

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

IN THE MATTER OF THE CLAIM OF

PAULINE ROSS RODRIGUEZ
EMILIO AMERICO RODRIGUEZ
JOSEPH ROSS RODRIGUEZ
PATTI MICHELLE RODRIGUEZ
PAUL MARSHALL RODRIGUEZ
AND
ARNESTO J. RODRIGUEZ

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -0929
Claim No. CU-0979

Decision No. CU 4469

PROPOSED DECISION

These claims against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, were presented by EMILIO A. RODRIGUEZ on January 6, 1967 and ARNESTO J. RODRIGUEZ, on February 3, 1967 for \$137,100.00 and \$97,500.00, respectively, based upon the asserted ownership and loss of real and personal property in Cuba. EMILIO A. RODRIGUEZ had been a national of the United States from his naturalization on December 15, 1949, until his death on November 9, 1967. ARNESTO J. RODRIGUEZ, has been a national of the United States since his naturalization on December 5, 1956.

Thereafter PAULINE ROSS RODRIGUEZ, a national of the United States since her birth, the surviving spouse of the late EMILIO A. RODRIGUEZ, petitioned the Commission for permission to join as a party claimant, and upon due consideration it is

ORDERED that the petition be and it is hereby granted.

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 claimants describe their losses as follows:

- (1) apartment 28-L at 17 and M Streets in Vedado with furniture and furnishings;
- (2) improved real property at No. 515 F Street in Vedado;
- (3) unimproved city lot at E Street in Marianao;
- (4) apartments 21-B and 19-F at 17 and M Streets in Vedado with furniture and furnishings;
- (5) rental income; and
- (6) 10,000 Cuban peso banknotes.

Based upon the entire record, including a report from sources abroad, the Commission finds that on the respective dates of loss, as stated below, claimants owned property in Cuba as follows:

(a) the late EMILIO A. RODRIGUEZ owned the entire fee in the apartment 28-L at 17 and M Streets in Vedado, Cuba;

(b) pursuant to the Cuban community property law the late EMILIO A. RODRIGUEZ and his widow, PAULINE ROSS RODRIGUEZ, each owned a one-half interest in the furniture and furnishings of the apartment 28-L mentioned above;

(c) the late EMILIO A. RODRIGUEZ and ARNESTO J. RODRIGUEZ each owned a one-half interest in the improved real property at No. 515 F Street

in Vedado, encumbered by a life estate in favor of Emilia Casanova Rodriguez, their late mother;

(d) the late EMILIO A. RODRIGUEZ and ARNESTO J. RODRIGUEZ each owned a one-half interest in the unimproved city lot No. 1921 in block 163 on E Street in Marianao, Cuba.

The Commission also finds that the apartment 28-L and the improved real property at No. 515 F Street were within the purview of the Cuban Reform Law, published in the Cuban Official Gazette on October 14, 1960. In the absence of evidence to the contrary, the Commission finds that these properties were taken by the Government of Cuba on October 14, 1960. (See the Claim of Henry Lewis Slade, Claim No. CU-0183, 1967 FCSC Ann. Rep. 39.)

On December 6, 1961, the Government of Cuba 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.

Based on the foregoing and the evidence of record, the Commission finds that the furniture and furnishings of apartment 28-L at 17 and M Streets in Vedado and the unimproved building lot at E Street in Marianao were taken by the Government of Cuba on December 6, 1961, pursuant to the provisions of Law 989. (See the Claim of Wallace Tabor and Catherine Tabor, Claim No. CU-0109, 25 FCSC Semiann. Rep. 53 [July-Dec. 1966].)

The late EMILIO A. RODRIGUEZ died intestate on November 9, 1967, when domiciled in Florida. Under the applicable law of the State of Florida concerning descent and distribution the decedent's estate, including the claim for the above mentioned losses, was inherited by his surviving wife, PAULINE ROSS RODRIGUEZ, and his four children, EMILIO AMERICO RODRIGUEZ, JOSEPH ROSS RODRIGUEZ, PATTI MICHELLE RODRIGUEZ, and PAUL MARSHALL RODRIGUEZ, in equal shares, and they are substituted as claimants in his stead.

