

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

IN THE MATTER OF THE CLAIM OF

OLGA P. NAPOLES

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -1301

Decision No. CU 4788

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 OLGA P. NAPOLES for approximately \$70,000.00 based upon the asserted ownership and loss of a life estate in one-third of her deceased husband's property in Cuba. Claimant has been a national of the United States since her birth on August 10, 1927.

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.

Claimant married Osvaldo Oscar Felix Venancio Napoles, a Cuban national, on August 6, 1960. He died on September 17, 1961, leaving his property by a 1959 will to his daughter, a Cuban national. Claimant asserts a life estate in one-third of the estate. Her entitlement to a life estate is set out in a document issued by the Court of First Instance in Havana, in November, 1964. The Commission finds that the life estate encumbered one-third of any properties left by the deceased.

The properties subject of the claim and their asserted evaluations, are as follows:

1. A one-story house on Calle 84 in Marianao	\$ 22,000.00
2. A plot adjacent to the above	7,458.22
3. A house on Calle 11 also in Marianao	10,000.00
4. A 4-story commercial building in Vedado	80,000.00
5. A one-story house with a garage apartment, in Miramar	<u>26,500.00</u>
	\$145,958.22

Claimant's presentation was in the amount of \$48,000.00 on page one of her claim form. On page 2 of the form she asserted inheritance of one-half of properties over \$200,000.00 in value, and on page 3 she stated the amount claimed as approximately \$70,000.00. The individual evaluations above have been taken from claimant's affidavit of December 29, 1965, made prior to her leaving Cuba on about January 14, 1966.

The record also includes a document No. 636 of August 26, 1959 setting out the property inherited by Osvaldo Napoles from his father, Modesto Napoles. This document reflects that he inherited a one-half interest in items 1, 2, and 3 above. It further reflects that his mother, Isabel Napoles,

owned the other one-half interest in said properties, as a separate inheritance. The record does not establish that Osvaldo Napoles ever acquired this one-half interest.

The record also includes a document No. 674 of September 10, 1959 wherein Isabel Napoles, sold to her son Osvaldo Napoles, for \$107,500.00, the properties described in items 4 and 5, above.

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 the evidence of record, the Commission finds that Osvaldo Napoles' interest in real property in item 4 above was 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.)

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.

Thus, in order for the Commission to favorably consider claims under Section 503(a) of Title V of the Act, it must be established (1) that the subject property was owned in whole or in part by a national of the United States on the date of nationalization or other taking; and (2) that the claim arising as a result of such nationalization or other taking has been

continuously owned thereafter in whole or in part by a national or nationals of the United States, to the date of filing with the Commission. (See Claim of Sigridur Einarsdottir, Claim No. CU-0728, 25 FCSC Semiann. Rep. 45 [July-Dec. 1966].)

Accordingly the Commission concludes that item 4 of this claim is not within the scope of Title V of the Act as it was not owned by a national of the United States on the date of loss, and therefore, it is denied.

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

The Commission finds, in the absence of evidence to the contrary, that the one-half interest in items 1, 2, and 3, and the property in item 5 above, formerly held by Osvaldo Napoles were taken by the Government of Cuba on December 6, 1961 pursuant to the provisions of Law 989 (see Claim of Wallace Tabor and Catherine Tabor, Claim No. CU-0109, 25 FCSC Semiann. Rep. 53 [July-Dec. 1966]), even though claimant or her stepdaughter may have remained in possession of some part of the property for a time thereafter.

The properties affected by Law 989 are described in detail in the 1959 documents 636 and 674 (supra) as follows:

- | | |
|--|------------------|
| 1. One-story house on 570 square meters,
garden, portal, about five rooms,
with usual facilities: 1/2 interest | \$11,000.00 |
| 2. An adjacent plot of 570 square meters:
1/2 interest | 3,729.11 |
| 3. A brick house on 174 square meters,
with garden, portal, about four
rooms, with usual facilities,
and garage: 1/2 interest | 5,000.00 |
| 5. A one-story house on 550 square meters,
about five rooms, with a garage
apartment: | <u>26,500.00</u> |
| | \$46,229.11 |

The Commission finds the aforesaid values fair and reasonable and holds that they represented the values of the properties on December 6, 1961. The one-third interest subject to a life estate had thus a value of \$15,409.70.

As stated above one-third of the properties affected by Law 989 were encumbered with a life estate in favor of claimant. According to evidence of record she was 34 years old at the time of taking. The value of the life estate 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 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 that method of valuation, a life estate in property so encumbered is valued at .68536 of the entire estate. Therefore, since the value of the property in question is \$15,409.70, the life estate is valued at \$10,561.19 which is .68536 of that amount.

Accordingly, the Commission concludes that claimant suffered a loss in the amount of \$10,561.19 within the meaning of Title V of the Act, as the result of the taking of her property by the Government of Cuba on December 6, 1961.

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.

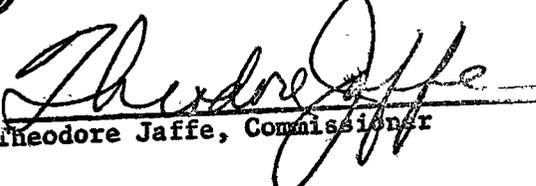
CERTIFICATION OF LOSS

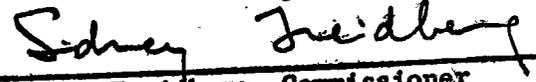
The Commission certifies that OLGA P. NAPOLES suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Ten Thousand Five Hundred Sixty-one Dollars and Nineteen Cents (\$10,561.19) with interest 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

APR 29 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).)