

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

IN THE MATTER OF THE CLAIM OF

NELLY ORMOND TERRY

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU - 0399

Decision No. CU - 5867

Counsel for claimant:

Kramer, Marx, Greenlee & Backus
By Robert K. Adikes, Esq.

PROPOSED DECISION

This claim against the Government of Cuba, filed under Title V of the International Claims Settlement Act of 1949, as amended, was presented by NELLY ORMOND TERRY for \$44,278.78 based upon the asserted loss of interests in real property and stock interests in Cuba. Claimant has been a national of the United States since birth on March 7, 1892.

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 has described her losses as follows:

(1) Land - Palma Sola, Camarones, Las Villas Life estate in 2/3 of 1/4	\$ 9,907.84
(2) Land - La Estrella, Cartagena, Rodas, Las Villas - Life estate in 2/3	9,907.84
(3) Apartment house - in Cienfuegos, at 85-87-89 Avenida de la Independencia, and annex at 232 Santa Clara - Life estate in 2/3	5,950.00
(4) 2-story house in Cienfuegos, at 142-144-146 San Fernando Street - Life estate in 2/3	1,983.33
(5) 23 shares of Cia. Mercantil de Cienfuegos, S.A. (Cienfuegos Commercial Co.) Life estate in 2/3	793.33
(6) Debt of Cienfuegos Commercial Co. - unre- mitted rents and dividends	15,736.14

The record includes a copy of the document winding up and distributing the assets of the estate of claimant's husband, who died on July 21, 1952; reports from abroad; copies of material furnished to Internal Revenue Service; an affidavit from a nephew of the former attorney for the TERRY family, affirming his destruction of the records of the attorney after his death in 1963; as well as photocopies of excerpts from the records of Cienfuegos Commercial Co. On the basis of this record the Commission finds that claimant owned the asserted interests in the above-described properties.

Land

The Cuban Agrarian Reform Law, published in the Official Gazette on June 3, 1959, established the National Agrarian Reform Institute and provided for the expropriation of rural properties and distribution among peasants and agricultural workers. Regulations governing such expropriations were contained in Law 588, published in the Cuban Official

Gazette on October 9, 1959. Claimant asserts the rural properties were taken accordingly. Thus, in the absence of other evidence, the Commission finds that the Palma Sola and Estrella properties were taken by the Government of Cuba on October 9, 1959.

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.

In determining the values of these properties, the Commission has considered the computations furnished by claimant, which are confirmed by the reports from abroad. Counsel has submitted copy of its memorandum of December 10, 1963, which sets forth the material that went into the valuation of the subject Cuban properties. This was the basis for the losses claimed before the Internal Revenue Service, and which were allowed according to the claim form.

Palma Sola Property: This consisted of 75 caballerias and 200 cordelles of land. The values considered were the 1953 liquidation proceeding value of \$10,000 for 1/4; an apparently depressed value of \$7,561 assigned in 1960 to 1/4; capitalization at 12 of average net earnings of \$16,000 for 1948 through 1959, resulting in \$48,000 for a 1/4 interest, and \$32,000 for 2/3 thereof.

As stated above 2/3 of 1/4 of the whole property was encumbered with a life estate in favor of claimant. According to evidence of record she was 68 years old at the time of loss in October 1959. The value of the life estate must therefore 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 that method of valuation, a life estate in property so encumbered is valued at .29750 of the estate (according to claimant's nearest birthday). Therefore, since the value of 2/3 of 1/4 is \$32,000, the life estate thereon is valued at \$7,520, which is .29750 of that amount.

La Estrella Property: This consisted of 80 caballerias. Similarly as outlined above, the values considered were the 1953 liquidation proceeding value of \$30,000; a 1960 assigned value of \$24,000; and capitalization of average net earnings for the last five year period, resulting in \$48,000 for the whole and \$32,000 for 2/3 thereof.

As stated above, 2/3 of the whole property was encumbered with a life estate in favor of claimant, who was 68 years old at the time of loss. According to the method of valuation described above, her life estate of .29750 of \$32,000 is valued at \$7,520 -- .29750 of \$32,000.

Improved realty

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 were outlawed (Article 2). The law covered residential, commercial, industrial and business office properties (Article 15).

Accordingly, in the absence of evidence to the contrary the Commission finds that the Independencia property with annex, and the San Fernando property were taken by the Government of Cuba on October 14, 1960, pursuant to the Urban Reform Law.

Independencia and annex: This is a 2-story apartment house (steel, concrete and brick) with eight apartments, and an adjoining structure

(masonry and steel). The values considered were the 1953 liquidation proceeding value of \$30,000 and capitalization at 12 of average net earnings of \$2,300 (for both structures) for 1948 into 1960, resulting in \$27,600. Claimant relied on the 1953 valuation, contending that it represented a more accurate statement of the value. While the Commission recognizes that a capitalization of earnings may represent a more equitable basis for determining a claimant's loss, this cannot be so in all cases. In the instant case, the Commission has considered that appreciation and depreciation would be about equal, and considered the treatment accorded apartment houses by the Government, and finds that \$30,000 was the value of the apartment house and annex on the date of loss.

