

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

IN THE MATTER OF THE CLAIM OF

MICHAEL FLEMING  
MARION FLEMING

Under the International Claims Settlement  
Act of 1949, as amended

Claim No. CU-2494

Decision No. CU

5881

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 MICHAEL FLEMING and MARION FLEMING in the amended amount of \$57,025.00 based upon the asserted ownership and loss of certain real and personal property in Cuba. Claimants 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 describe their loss as follows:

24 acres of unimproved realty in the Isle of Pines	\$48,000.00
House thereon converted into two rental apartments	6,800.00
Personal property	<u>2,225.00</u>
	\$57,025.00

Based upon the entire record, including a copy of the deed dated December 12, 1955 for the realty, a report from abroad, and a detailed list of the personalty subject of this claim, the Commission finds that claimants owned the real and personal property in question.

On December 6, 1961, the Cuban Government published its Law 989 which confiscated all assets, personal property and real estate, rights, shares, stocks, bonds and securities of persons who had left the country. The record indicates that claimants had left Cuba and were residents of the United States on this date.

The Commission therefore finds, in the absence of evidence to the contrary, that the subject real property was 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].) The Commission also finds that the personal property subject of this claim was taken on this date.

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 record includes, in support of the claimed values, the mentioned deed which states the purchase price for the unimproved realty was \$10,000.00. The report from abroad states that the realty comprised 24 acres valued at \$10,000.00, that it was unencumbered and had a tile and mortar house. Claimant states that the property was located on the outskirts of Nueva Gerona less than one-half mile from the Central Park and City Hall, that the house of which he submitted a plan measured 50 feet by 30 feet, was constructed of heavy masonry with a wood frame and heavy roofing paper roof, and that the property also included a masonry outbuilding measuring about 12 feet by 15 feet. The record also includes claimant's tabulation of costs and expenses which he states he submitted in 1964 to the United States Internal Revenue Service. This tabulation indicates that the actual cost of the realty was \$14,290.00 and that the cost of improvements including the conversion of the house to two apartments, tiling and installing of a new roof totaled \$2,430.00.

Claimants also have submitted an itemized list of the personalty which includes dates of acquisition and estimated values on the date of loss.

On the basis of the evidence of record, and evidence available to the Commission regarding the value of similar properties on the Isle of Pines, the Commission finds that on December 6, 1961, the date of loss, the real property including the improvements had a value of \$22,365.00 and that the personalty had a total value of \$2,225.00.

The Commission therefore concludes that claimants suffered losses in the aggregate amount of \$24,690.00 within the meaning of Title V of the Act as a result of the taking of their property by the Government of Cuba on December 6, 1961.

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.

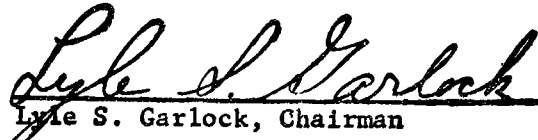
CERTIFICATIONS OF LOSS

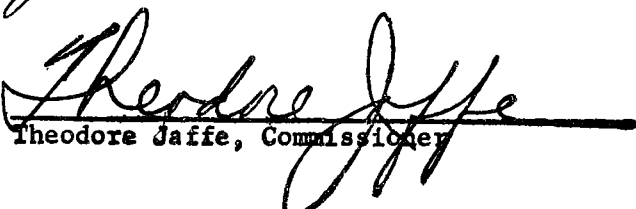
The Commission certifies that MICHAEL FLEMING suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Twelve Thousand Three Hundred Forty-five Dollars (\$12,345.00) with interest at 6% per annum from December 6, 1961 to the date of settlement; and

The Commission certifies that MARION FLEMING 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 Twelve Thousand Three Hundred Forty-five Dollars (\$12,345.00) with interest at 6% per annum from December 6, 1961 to the date of settlement.

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

OCT 7 1970

  
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.

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).)