

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

IN THE MATTER OF THE CLAIM OF

OSCAR ORTA
ROSA ORTA GARAFOLO
EVANGELINA ORTA KRUPPENBACHER
MIGUEL A. ORTA

Claim No. CU-1738
Claim No. CU-1740
Claim No. CU-1741
Claim No. CU-1742

Decision No. CU

6012

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

PROPOSED DECISION

These claims against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, in the total amount of \$41,384.00, were presented by the aforesaid claimants, and are based upon the asserted ownership and loss of real and personal properties in Cuba. Claimants have been nationals of the United States at all times pertinent to their claims.

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.

The claimants herein have based their claims upon the loss of property stated to have been inherited from the estate of their late aunt, Dolores Orta y Valladares, a Cuban citizen, who died testate in Cuba on July 25, 1958. Claimants have submitted a Protocol, No. 293, prepared by a Notary-Attorney at Law in Cuba, which contains an inventory of the estate and an evaluation of the properties in the total amount of \$89,598.05. This Protocol sets out the heirs and the inherited interests. The estate consisted principally of a sugar plantation and mill, some personalty and several kinds of securities.

The claimants have indicated in their claim applications that these claims arose in January 1960. Accordingly, in the absence of evidence to the contrary, the Commission finds that the claimants' interests in the properties inherited from the late Dolores Orta y Valladares, were taken by the Government of Cuba on January 1, 1960. (See Claim of Jack Moss, Claim No. CU-0225, 25 FCSC Semiann. Rep. 52 [July-Dec. 1966].)

The evidence discloses that the claimants' late father, Jose Manuel Orta, a non-national of the United States, who died on January 23, 1963, inherited a life estate in one-half of a one-fifth interest, with remainder to three of these claimants. Moreover, the four children inherited 1/2 of 1/5 outright. This aggregate one-fifth of the estate (after deduction of a \$200 bequest) had a value of \$17,879.60 and was apparently devised as follows:

CU-1738 CU-1741
CU-1740 CU-1742

| | |
|-------------------------------|-----------------|
| Jose Manuel Orta | \$8,939.80 |
| Oscar Orta | 2,234.95 |
| Evangelina Orta Kruppenbacher | 2,234.95 |
| Miguel A. Orta | 2,234.95 |
| Rosa Orta Garafolo | <u>2,234.95</u> |
| Total | \$17,879.60 |

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 Commission finds in the instant claims that the evaluations of the appraiser, appointed by the Cuban court, as set forth in the Protocol, are most appropriate and equitable to the claimants in ascertaining the value of the inherited properties.

The Will of Dolores Orta Valladares also provided that the property which the decedent designated for her brother, the late Jose Manuel Orta, being a one-half of a one-fifth interest, "would never be sold"; and that upon his death the property would then be distributed between three remaindermen, namely claimants OSCAR ORTA, EVANGELINA ORTA KRUPPENBACHER and MIGUEL A. ORTA, in equal shares. Thus, the Commission finds that Jose Manuel Orta, father of claimants herein, held a life estate in one-half of one-fifth of the subject properties.

As stated above, the interest of Jose Manuel Orta was that of a life estate in property having a value of \$8,939.80. At the time of loss on January 1, 1960, Jose Manuel Orta was not a national of the United States. Thus, his interest would not be compensable under Section 504 of the Act (supra).

The value of the life estate, however, must be determined in order to determine the interests of the remaindermen, including OSCAR ORTA, EVANGELINA ORTA KRUPPENBACHER and MIGUEL A. ORTA. According to the evidence of record, the late Jose Manuel Orta was 83 years old (according to his nearest birthday) at the time of taking of the property on

January 1, 1960.

CU-1738 CU-1741
CU-1740 CU-1742

The Commission has adopted as a basis for 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 .14123 of the estate, and the remainder interest is valued at .85877 of the estate. Therefore, the value of the life interest of Jose Manuel Orta was \$1,262.57, and the remainder interest is valued at \$7,677.23, in which claimants OSCAR ORTA, EVANGELINA ORTA KRUPPENBACHER and MIGUEL A. ORTA have respective one-third interests. The Commission concludes that these three claimants suffered an additional loss, in the aggregate amount of \$7,677.23, within the meaning of Title V of the Act.

The Commission finds that the interests of these claimants, pursuant to the will of the decedent, have the following values:

| | |
|-------------------------------|-----------------|
| Oscar Orta | \$4,794.03 |
| Evangelina Orta Kruppenbacher | 4,794.03 |
| Miguel A. Orta | 4,794.02 |
| Rosa Orta Garafolo | <u>2,234.95</u> |
| Total | \$16,617.03 |

This leaves for determination a claim asserted by ROSA ORTA GARAFOLO for loss of a one-third interest in improved real property situated at B 418 Street, Reparto Lawton, Havana, Cuba. In the Claim of Esperanza Orta Peters, Claim No. CU-1739, that claimant asserted a claim for loss of a one-third interest in the property at B 418 Street, Reparto Lawton. A Certification of Loss was made to Esperanza Orta Peters in the amount of \$4,000.00 for her 1/3 interest in that property.

CU-1738 CU-1741
CU-1740 CU-1742

Based on the evidence of record in the aforesaid claim (Peters, supra), as well as evidence submitted in the claim of ROSA ORTA GARAFOLO, the Commission finds that ROSA ORTA GARAFOLO owned a one-third interest in the property in question, consisting of a house and lot; that such property was taken by the Government of Cuba on January 1, 1960; and that the value of a one-third interest in the subject property was \$4,000.00 at the time of loss. (See Peters and Moss, supra.)

The Commission concludes that claimants suffered losses within the meaning of Title V of the Act in the aforesaid amounts, the loss of ROSA ORTA GARAFOLO including the additional sum of \$4,000.00.

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.

CERTIFICATIONS OF LOSS

The Commission certifies that OSCAR ORTA 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 Four Thousand Seven Hundred Ninety-Four Dollars and Three Cents (\$4,794.03) with interest thereon at 6% per annum from January 1, 1960 to the date of settlement;

The Commission certifies that EVANGELINA ORTA KRUPPENBACHER 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 Four Thousand Seven Hundred Ninety-Four Dollars and Three Cents (\$4,794.03) with interest thereon at 6% per annum from January 1, 1960 to the date of settlement;

CU-1738 CU-1741
CU-1740 CU-1742

The Commission certifies that MIGUEL A. ORTA 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 Four Thousand Seven Hundred Ninety-Four Dollars and Two Cents (\$4,794.02) with interest thereon at 6% per annum from January 1, 1960 to the date of settlement; and

The Commission certifies that ROSA ORTA GARAFOLO 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 Six Thousand Two Hundred Thirty-Four Dollars and Ninety-Five Cents (\$6,234.95) with interest thereon at 6% per annum from January 1, 1960 to the date of settlement.

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

JAN 6 1971


Lyle S. Gazlock, 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.

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. 31.5(e) and (g), as amended (1970).)

CU-1738 CU-1741
CU-1740 CU-1742