As stated above 2/3 of the property was encumbered with a life estate in favor of claimant. On October 14, 1960, she was 69 years old (as of the nearest birthday). According to the method of valuation described above, her life estate is valued at .27370 of the estate. Therefore, since the whole property had a value of \$30,000 and 2/3 had a value of \$20,000 her life estate had a value of \$5,474.00 which is .27370 of \$20,000.

San Fernando Property: This was a 6-story house, of masonry with a tile roof. The values considered were the 1953 liquidation proceeding value of \$10,000 and capitalization at 12 of average net earnings of approximately \$500 for 1948 into 1960, resulting in \$6,000. Here also claimant relied on the 1953 valuation, for the same reasons as in the Independencia property. For the reasons stated above, the Commission finds that this property had a value of \$10,000 on the date of loss.

As stated above 2/3 of the property was encumbered with a life estate in favor of claimant. On October 14, 1960 she was 69 years old, and her life estate was .27370 of the estate. Therefore, since the whole property had a value of \$10,000 and 2/3 had a value of \$6,666.67, her life estate had a value of \$1,824.67, which is .27370 of \$6,666.67.

Stock Interest and Debt

On December 6, 1961, the Cuban Government published its Law 989 in its Official Gazette, which effectively confiscated all assets, personal property and real estate, rights, shares and stock, bonds and securities of persons who left the country. Claimant was not in Cuba on that date. Accordingly, in the absence of evidence to the contrary, the Commission finds that claimant's interest in Cia. Mercantil de Cienfuegos, S.A., and the debt due her from the company, were taken by the Government of Cuba on December 6, 1961.

Cia. Mercantil de Cienfuegos was a managing company organized in Cuba in 1913. Claimant's interest was a life estate in 23 shares. The record does not show the total number of shares issued. It is said the company paid dividends until 1959 and that no dividends were paid in 1960 or thereafter. Further, the properties managed by the company are all said to have been confiscated by the end of 1960. Claimant's evaluation of her stock interest was made on the basis of asserted fair market value. Claimant's share of 1959 dividends was said to have been \$333. In 1953 her share amounted to \$400, and accordingly a valuation of \$4,000 was asserted for the 23 shares.

Examination of a number of Spanish language financial papers indicates that the capital of the company was listed as \$92,000 which apparently was the value of the properties being managed for different participating members. It does not appear that the company had a net worth not credited to individual accounts. Moreover, it is to be noted that claimant's losses in the properties managed for her and the remainderman involved, are being certified in this decision. In the absence of more convincing evidence the Commission finds that claimant's interest in the 23 shares of the company had no value on December 6, 1961, and this part of the claim is denied.

On the other hand a statement issued in the name of the company, from Cienfuegos on December 31, 1961, reflects that the account of this claimant for the said unremitted income then had a balance of \$15,736.14. As stated above this interest of claimant in Cia. Mercantil de Cienfuegos was lost to claimant by action of the Government of Cuba pursuant to Law 989, supra.

Recapitulation

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

<u>Item</u>	<u>Date of Loss</u>	<u>Value</u>
(1) Palma Sola Life estate in 2/3 of 1/4	October 9, 1959	\$ 7,520.00
(2) La Estrella Life estate in 2/3	October 9, 1959	7,520.00
(3) Independencia Life estate in 2/3	October 14, 1960	5,474.00
(4) San Fernando Life estate in 2/3	October 14, 1960	1,824.67
(5) Debt of Cuban Enterprise	December 6, 1961	<u>15,736.14</u>
		<u>\$38,074.81</u>

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

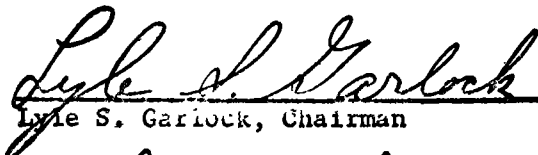
<u>FROM</u>	<u>ON</u>
October 9, 1959	\$15,040.00
October 14, 1960	7,298.67
December 6, 1961	<u>15,736.14</u>
	<u>\$38,074.81</u>

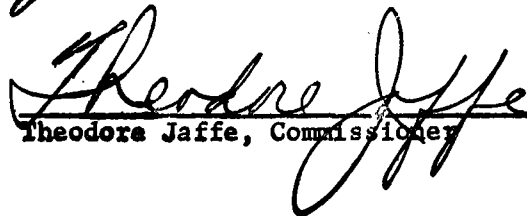
CERTIFICATION OF LOSS

The Commission certifies that NELLY ORMOND TERRY 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 Thirty-Eight Thousand Seventy-Four Dollars and Eighty-One Cents (\$38,074.81) with interest at 6% per annum from the respective dates of loss to the date of settlement.

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

SEP 30 1970


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, 32 Fed. Reg. 412-13 (1967).)