

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

IN THE MATTER OF THE CLAIM OF

JORGE GARCIA

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-0423

Decision No. CU-467

PROPOSED DECISION

This claim against the Government of Cuba, filed under Title V of the International Claims Settlement Act of 1949, as amended, in the amount of \$357,714.90, was presented by JORGE GARCIA and is based upon the asserted loss of realty, improvements, personalty, proceeds from bank accounts, "amortization", and a life insurance policy, and of an interest in Academia Militar del Caribe. Claimant has been a national of the United States since his naturalization on June 21, 1963.

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 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 continuously thereafter until the date of filing with the Commission.

The Regulations of the Commission provide:

The claimant shall be the moving party and shall have the burden of proof on all issues involved in the determination of his claim. (FCSC Reg., 45 C.F.R. §531.6(d) (1967).)

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 a claim under Section 503 of the Act, it must be established (1) 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; and (2) that the claim arising as a result of such nationalization or other taking has been continuously owned thereafter in whole or in part by a national or nationals of the United States to the date of filing with the Commission.

According to claimant's statements, the property upon which this claim is based was owned by him at a time when such property was lost "due to confiscation by the Communist Government (1961)"; the claim arose on January 1959 through December 1961, at Havana, Cuba, as a result of different actions on different dates; and his wife Diana Suros is not a national of the United States.

The record contains affidavits by claimant and third persons concerning ownership and value of certain of the claimed property; an untranslated letter from the First National City Bank of New York to claimant, dated August 4, 1959, concerning deposits of P.2,867.30 and P.60,000.00 in the name of Jorge Garcia Tunon and Diana Suros Suros;

untranslated account statements in the name of Jorge Garcia Tunon from the Banco del Caribe, S.A.; copies of a letter from the Banco del Caribe, S.A. to claimant, dated June 9, 1959, in which it is stated that certain "titles" were surrendered and that claimant had lost his "rights to participate in our annual drawing for Anticipated Amortization", pursuant to "instructions from the Department of Recuperation of Malversed Welfare"; and letters from The Crown Life Insurance Company, dated April 21, 1961 and December 13, 1963, in which it is stated that Policy No. 630,541, Jorge Garcia Tunon, was no longer in force as it was confiscated and surrendered for its cash value by the Government of Cuba in April 1960, pursuant to attached photostatic copies of the demand for surrender of the subject policy.

Information available to the Commission from independent sources discloses that in the Property Registry of Havana, Volume 136, Folio 225, register 24, property #1735 located on Calzada de Jesus del Monte is registered to Jorge Garcia Tunon and was confiscated on an unspecified date by the Government of Cuba; in Volume 40 of the extinguished Municipality of Managua, San Jose de las Lajas, Folio 145, register 16, and Folio 149, 2nd deed, property #67 and #1176 are registered to Diana Arcadia Silvia Augusta Suros Suros, married to Jorge Garcia Tunon and was confiscated on unspecified dates by the Government of Cuba; in Volume 70, Folios 53 and 58, and in Volume 71, Folio 51, of the Municipal District of St. Maria del Rosario, Guanabacoa, deeds appear in favor of the brothers Jorge, Fernando Jose Miguel, and Pablo Garcia Tunon, one-third to each, and that portion belonging to Jorge Garcia Tunon was shown as confiscated pursuant to Resolution 1862 of January 28, 1960, published in the Official Gazette on February 1, 1960.

The record thus indicates that any loss of the real and personal property, subject of this claim, sustained by claimant JORGE GARCIA,

occurred or is asserted to have occurred during the period between 1959 and 1961. However, claimant was not a national of the United States at such time, and did not become a national of the United States until his naturalization on June 21, 1963.

The Commission therefore finds that the property upon which the instant claim is based was not owned by a national of the United States on the asserted dates of loss.

Accordingly, the Commission concludes that this claim is not a valid claim under Title V of the Act in that the property claimed herein was not owned by a national of the United States at the time of loss, and it is therefore denied.

The Commission deems it unnecessary to make specific findings with respect to other elements of this claim.

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

OCT 25 1967

Edward D. Re
Edward D. Re, Chairman

Theodore Jaffe
Theodore Jaffe, Commissioner

LaVern R. Dilweg
LaVern R. Dilweg, Commissioner

THIS IS A TRUE AND CORRECT COPY OF THE DECISION OF THE COMMISSION AS THE FINAL DECISION OF THE COMMISSION
RECORDED - OCT 25 1967
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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).)