

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

IN THE MATTER OF THE CLAIM OF

AMPARO RODRIGUEZ

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -0428

Decision No. CU
5837

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, in the amount of \$21,250.00 was presented by Justo Rodriguez on September 14, 1965 and was validated by the Commission as of November 1, 1965, the commencement of the filing period, based upon the asserted ownership and loss of certain real and personal property in Cuba. Justo Rodriguez, a national of the United States since his naturalization in 1935, died on August 21, 1967, and his widow and sole heir, AMPARO RODRIGUEZ, a Cuban national, has been substituted as claimant herein.

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.

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.

Claimant's losses are described as follows:

A house in Guanabacoa, Havana including acquisition costs	\$ 4,350.00
Improvements thereto	1,950.00
Loss resulting from Cuban exchange laws	7,500.00
Furnishings	995.00
Bank account	<u>6,455.00</u>
	\$21,250.00

Based upon the entire record, including a report from abroad and an affidavit from two individuals who state that they have known Justo Rodriguez since 1955 and know of his purchase of the house and the improvements, the Commission finds that pursuant to the Community Property Law of Cuba, claimant and her husband each owned a one-half interest in the improved realty and the house furnishings, and upon her husband's death in 1967, she succeeded to his one-half interest therein.

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).

Claimant's late husband stated that he purchased the property about July 24, 1961 and that his claim arose about August 6, 1961.

Based on the foregoing and the evidence of record, the Commission finds that the said real property in Havana was within the purview of the Urban Reform Law and 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 August 6, 1961. (See Claim of Henry Lewis Slade, Claim No. CU-0183, 1967 FCSC Ann. Rep. 39.) The Commission further finds that the furnishings therein were also taken on that date.

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 includes, in support of the claimed values, the aforementioned report from abroad and a description of the house as a 1-story brick building having about 5 rooms and usual facilities on a lot 75 feet by 25 feet, purchased about July 24, 1961 and thereafter improved by the erection of a wrought iron fence, and installation of electric fixtures, a water tank and new plumbing fixtures.

On the basis of the aforesaid evidence of record, the Commission finds that on the date of loss the house, including the improvements, had a value of \$6,300.00.

Moreover, the Commission has considered the description of the house furnishings and finds the asserted value of \$995.00 to be fair and reasonable.

Inasmuch as claimant, a Cuban national, owned only one-half of the house and furnishings on the date of loss, so much of this claim as is based on her interest at that time is hereby denied, and pursuant to Section 504(a) of the Act only the one-half interest in the claim for loss to which she succeeded upon the death of her husband, a United States national, will be considered.

The Commission therefore concludes that claimant succeeded to and suffered a loss in the total amount of \$3,647.50 within the meaning of Title V of the Act as the result of the taking of this property by the Government of Cuba.

Concerning the portion of the claim based on the asserted loss of a bank account and on the asserted loss resulting from the Cuban currency exchange, the Commission finds that there is insufficient evidence in the record to establish these losses or that they resulted from a taking by the Government of Cuba. Accordingly, this portion of the claim is denied for failure of proof.

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.

CERTIFICATION OF LOSS

The Commission certifies that AMPARO RODRIGUEZ succeeded to and 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 Three Thousand Six Hundred Forty-seven Dollars and Fifty Cents (\$3,647.50) with interest at 6% per annum from August 6, 1961 to the date of settlement.

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

SEP 16 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).)