

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

IN THE MATTER OF THE CLAIM OF

EDNA H. YOUNANS
CHARLES L. YOUNANS, JR.
JOAN Y. COZENS
JANINE YOUNANS TODARO

Claim No. CU -0496

Decision No. CU 4656

Under the International Claims Settlement
Act of 1949, as amended

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 EDNA H. YOUNANS for \$37,697.81 based upon the asserted ownership and loss of certain real and personal property in Cuba. Claimant, EDNA H. YOUNANS, has been a national of the United States since birth.

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.

The record discloses that CHARLES L. YOUMANS, JR., JOAN Y. COZENS, and JANINE YOUMANS TODARO, the children of EDNA H. YOUMANS, inherited an interest in the property in question upon the death of their father, Charles L. Youmans, who died intestate on January 15, 1960. He had been a United States national since birth and his children have also been nationals of the United States since birth. Accordingly, CHARLES L. YOUMANS, JR., JOAN Y. COZENS, and JANINE YOUMANS TODARO are joined as claimants in this matter.

Claimant, EDNA H. YOUMANS, describes the loss as follows:

House in Marianao, Havana, Cuba	\$11,000.00
Guest House in Mariano, Havana, Cuba	2,500.00
Land	17,877.00
Concrete block wall	2,000.00
Bank account	477.09
Household furnishings	<u>3,843.72</u>
	\$37,697.81

Based upon the entire record, including a copy of a receipt for fees paid in connection with the sale of the realty, a copy of a power of attorney and a copy of a lease relating to this property, a statement showing a balance of 477.09 pesos on deposit with a bank in Cuba, and an itemized list of the household furnishings, the Commission finds that claimant, EDNA H. YOUMANS, and her husband, Charles L. Youmans, deceased, each owned a 1/2 interest in the real and personal property in question.

Upon the death of Charles L. Youmans intestate on January 15, 1960, pursuant to the Cuban laws of descent and distribution, his interest was inherited equally by his three children, CHARLES L. YOUMANS, JR., JOAN Y. COZENS, and JANINE YOUMANS TODARO, claimants herein, with a life estate in 1/3 of his estate in favor of his widow, EDNA H. YOUMANS, remainder in his three children. Each of the three children therefore inherited 2/9 interest of their father's estate outright and 1/9 interest in the remainder of the property subject to the life estate.

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). Following Chapter VI of the law appears a section entitled "Temporary Provisions" and the third paragraph thereof provides 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.

On December 6, 1961, the Cuban Government published its Law 989 which confiscated all assets, personal property and real estate, rights, shares, stocks, bonds and securities of persons who had left the country.

Based on the foregoing and the evidence of record, the Commission finds that the real property and household furnishings in Marianoso, Havana, 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 FCSC Ann. Rep. 39.)

In the absence of evidence to the contrary, the Commission further finds that the above-described bank account, totalling 477.09 pesos (which were on a par with United States dollars) was taken by the Government of Cuba on December 6, 1961. (See Claim of Floyd W. Auld, Claim No. CU-0020, 25 FCSC Semiann. Rep. 55 [July-Dec. 1966].)

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, three photographs and a description of the residence as of concrete block construction built in 1956, having about ten rooms and usual facilities, and located in the suburbs of Havana, Calle 230, No. 3311, Marianao, on a lot of about 3963 square meters. Claimant, EDNA H. YOUMANS, states that there was also a guest house, a chicken coop and utility house on the property of concrete block construction, that the property was purchased on April 22, 1957 for \$18,000.00 and that the improvements thereafter included the enlargement and air conditioning of the residence, complete landscaping, planting a large mango orchard, and the construction of the guest house, a new water system, and a concrete block wall around the property. She states that the aggregate cost of the improvements was \$8,500.00.

Claimant has furnished an itemized list of the personal effects including dates of acquisition and cost, and a copy of a bank balance which her late husband had on deposit with the Cuban branch of the First National Bank of Boston.

Based on the entire record, the Commission finds that the value of the real property including the improvements was \$22,500.00, that the value of the bank account was \$477.09 (the peso being on a par with the United States dollar), and that the value of the household furnishings and other personal property, after appropriate depreciation, was \$3,614.35.

