

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

IN THE MATTER OF THE CLAIM OF

EDWARD E. KRAUSE
and
PHYLLIS E. KRAUSE

Claim No. CU -0910

Decision No. CU -3363

Under the International Claims Settlement
Act of 1949, as amended

Counsel for claimants:

McCall, Benson, DeHoff and Feist
By John S. McCall, Esq.

Appeal and objections from a Proposed Decision entered on December 11, 1968.
No oral hearing requested; Hearing on the record.

Hearing on the record held on June 24, 1970.

FINAL DECISION

By Proposed Decision dated December 11, 1968, the Commission determined that the aforesaid claimants sustained losses of property in Cuba within the purview of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of \$145,000.00, after deducting the sum of \$105,000.00 which was the balance owed on a mortgage of the real property involved in the claim.

Claimants contend that because of the balance due on the debt for which the mortgage was security they may be held responsible for payment of that balance and it should not be deducted from the total value of their losses.

The Commission has consistently held in claims based upon mortgaged property that the balance due on a mortgage should be deducted to compute the amount of loss sustained by a mortgagor. (See Claim of Manfred Sternberg, Claim No. Y-1092, Dec. No. Y-1527, FCSC Dec. & Ann. 41 (1968).)

In the Sternberg claim, the Commission held that justice and equity to all claimants require a deduction for mortgages under the circumstances involved, and that when many claimants have to share in a fund, one claimant should not receive a windfall or be enriched at the expense of other claimants. The Commission thereupon deducted the mortgage balance to reflect the actual amount of claimant's loss.


Concerning claimants' contention that they may be held liable for the balance due on the debt for which the mortgage was security, such liability is too remote for the Commission's consideration. The mortgage instrument provides in Paragraph 18 that ". . . waiving any other jurisdiction they (the mortgagors and mortgagees) submit themselves to the judges and tribunals of the Isle of Pines for the conduct of any and all proceedings arising from this instrument." Thereby questions as to the mortgage and debt were to be settled by Cuban Courts. Under the Urban Reform Law of October 14, 1960, the Cuban Government abolished all mortgages and sums owed on notes or bonds secured by mortgages were to be paid to the Cuban Government, the mortgagees to be compensated by the Government. Additionally, recovery on the notes would be barred by the Statute of Limitations as under Article 1966 of the Cuban Civil Code, provisions for the payment of any funds which must be paid at intervals of one year or less must commence within five years. No action against claimants had begun within the five-year period.

Accordingly, the Commission holds that the deduction of the balance remaining due on the mortgage on claimants' Cuban property from the total value of their holdings taken by the Cuban Government is just and equitable, and the Proposed Decision issued on December 11, 1968 is affirmed.

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

JUN 30 1970


ROBERT G. GARLOCK, CHAIRMAN


THEODORE JAFFE, COMMISSIONER


SIDNEY FELDBERG, COMMISSIONER

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

IN THE MATTER OF THE CLAIM OF

EDWARD E. KRAUSE
and
PHYLLIS E. KRAUSE

Claim No. CU -0910

Decision No. CU

3363

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 EDWARD E. KRAUSE and PHYLLIS E. KRAUSE for \$250,000.00 based upon the asserted ownership and loss of an interest in improved real property and personal property on the Isle of Pines, Cuba. Claimants have been nationals of the United States since their respective births.

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.

Claimants contend that they have lost an investment in real property and personal property on the Isle of Pines, Cuba.

The record contains a contract of sale wherein claimants acquired through purchase 4.3 acres of land and the improvements thereon on the Isle of Pines on January 27, 1959; itemization setting forth the cost of a multiunit motel including household furnishings, equipment, a swimming pool and landscaping.

On the basis of the entire record, the Commission finds that the claimants owned 4.3 acres at Bibijagua on the Isle of Pines, improved by a 21-unit motel and auxiliary buildings, as well as household furnishings and equipment.

On December 6, 1961 the Cuban Government published its Law 989 (Official Gazette, XXIII, No. 237, p. 23705) which confiscated all assets, personal property and real estate, rights, shares, stocks, bonds and securities of persons who had left the country.

The record shows the claimants left Cuba in 1960 and became residents of Ohio. The Commission finds, in the absence of evidence to the contrary, that the subject real and personal property was taken by the Government of Cuba on December 6, 1961 pursuant to the provisions of Law 989.

In arriving at the value of the property the Commission has considered claimants' descriptions of the real property and improvements, recitation in the deed, contract of sale, an acceptable appraisal and other information available to the Commission as to similar property, as well as an itemized list of personalty.

Based on the entire record the Commission finds that \$250,000.00 is a fair value for the real and personal property, as follows:

Land (4.3 acres, landscaped)	\$127,500.00
Motel (21 units with auxiliary buildings)	85,000.00
Wells, tanks, drainfields, swimming pool	5,000.00
Miscellaneous - including personal property, boat, linens, bedding, furniture, kitchen equipment and utensils, power units, driveways, underground power and water lines	<u>25,000.00</u>
Total	\$250,000.00

It is noted, however, that a balance of \$105,000.00 is still due and owing on a mortgage secured by the claimed real property and claimants' loss of that property must be reduced by that amount, claimants' equity therefore amounting to \$145,000.00 at the time of loss. Accordingly, the Commission concludes that claimants suffered a loss in the amount of \$145,000.00, within the meaning of Title V of the Act.

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 this claim it is so ordered.

CERTIFICATION OF LOSS

The Commission certifies that EDWARD E. KRAUSE and PHYLLIS E. KRAUSE 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 One Hundred Forty-five Thousand Dollars (\$145,000.00) with interest thereon at 6% per annum from December 6, 1961 to the date of settlement.

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

DEC 11 1968

Edward v. B. Sutton
Edward v. B. Sutton, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

Sidney Feidberg

~~_____~~

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).)