

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

IN THE MATTER OF THE CLAIM OF

DOLORES TAWATER, Individually, and
DOLORES TAWATER as Mother and
Natural Guardian of CARMEN EMILIA
TAWATER and MARLENE TAWATER, Minors

Claim No. CU -2266

Decision No. CU - 5538

Under the International Claims Settlement
Act of 1949, as amended

PROPOSED DECISION

This claim against the Government of Cuba, filed under Title V of the International Claims Settlement Act of 1949, as amended, in the amount of \$48,777.00, was presented originally by Aubrey Tawater, a native-born American national who died on February 5, 1970 in Florida. The claim was filed on April 26, 1967 and is based upon the asserted loss of certain real and personal property in Cuba. Upon the death of Aubrey Tawater, his property was inherited by his widow, DOLORES TAWATER, and his two children, CARMEN EMILIA TAWATER and MARLENE TAWATER, who are substituted in place of the original claimant.

DOLORES TAWATER states that she has been a national of the United States since May 17, 1966. CARMEN EMILIA TAWATER and MARLENE TAWATER have been nationals of the United States since 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 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.

Claimants assert the following losses as originally claimed by the deceased:

House and lot in Havana	\$ 20,000.00
A 1959 automobile costing	3,777.00
Personal savings	<u>25,000.00</u>
Total	<u>\$ 48,777.00</u>

REAL PROPERTY

The record includes a report from abroad and statements of the deceased and his widow concerning this claim. On the basis of the entire record, the Commission finds that CARMEN EMILIA TAWATER and MARLENE TAWATER acquired by gift from their parents on September 30, 1959 joint title to a house and lot at 110 Calle Andres, Havana, Cuba.

The Commission finds that said property was within the purview of the Urban Reform Law, published in the Cuban Official Gazette on October 14, 1960. In the absence of evidence to the contrary, the Commission finds that the property was taken by the Government of Cuba on October 14, 1960. (See Claim of Henry Lewis Slade, Claim No. CU-0183, 1967 FCSC Ann. Rep. 39.)

The evidence includes a statement made by the deceased to the American Embassy in Havana, Cuba on August 15, 1960, and a description of the property furnished by his widow. It appears that the property consisted of a lot approximately 60 feet by 160 feet and a two-story building with

sight rooms and two bathrooms. Upon consideration of the entire record, the Commission finds that the deceased's valuation of the real property set forth in his statement of August 15, 1960 to the Department of State appears fair and reasonable. Accordingly, the Commission finds that the value of the property on October 14, 1960, the date of loss, was \$20,000.00. Therefore, CARMEN EMILIA TAWATER and MARLENE TAWATER each sustained a loss in the amount of \$10,000.00.

PERSONAL PROPERTY

A portion of the claim in the amount of \$3,777.00 is based upon the asserted loss of an automobile. The record establishes that the deceased transferred title to the automobile to his father-in-law on August 16, 1960, prior to the deceased's departure from Cuba. This is corroborated by a copy of an assignment duly executed by the deceased. The deceased stated in a letter of September 15, 1967 to the Commission that the automobile "was lost to the Cuban Government" after he had transferred title to his father-in-law, a nonnational of the United States.

The Commission finds that on the date when the automobile was taken by the Cuban Government, it did not belong to the deceased. Consequently, claimants could not have inherited any interest therein. Moreover, since the transferee is a nonnational of the United States, he is ineligible under Section 504 of the Act which 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.

For the foregoing reasons, the portion of the claim based upon an automobile is denied.

Another portion of the claim in the amount of \$25,000.00 is based upon "personal savings". In a letter of September 15, 1967 to the Commission, the deceased stated that his "savings were in cash and joint banking

accounts with Cuban friends. The majority of it being with my father-in-law."

On several occasions it was suggested by the Commission that appropriate evidence be submitted to support the claim for the loss of savings. Under date of February 27, 1970, DOLORES TAWATER stated that her father had sent her the pertinent bank books, but that she never received them. The record includes no other documentation to support this portion of the claim.

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) (1969).)

The Commission finds that claimants have failed to sustain the burden of proof with respect to the portion of the claim based on personal savings. Accordingly, this portion of the claim is denied.

The Commission has decided that in certification 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 the Claim of Lisle Corporation, FCSC Claim No. CU-0644), and in the instant case, it is so ordered.

CERTIFICATIONS OF LOSS

The Commission certifies that DOLORES TAWATER, Mother and Natural Guardian of CARMEN EMILIA TAWATER, a Minor, 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 Dollars (\$10,000.00) with interest at 6% per annum from October 14, 1960 to the date of settlement; and

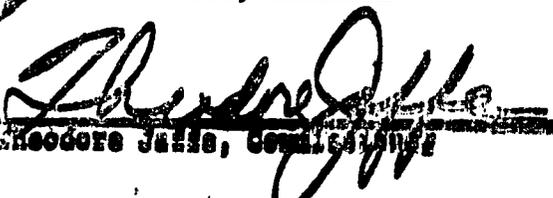
The Commission certifies that DOLORES TAWATER, Mother and Natural Guardian of MARLENE TAWATER, a Minor, suffered a loss as a result of actions of the Government of Cuba, within the scope of Title V of the

International Claims Settlement Act of 1949, as amended, in the amount of Ten Thousand Dollars (\$10,000.00) with interest at 6% per annum from October 14, 1960 to the date of settlement.

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

AUG 6 - 1970


L. H. Garlock, Chairman


Theodore Jaffe, Commissioner


Sidney Fretzberg, 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).)