

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

IN THE MATTER OF THE CLAIM OF

CONCEPCION GARCIA NAUMANN

Claim No. CU - 0576

Decision No. CU - 6082

Under the International Claims Settlement
Act of 1949, as amended

Counsel for claimant:

A. V. Bethencourt, 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 CONCEPCION GARCIA NAUMANN in the original amount of \$100,000, based upon the asserted ownership and loss of interests in improved real property in Cuba. Claimant has been a national of the United States since her naturalization in 1955.

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.

Claim has been asserted for inherited interests in the following properties:

	<u>Asserted Interest</u>	<u>Unit Value</u>
1. Apartment house, Calle Sur between 9 and 10, Santa Maria del Mar Beach	1/6	\$ 75,000
2. Apartment buildings, 410 and 412 19th Street, Vedado	1/6	150,000
3. Apartment building, 414 19th Street Vedado	1/6	60,000
4. Frame house, 407 F Street, Vedado	1/6	20,000
5. Apartment building, 464 23d Street, between 10 and 12, Vedado	1/5	
6. Apartment building, 177 F Street, between 17 and 19, Vedado	1/5	

Based on the evidence of record including reports from abroad and affidavits, the Commission finds that claimant inherited a one-sixth interest in properties in Items (1) through (4) above, from her father Ramon Garcia Villarino who died on April 23, 1944, having inherited them from his father. Ramon Garcia Villarino was survived by his widow Pilar Fernandez and five children of whom claimant is one. However, the interest of Pilar Fernandez was that of a life estate, with remainder to the five children.

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).

Based on the foregoing and evidence of record, the Commission finds

that claimant's interests in the properties in Items (1) through (4), above, 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.)

The aforesaid interests were one-sixth of the value of the properties, and one-fifth of the remainder of the one-sixth encumbered by a life estate in Pilar Fernandez.

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.

(1) Beach apartments, Santa Maria del Mar

This property is described as built of reinforced concrete, brick wall and partitions, cedar doors and windows, usual facilities, the ground floor occupied by a 6-car garage and utility room; the second and third floors having six efficiency apartments. The record also includes a photograph of this property. Based on the record and evidence as to the value of similar properties, the Commission finds that on the date of loss this property had a value of \$60,000, a one-sixth interest therein being valued at \$10,000.

(2) 410 and 412 19th Street

These properties are described as of reinforced concrete, with brick walls and partitions, cedar doors and windows, usual facilities, the basement having an 8-car garage, and two one-bedroom apartments; the first and second floors having four large 3-bedroom apartments; and the third floor having two 3-bedroom apartments. The record also includes a photograph of the property. On the basis of the record, and evidence

available to the Commission, the Commission finds that on the date of loss this property had a value of \$100,000, a one-sixth interest therein having a value of \$16,666.67.

(3) 414 19th Street

This property is also described as of reinforced concrete, with brick wall and partitions, the ground floor having two one-bedroom apartments and grocery store space; the second floor having one large 3-bedroom apartment and one 4-bedroom apartment, with all facilities. A photograph of this property has also been submitted. On the basis of the entire record, the Commission finds that on the date of loss, this property had a value of \$60,000, a one-sixth interest therein having a value of \$10,000.

(4) 407 F Street

This is described as an old frame house, the land plot having greater value. The record includes a photograph of the house. The plot is of an area of about 209 square meters. It is located next to the property at 414 19th Street (supra). On the basis of the entire record, the Commission finds that this property had a value of \$12,000 on the date of loss and a one-sixth interest therein had a value of \$2,000.

Accordingly, the Commission finds that claimant's one-sixth interest in the above-described four properties had a value of \$38,666.67. Another one-sixth interest was encumbered by a life estate in favor of claimant's mother. According to evidence of record she was 64 years old at the time of taking. The value of the remainder interest and claimant's one-fifth part thereof 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 .34663 of the entire estate, and the remainder interest is valued at .65337 of the entire estate. Therefore, since the value of one-sixth of the property in question is \$38,666.67 the remainder is valued at \$25,263.64 which is .65337 of that amount.

Therefore, the Commission finds that the 1/5 interest of claimant in the remainder interest was \$5,052.73 (see Claim of Richard Franchi Alfaro and Anna Alfaro, Claim No. CU-0048, 1967 FCSC Ann. Rep. 71).

- (5) 464 23d Street, between 10 and 12, Vedado
- (6) 177 F Street, between 17 and 19, Vedado

The record discloses that these properties were recorded in the name of claimant's uncle, Domingo Garcia Villarino, who died in the latter part of 1965, survived by his five nephews and nieces, of whom claimant is one.

These properties are described as apartment buildings, the record including photographs thereof. The Commission finds that they were subject to the provisions of the Urban Reform Law, and that they were taken by the Government of Cuba on October 14, 1960, while owned by a non-United States national.

Inasmuch as the claim arising from the loss of these properties was not owned by a United States national from the date of loss to the date of filing claim with the Commission, as required by the provisions of the Act, for certification of loss, the Commission is constrained to and does deny these items of claim.

Accordingly, the Commission concludes that claimant sustained losses within the scope of Title V of the Act, on the October 14, 1960, as follows:

1/6 of items (1) through (4)	\$38,666.67
1/5 of the remainder of a	
1/6 interest in the said	
properties	<u>5,052.73</u>
	\$43,719.40

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

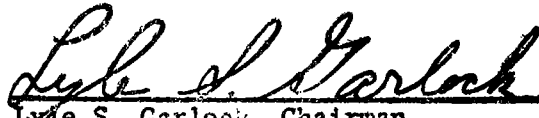
from the date of loss to the date of settlement (see Claim of Lisle Corporation, Claim No. CU-0644), and in the instant case it is so ordered.

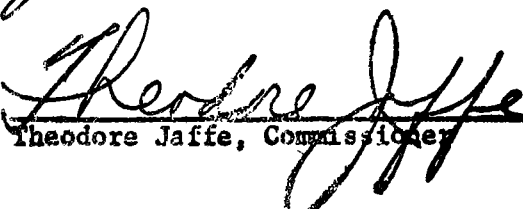
CERTIFICATION OF LOSS

The Commission certifies that CONCEPCION GARCIA NAUMANN 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 Seven Hundred Nineteen Dollars and Forty Cents (\$43,719.40) 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

FEB 24 1971


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 (1970).)