonio Barro and Avelino Gonzalez. Thereafter, pursuant

to an Agreement of July 20, 1959, Diaz & Company acquired new associates and augmented its capital to \$32,000.00, giving \$4,500.00 in shares to EMILIO DIAZ to be added to the \$10,000.00 he held when the company was formed in November 1957, or, a total of \$14,500.00.

Thus, the partnership doing business as a service station and the "Garage Lombillo" had the following partners in July 1959 with the shares indicated:

EMILIO DIAZ	\$14,500.00
JOSEFA DIAZ	14,500.00
Emilio del Busto	1,000.00
Jose C. Martin	<u>2,000.00</u>
TOTAL	\$32,000.00

It further appears that for income tax purposes the 1962 joint return of claimants included an item for loss of \$40,104.00 in connection with the partnership interests of claimants in Diaz & Company. In the year that the loss arose, the Internal Revenue Service allowed the sum of \$5,380.00. While claimants have stated that the property was worth much more, claimants have not submitted documentation as to such value other than the Agreement, affidavits and an unaudited balance sheet.

The Commission finds that the affidavits and informal balance sheet submitted by the claimants are not supported by supplemental evidence to establish the ownership, extent and value of the items included in the "Assets". However, since the record does include the July 1959 Agreement between the aforesaid persons, supplemented by other information available to the Commission, the Commission hereby determines that the claimants suffered losses of their respective interests in Diaz & Company within the meaning of Title V of the Act, each in the amount of \$14,500.00, as a result of the taking of this firm by the Government of Cuba on July 1, 1962.

RECAPITULATION

I. EMILIO DIAZ

<u>Property</u>	<u>Date of Taking</u>	<u>Amount</u>
#160 Carretera Central	October 14, 1960	\$32,500.00
Perkins Street	October 14, 1960	7,800.00
Fifth and A Streets	October 14, 1960	10,960.00
Share, Diaz & Company	July 1, 1952	<u>14,500.00</u>
	TOTAL	\$65,760.00

II. JOSEFA DIAZ

Share, Diaz & Company	July 1, 1952	\$14,500.00
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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 it is so ordered in the instant claims.

Accordingly, the Commission concludes that the amounts of the losses sustained by claimants shall be increased by interest thereon at the rate of 6% per annum from the respective dates of loss, to the date on which provisions are made for settlement thereof, as follows:

EMILIO DIAZ: On \$51,260.00 from October 14, 1960  
On 14,500.00 from July 1, 1962  
TOTAL \$65,760.00

JOSEFA DIAZ: On \$14,500.00 from July 1, 1962.

CERTIFICATION OF LOSSES

The Commission certifies that EMILIO DIAZ 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 Sixty-Five Thousand Seven Hundred Sixty Dollars (\$65,760.00), with interest thereon at 6% per annum from the respective dates of loss to the date of settlement; and

the Commission certifies that JOSEFA DIAZ 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 Fourteen Thousand Five Hundred Dollars (\$14,500.00), with interest thereon at 6% per annum from July 1, 1962, to the date of settlement.

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

**DEC 11 1968**

*Leonard v. B. Sutton*  
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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).)