

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

IN THE MATTER OF THE CLAIM OF

LUISA GUTIERREZ SMITH

Claim No. CU -2454

Decision No. CU -5885

Under the International Claims Settlement
Act of 1949, as amended

Appeal and objections from a Proposed Decision entered October 7, 1970;
no hearing requested.

Hearing on the record held September 8, 1971.

FINAL DECISION

By Proposed Decision issued October 7, 1970, the Commission denied this claim for failure of proof.

Claimant has since submitted certain evidence including documentation concerning the partition of her mother's estate and also accountings from her attorney concerning a commercial property. The Commission having examined this documentation, and the entire record, now finds that claimant was the owner of (1) a rental property at Calle Frexes 96, Holguin, Oriente, which was given her in 1916; and (2) two lots of 32 parcels, totaling 2.0267 hectares which she acquired from the estate of her mother in 1955. These parcels are located west of Holguin.

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).

On this basis the Commission finds that claimant's property on Frexes Street was taken by the Government of Cuba on October 14, 1960, the date of publication of the law on Urban Reform.

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

The Commission finds that claimant's unimproved property outside Holguin was taken by the Government of Cuba on December 6, 1961.

There remains for determination the value of the above-described properties. 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.

96 Frexes Street

The record includes several letters from claimant's former attorney in Cuba accounting for the rent receipts on the Frexes Street property. These show that the net rent per month was about \$30 and the gross rent was \$40 per month. On this basis the Commission finds that on the date of loss this property had a value of \$8,000.

Parcels near Holguin

The record now includes documentation which shows that this property consisted of two lots, one measuring 1.4697 hectares and the other .5570 hectares, a total of 20,267 square meters, which were valued at \$850 at the time of acquisition by claimant. Claimant states that this property had been subdivided into 32 lots. The Commission has considered this, and evidence of value as to similar properties in Oriente, and finds that at the time of loss, the property had a value of \$8,500.

Accordingly, claimant's losses within the scope of Title V of the Act are summarized as follows:

<u>Item</u>	<u>Date of Loss</u>	<u>Value</u>
Rental property	October 14, 1960	\$8,000
Subdivision	December 6, 1961	<u>8,500</u>
		\$16,500

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.

The record does not substantiate the asserted loss of \$3,840 in debts due the claimant. This item of claim therefore remains denied.

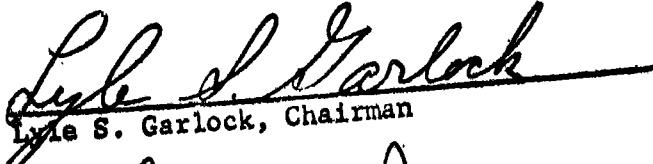
Accordingly, the following Certification of Loss will be entered and in all other respects the Proposed Decision as amended herein is affirmed.

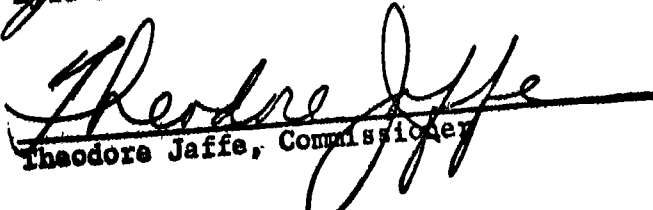
CERTIFICATION OF LOSS

The Commission certifies that LUISA GUTIERREZ SMITH 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 Sixteen Thousand Five Hundred Dollars (\$16,500.00) with interest thereon at 6% per annum from the respective dates of loss to the date of settlement.

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

SEP 8 1971


Lyle S. Garlock, 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.

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IN THE MATTER OF THE CLAIM OF

LUISA GUTIERREZ SMITH

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-2454

Decision No. CU - **5885**

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 \$118,840, was presented by LUISA GUTIERREZ SMITH and is based upon the asserted loss of real and personal property in Cuba. Claimant has been a national of the United States since her naturalization on December 20, 1957.

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 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).)

Claimant has asserted claim in the amount of \$85,000 for land; \$30,000 for buildings and \$3,840 for debts.

She described her losses as (1) a commercial building at Calle Frexes 96 in Holguin, Oriente, Cuba; and (2) 32 lots on an unimproved subdivision on the west side of Holguin, on the former farm (El Tanque) of the successors of Maria Gonzalez. She has asserted that the city taxes paid on the commercial property were \$48.06 per year and that the rental was \$40 per month. The property was said to have been inherited from Her mother, Maria Gonzalez, in 1916, and it is said that improvements were made thereafter of a value of \$3,000.

By Commission letter of July 2, 1967 claimant was advised in detail as to the type of evidence proper for submission to establish this claim under the Act, and was provided with forms for requesting the assistance of the Commission in attempting to obtain evidence in support.

Claimant then submitted a copy of a Spanish language document dated in 1959 which she described as a deed but which does not appear to have that form. The document appears to concern Lots No. 6 and 6A, and includes reference to Candida Luisa Gutierrez Gonzalez. She also submitted several copies of a plan or survey prepared in 1957 apparently concerning the succession of Maria Gonzalez. She stated she has no records pertaining to the improved property. The Commission has attempted to obtain evidence for claimant, but without success.

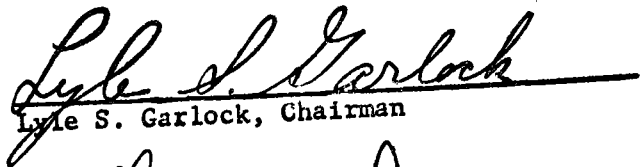
By a notice of September 20, 1968 the claimant was reminded of the elements to be established in the claim. Thereafter, by letter of April 23, 1970 the Commission called to claimant's attention the apparent inconsistency in dates and names involved, and suggested translation and clarification, as well as any documentation then available, and an explanation of the evaluations asserted. No reply was received to this letter.

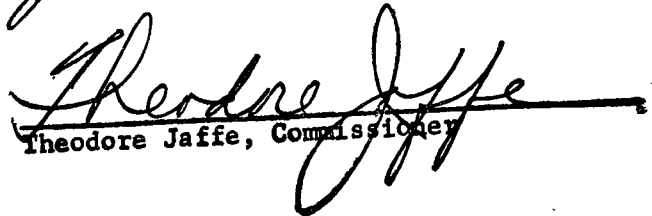
On August 25, 1970, claimant was invited to submit any evidence available to her within 45 days from that date, and she was informed that, absent such evidence, it might become necessary to determine the claim on the basis of the existing record. No evidence has since been submitted.

The Commission finds that claimant has not met the burden of proof in that she has failed to establish ownership of rights and interests in property which was nationalized, expropriated or otherwise taken by the Government of Cuba. Thus, the Commission is constrained to deny this claim and it is hereby denied. The Commission deems it unnecessary to make determinations with respect to other elements of the claim.

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

OCT 7 1970


Lyle S. Garlock, 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).)

CU-2454