

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

IN THE MATTER OF THE CLAIM OF

JOSE R. USATEGUI

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-0214

Decision No. CU 4222

Counsel for claimant:

Stuart Kessler, Esq.

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 JOSE R. USATEGUI for \$140,625.00 based upon the asserted ownership and loss of an interest in a holding company. Claimant has been a national of the United States since naturalization in 1952.

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 describes his loss as 5/8 of the shares of USAMA, S.A., a family corporation organized for the purpose of renting apartments in two residential buildings owned by it. These were an apartment building at 17 and L Streets in Vedado assertedly valued at \$175,000 and another at "22d and 11 Streets" in Vedado, assertedly valued at \$50,000.

The record establishes that by 1956, claimant had acquired a 5/8 interest in USAMA, S.A.

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 real property held by USAMA, S.A. in Vedado 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.)

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 record, including affidavits, and a report from abroad establishes that Cia. Inmobiliaria USAMA, S.A., held title to a 4-story

building at 17 and L Streets in Vedado, Havana, Cuba. The Commission finds, however, that the record does not establish that USAMA held any other property on October 14, 1960.

In arriving at the value of the property the Commission has considered claimant's description of a 4-story building having 12 apartments and four stores; the appraised value recorded as \$107,000; and the gross monthly income of \$1,165. After considering the usual expenses attendant on operation of such a building, the Commission finds the value as \$104,850. However, the record reflects two mortgages therein in an aggregate amount of \$35,000 which must be deducted. Thus, the equity in the property was \$69,850.

Accordingly, the Commission concludes that claimant suffered a loss in the amount of \$43,656.25 within the meaning of Title V of the Act, as the result of the taking of USAMA, S.A. by the Government of Cuba.

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.

CERTIFICATION OF LOSS

The Commission certifies that JOSE R. USATEGUI 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 Forty-Three Thousand Six Hundred Fifty-Six Dollars and Twenty-Five Cents (\$43,656.25) with interest 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

NOV 26 1969

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).)