

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

IN THE MATTER OF THE CLAIM OF

JOSE GATERBAUM
MORRIS GARTENBAUM
ZILA GATERBAUM
ESTHER CHERNOFF

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-1059
Claim No. CU-1116
Claim No. CU-1117
Claim No. CU-1118

Decision No. CU

4470

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 JOSE GATERBAUM, MORRIS GARTENBAUM, ZILA GATERBAUM and ESTHER CHERNOFF, in the total amount of \$20,000.00, based upon the asserted ownership and loss of an interest in improved realty. Claimants JOSE GATERBAUM, MORRIS GARTENBAUM and ESTHER CHERNOFF have been nationals of the United States since naturalization in 1957, 1959 and 1950, respectively. It appears from the record that ZILA GATERBAUM is not a national of the United States.

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.

Section 502(1) of the Act defines the term "national of the United States" to mean "(A) a natural person who is a citizen of the United States, . . . The term does not include aliens".

Based upon evidence of record, the Commission finds that certain improved realty at 6-A Romay Street, Guanabacoa, was owned by the claimants as follows:

ZILA GATERRAUM	1/2 interest
JOSE GATERRAUM	1/6 "
ESTHER CHERNOFF	1/6 "
MORRIS GARTENBAUM	1/6 "

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 Commission finds, in the absence of evidence to the contrary, that the subject real property was taken by the Government of Cuba on December 6, 1961 pursuant to the provisions of Law 989.

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Inasmuch as ZILIA GATERBAUM is not a national of the United States her claim based on a one-half interest in the property must be denied. (See Claim of Sigridur Einarsdottir, Claim No. CU-0728, 25 FCSC Semiann. Rep. 45 [July-Dec. 1966].)

Based on the entire record the Commission finds that the land, including improvements, had a value of \$12,700.00. Accordingly, the Commission concludes that ESTHER CHERNOFF, JOSE GATERBAUM and MORRIS GARTENBAUM suffered a loss in the aggregate amount of \$6,350.00 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 the instant case it is so ordered.

CERTIFICATION OF LOSS

The Commission certifies that JOSE GATERBAUM 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 Two Thousand One Hundred Sixteen Dollars (\$2,116.00) with interest thereon at 6% per annum from December 6, 1961 to the date of settlement;

The Commission certifies that MORRIS GARTENBAUM 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 Two Thousand One Hundred Seventeen Dollars (\$2,117.00) with interest thereon at 6% per annum from December 6, 1961 to the date of settlement; and

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The Commission certifies that ESTHER CHERNOFF 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 Two Thousand One Hundred Seventeen Dollars (\$2,117.00) 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

5 FEB 1970

Theodore Jaffe

Theodore Jaffe, Commissioner

Sidney Freidberg

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].)

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