

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

IN THE MATTER OF THE CLAIM OF

ELEANOR McARDLE

JOHN J. McARDLE

ELEANOR GRACE McARDLE
Executrix of the Estate of
ROBERT J. McARDLE,
Deceased

**Under the International Claims Settlement
Act of 1949, as amended**

Claim No. CU-1486

Decision No. CU-1169

Counsel for claimants:

Wilkinson, Cragun and Barker
By Glen A. Wilkinson, Esq.

Appeal from a Proposed Decision entered February 7, 1968. No hearing requested.
Hearing on the record held September 1, 1971

FINAL DECISION

This claim against the Government of Cuba was filed by ROBERT J. McARDLE on April 14, 1967. The record discloses that his spouse, MARGARET B. McARDLE, had an interest in the property subject of this claim, pursuant to the community property laws of Cuba. MARGARET B. McARDLE died in New York on August 3, 1968, leaving her surviving ROBERT J. McARDLE and two children, ELEANOR McARDLE and JOHN J. McARDLE, who are added as claimants in this matter. ROBERT J. McARDLE died in New York on February 3, 1971. ELEANOR GRACE McARDLE having been appointed Executrix of his Estate, she is added as claimant in this capacity.

The Commission had denied the claim on February 7, 1968 for failure of proof. Counsel objected and has since submitted evidence in support.

On the basis of the record including affidavits of the deceased ROBERT J. McARDLE and of persons who were formerly a lawyer in Cuba, and an engineer-contractor and real estate expert for claimant, respectively, the Commission now finds that ROBERT J. McARDLE and MARGARET B. McARDLE had owned about 178,935 square meters of land with some improvements in Mantilla, Havana province; and further, that this property was taken by the Government of Cuba on December 6, 1961, pursuant to Cuban law 989, which effected confiscation of property of those who left the country.

(See Claim of Wallace Tabor and Catherine Tabor, Claim No. CU-0109, 25 FCSC Semiann. Rep. 53 [July-Dec. 1966].) The record discloses that the decedents had left Cuba in 1960.

The record also discloses and the Commission finds that the decedents had equal interests in certain personal property in the nature of household furnishings which were left in Cuba and which were also taken by the Government of Cuba on December 6, 1961.

The value of the property taken by the Government of Cuba remains to be determined. 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 real property is described as being in part flat and in part of rolling hillside, suitable for subdivision, similarly as neighboring property, and as having no drainage problems and with an excellent view of the City of Havana. On the basis of the record, and considering evidence available to the Commission as to the value of similar properties in and around Havana, the Commission finds that the real property had a value of \$178,935, the improvements thereon, in the nature of several small buildings, a value of \$500; and the household personalty, a value of \$5,725, an aggregate value of \$185,160.

Accordingly, the Commission finds that MARGARET B. McARDLE and ROBERT J. McARDLE each suffered a loss of \$92,580 within the meaning of Title V of the Act as a result of the taking of their property by the Government of Cuba.

Upon the death of MARGARET B. McARDLE in New York, one-third of her estate passed to her spouse and the remainder divided equally among her children. Thus ELEANOR McARDLE and JOHN J. McARDLE each succeeded to a loss in the amount of \$30,860; and subsequent to the death of ROBERT J. McARDLE the beneficiaries of his estate succeeded to his interest of \$123,440 in the claim against Cuba.

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.

Accordingly, the following Certifications of Loss will be entered and the remainder of the Proposed Decision as amended herein, is affirmed.

CERTIFICATIONS OF LOSS


The Commission certifies that ELEANOR McARDLE succeeded to and 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 Thirty Thousand Eight Hundred Sixty Dollars (\$30,860.00) with interest at 6% per annum from December 6, 1961 to the date of settlement;

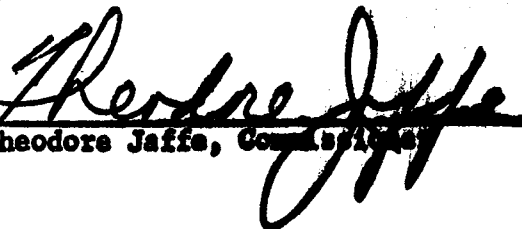
The Commission certifies that JOHN J. McARDLE succeeded to and suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Thirty Thousand Eight Hundred Sixty Dollars (\$30,860.00) with interest at 6% per annum from December 6, 1961 to the date of settlement;
and

The Commission certifies that ELEANOR GRACE McARDLE, Executrix of the Estate of ROBERT JOSEPH McARDLE, Deceased, succeeded to and 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 Twenty-three Thousand Four Hundred Forty Dollars (\$123,440.00) with interest at 6% per annum from December 6, 1961 to the date of settlement.

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

SEP 1 1971


P. S. Carlock, 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.

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

IN THE MATTER OF THE CLAIM OF

ROBERT J. MCARDLE

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -1486

Decision No. CU 1169

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, in the amount of \$649,725.00, was presented by ROBERT J. MCARDLE based upon the asserted loss of certain real property and personal property located in Cuba. Claimant asserts that he has been a national of the United States since his birth.

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 530(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 of 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.

The Regulations of the Commission provide:

The claimant shall be the moving party and shall have the burden of proof on all issues involved in the determination of his claim. (FCSC Reg., 45 C.F.R. §531.6(d) (Supp. 1967).)

Claimant asserts the ownership of certain real property and personal property in Cuba; however, claimant has submitted no documentary evidence in support of his claim. By Commission letter of August 1, 1967, claimant was advised as to the type of evidence proper for submission to establish his claim under the Act.

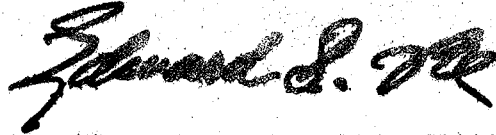
On September 1, 1967, claimant was invited to submit any evidence he might have within 45 days from that date, and he was informed that, absent such evidence it might become necessary to determine the claim on the basis of the present record. This time was extended to November 15, 1967 at claimant's request. No evidence has since been submitted in support of this claim.

The Commission finds that claimant has not met the burden of proof in that he has failed to establish ownership of rights and interests in property which was nationalized, expropriated or otherwise taken by the

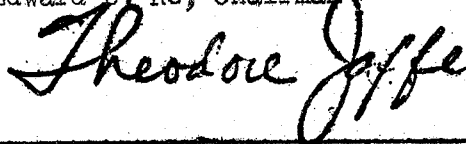
Government of Cuba. Accordingly, this claim is hereby denied. The Commission deems it unnecessary to determine other elements of this claim.

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

FEB 7 1968



Edward D. Re, Chairman



Theodore Jaffe, Commissioner

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).)