In view of the foregoing, the interest PAULINE ROSS RODRIGUEZ and her children have in the claim for compensation based upon the loss of property

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as stated above, is summarized as follows:

PAULINE ROSS RODRIGUEZ owned:

1/5 interest in apartment 28-L at 17 and M Streets;

1/2 plus 1/10 or a total of 6/10 interest in the furnishings and furniture of the apartment 28-L;

1/10 remainder interest in the real property at No. 515 F Street;

1/10 interest in the unimproved city lot at E Street in Marianao.

EMILIO AMERICO RODRIGUEZ, JOSEPH ROSS RODRIGUEZ, PATTI MICHELLE RODRIGUEZ, and PAUL MARSHALL RODRIGUEZ each owned;

1/5 interest in apartment 28-L at 17 and M Streets;

1/10 interest in the furnishings and furniture of the apartment 28-L;

1/10 remainder interest in the real property at No. 515 F Street;

1/10 interest in the unimproved city lot at E Street in Marianao.

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 reports from abroad which support the valuation of the subject property as asserted by claimants.

Based upon the entire record, the Commission finds that on the respective dates of loss the above-mentioned properties had values as follows:

- (a) apartment 28-L at 17 and M Streets, being a four bedroom, 3 full bath apartment with a parking space in the garage \$22,800.00
- (b) two story apartment house at No. 515 F Street in Vedado, purchased for 20,000.00 pesos and improved with a cost of 5,000.00 pesos. \$25,000.00
- (c) unimproved city lot at E Street in Marianao, having an area of approximately 240 square meters and purchased for 5,000.00 pesos \$ 5,000.00

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(d) furnishings and furniture of apartment 28-L at 17 and M Streets (the detailed list of which is marked as Exhibit #5 in Claim CU-0929) after deduction of estimated depreciation, wear and tear

\$5,440.00

As stated above, the real property at No. 515 F Street in Vedado was encumbered with a life estate in favor of Emilia Casanova Rodriguez. According to evidence of record she was 59 years old on October 14, 1960, the date when this property was taken by the Government of Cuba. The interest owned by the late Emilio A. Rodriguez and ARNESTO J. RODRIGUEZ in the property mentioned was, therefore, a remainder interest. The value of such remainder interest must be determined.

The Commission has adopted as a basis for the 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 1-1/2% 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.R.F. 2031-7.) According to that method of valuation, a remainder interest in property so encumbered is valued at 0.59064 of the entire fee in cases where the owner of the usufruct is 59 years of age. Therefore, since the property at No. 515 F Street in Vedado had a value of \$25,000.00, the value of the remainder interest is 0.59064 of that amount or \$14,766.00.

In view of the foregoing, the Commission concludes that claimants sustained losses within the meaning of Title V of the Act, as a result of actions of the Government of Cuba, in amounts as follows:

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PAULINE ROSS RODRIGUEZ:

1/5 interest in apartment 28-L	\$ 4,560.00
6/10 interest in furniture and furnishings of apartment 28-L	3,264.00
1/10 remainder interest in real property at No. 515 F Street in Vedado	1,476.60
1/10 interest in building lot at E Street in Marianao	<u>500.00</u>
	\$ 9,800.60

EMILIO AMERICO RODRIGUEZ, JOSEPH ROSS RODRIGUEZ, PATTI MICHELLE RODRIGUEZ,
and PAUL MARSHALL RODRIGUEZ each:

1/5 interest in apartment 28-L	\$ 4,560.00
1/10 interest in the furnishings and furniture of apartment 28-L	544.00
1/10 remainder interest in the real property at No. 515 F Street in Vedado	1,476.60
1/10 interest in building lot at E Street in Marianao	<u>500.00</u>
	\$ 7,080.60

ARNESTO J. RODRIGUEZ:

1/2 remainder interest in the real property at No. 515 F Street in Vedado	\$7,383.00
1/2 interest in building lot at E Street in Marianao	<u>2,500.00</u>
	\$9,883.00

A portion of these claims is based upon the asserted loss of apartments 19-F and 21-B at 17 and M Streets in Vedado, with furniture and furnishings at the same addresses. The claimants state, and the Commission finds that these apartments were within the purview of the Cuban Urban Reform Law of October 14, 1960 (supra), and therefore were taken by the Government of Cuba on October 14, 1960, when they were owned by Emilia Casanova Rodriguez, a nonnational of the United States. The record contains no probative evidence of ownership, value and loss of any furnishings and furniture of these two apartments, assertedly the property of Emilia Casanova Rodriguez, and assertedly taken on October 14, 1960, although the submission of such evidence had been suggested by the Commission. In view of the foregoing, the Commission finds that claimants have failed to establish that the apartments 19-F and 21-B and their furnishings and furniture were owned by a national of the United States on the date of any taking by the

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Government of Cuba, as required for certification of a loss under Title V of the Act, and therefore the portions of these claims based upon such properties must be and are hereby denied.