The Commission therefore concludes that claimants suffered a total loss in the amount of \$26,591.44 within the meaning of Title V of the Act as a result of the taking of the real and personal property by the Government of Cuba.

As indicated above 1/3 of the late Charles L. Youman's estate or 1/6 of the entire property was encumbered with a life estate in favor of his widow, EDNA H. YOUMANS. According to evidence of record she was 62 years old at the time of taking. Claimant EDNA H. YOUMANS' interest in 1/6 of the property was therefore an interest for life, and the value of her life estate and of the remainder interest must 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 the method of valuation, a life estate in property so encumbered is valued at .37165 of the entire estate, and the remainder interest is valued at .62835 of the entire estate. Therefore, since the value of 1/6 of the property in question is \$4,431.90 the life estate thereon is valued at \$1,647.11 which is .37165 of that amount and the remainder is valued at \$2,784.78 which is .62835 of that amount.

Therefore, the Commission finds that the interest of EDNA H. YOUMANS in the property in question which was taken by the Government of Cuba, had a value of \$1,647.11 for her life interest and \$13,295.72 for her own 1/2 interest or a total of \$14,942.83; and that the interest of each of the three children had a value of 2/9 of \$13,295.72 or \$2,954.61 and 1/3 of \$2,784.78 or \$928.26; for a total of \$3,882.87. Of these amounts the interest of EDNA H. YOUMANS in the bank account lost on December 6, 1961 was \$268.10 and the interest of each of the three children was \$69.67.

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 as follows:

<u>FROM</u>	<u>ON</u>
<u>EDNA H. YOUMANS</u>	
October 14, 1960	\$14,674.73
December 6, 1961	<u>268.10</u>
Total	\$14,942.83

<u>Each child</u>	
October 14, 1960	\$ 3,813.20
December 6, 1961	<u>69.67</u>
Total	\$ 3,882.87

CERTIFICATION OF LOSS

The Commission certifies that EDNA H. YOUNG 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 Nine Hundred Forty-Two Dollars and Eighty-Three Cents (\$14,942.83) with interest thereon at 6% per annum from the respective dates of loss to the date of settlement;

the Commission certifies that CHARLES L. YOUNG, JR., 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 Eight Hundred Eighty-Two Dollars and Eighty-Seven Cents (\$3,882.87) with interest thereon at 6% per annum from the respective dates of loss to the date of settlement;

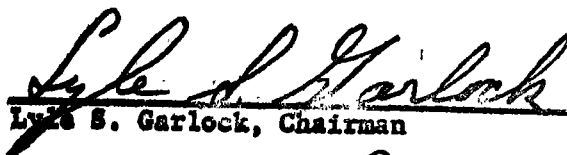
the Commission certifies that JOAN Y. COZENS suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Three Thousand Eight Hundred Eighty-Two Dollars and Eighty-Seven Cents (\$3,882.87) with interest thereon at 6% per annum from the respective dates of loss to the date of settlement; and

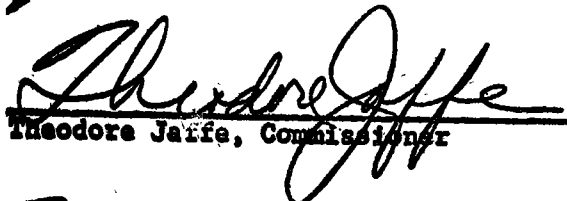
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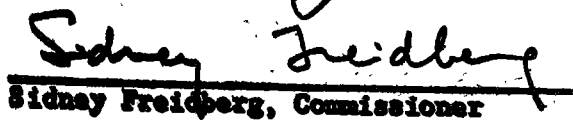
the Commission certifies that JANINE YOUMANS TODARO suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Three Thousand Eight Hundred Eighty-Two Dollars and Eighty-Seven Cents (\$3,882.87) with interest thereon 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

MAR 25 1970


Lyle S. Garlock, Chairman


Theodore Jaffe, Commissioner


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).)