A further portion of these claims is based upon the asserted loss of rentals from the improved real property at No. 515 F Street in Vedado and apartments 21-B and 19-F at 17 and M Streets in Vedado accrued but not collected from 1959 through 1966. Prior to October 14, 1960, the date when the real properties in question were taken by the Government of Cuba, the rentals belonged to Emilia Casanova Rodriguez as the owner of the two apartments and the owner of the life estate on the property at No. 515 F Street in Vedado. Any interest the claimants may have inherited upon her death on July 6, 1961, does not come within the purview of Title V of the Act inasmuch as she was not a national of the United States. After October 14, 1960, the date of loss, the rental income belonged to the Government of Cuba rather than to the previous owner or her successors in interest. Accordingly, the portion of the claims which is based upon loss of rental income must be and it is hereby denied.

The late EMILIO A. RODRIGUEZ based a further portion of his claim upon loss of Cuban banknotes in the total amount of 10,000.00 pesos, Cuban legal tender in 1959. It is asserted that such banknotes were in safe deposit box No. 392 with the main office of the Cuban branch of the Royal Bank of Canada in Havana, Cuba. There is no evidence of record in support of such asserted ownership. Accordingly, the portion of Claim CU-0929 which is based upon asserted loss of 10,000.00 pesos must be and it is hereby denied.

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 the Claim of Lisle Corporation, ECSC Claim No. CU-0644), and in the instant case it is so ordered as follows:

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PAULINE ROSS RODRIGUEZ:

<u>FROM</u>	<u>ON</u>
October 14, 1960	\$6,036.60
December 6, 1961	<u>3,764.00</u>
	9,800.60

EMILIO AMERICO RODRIGUEZ, JOSEPH ROSS RODRIGUEZ, PATTI MICHELLE
RODRIGUEZ, and PAUL MARSHALL RODRIGUEZ, each:

<u>FROM</u>	<u>ON</u>
October 14, 1960	\$6,036.60
December 6, 1961	<u>1,044.00</u>
	\$7,080.60

ARNESTO J. RODRIGUEZ:

<u>FROM</u>	<u>ON</u>
October 14, 1960	\$7,383.00
December 6, 1961	<u>2,500.00</u>
	\$9,883.00

CERTIFICATION OF LOSS

The Commission certifies that PAULINE ROSS RODRIGUEZ sustained 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 Nine Thousand Eight Hundred Dollars and Sixty Cents (\$9,800.60) with interest thereon at 6% per annum from the respective dates of loss to the date of settlement;

the Commission certifies that EMILIO AMERICO RODRIGUEZ sustained 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 Seven Thousand Eighty Dollars and Sixty Cents (\$7,080.60) with interest thereon at 6% per annum from the respective dates of loss to the date of settlement;

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the Commission certifies that JOSEPH ROSS RODRIGUEZ sustained 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 Seven Thousand Eighty Dollars and Sixty Cents (\$7,080.60) with interest thereon at 6% per annum from the respective dates of loss to the date of settlement;

the Commission certifies that PATTI MICHELLE RODRIGUEZ sustained 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 Seven Thousand Eighty Dollars and Sixty Cents (\$7,080.60) with interest thereon at 6% per annum from the respective dates of loss to the date of settlement;

the Commission certifies that PAUL MARSHALL RODRIGUEZ sustained 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 Seven Thousand Eighty Dollars and Sixty Cents (\$7,080.60) 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 ARNESTO J. RODRIGUEZ sustained 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 Nine Thousand Eight Hundred Eighty-Three Dollars (\$9,883.00) 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

5 FEB 1970

Theodore Jaffe

~~Theodore Jaffe, Commissioner~~

Sidney Frolberg

~~Sidney Frolberg, 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).)

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