

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

IN THE MATTER OF THE CLAIM OF

RUTH ANN HEMMETER

Claim No. CU -2506

Decision No. CU -6678

Under the International Claims Settlement
Act of 1949, as amended

Counsel for claimant:

Theodore Weiswasser, Esq.

Appeal and objections from a Proposed Decision entered on August 11, 1971. Oral hearing was scheduled for October 7, 1971, at 10:00 a.m. at the offices of the Commission, 1111-20th Street, Northwest, Washington, D. C. with due notice thereof given to counsel. No request for a continuance was made and claimant failed to appear in person or by attorney at the scheduled time.

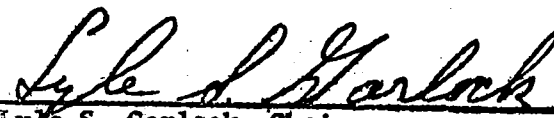
FINAL DECISION


Full consideration having been given to objections of claimant, and submissions of counsel, and the entire record having been reviewed, and general notice of the Proposed Decision having been given by posting for thirty days, it is

ORDERED that the Proposed Decision be and the same is hereby affirmed as the Final Decision of the Commission in this claim.

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

OCT 20 1971


Lyle S. Garlock, Chairman


Theodore Jaffe, Commissioner

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IN THE MATTER OF THE CLAIM OF

RUTH ANN HEMMETER

Under the International Claims Settlement
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Decision No. CU

6578

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 \$12,000.00, was originally presented by Luther Coleman as asserted co-owner and attorney-in-fact for Minnie Garside. Subsequently a claim was filed by RUTH ANN HEMMETER as beneficiary under the Will of Minnie Garside, deceased, based upon the asserted loss of real property on the Isle of Pines, Cuba. Due consideration having been given to this matter, RUTH ANN HEMMETER has been substituted as claimant in lieu of Minnie Garside, deceased. Luther Coleman has filed Claim No. CU-2508, individually. Claimant has been a national 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.

Claimant asserts the loss of a one-half interest in the land, consisting of the following:

Lots 5 through 12 of Section 19
Parts of lot 22 and lots 25 through 28 of Section 20
Lot 32 of Section 21
Lots 1,2,13 through 16 of Section 22

of an aggregate area of 320 acres in a development known as Reparto Hacienda San Francisco de las Piedras, on the Isle of Pines, Cuba. Claimant further states that the property was originally owned by Alvah Smith McClain, and upon his death in 1939 by his widow Eva Nora McClain, and upon her death in 1956 by Minnie Garside, and upon her death in 1960 by the claimant pursuant to the Last Will of Minnie Garside. The record shows that Minnie Garside conveyed and assigned a one-half interest in the property to Luther Coleman on November 26, 1958. Claimant asserts that the property was taken by the Government of Cuba by Decree No. 1965 published in the Official Gazette on February 29, 1960, or by some action at an earlier date.

The evidence submitted by the claimant does not substantiate that the above described property was owned by the successors of Alvah Smith McClain at the asserted time of taking; the evidence indicates that the property was placed on sale at public auction for unpaid taxes by the Municipality of the Isle of Pines in 1944. Nothing in the record shows that subsequent to January 1, 1959, the property in question was owned by Minnie Garside, as asserted.

Claimant states that the sales for unpaid taxes were illegal and therefore null and void. It appears that pursuant to Cuban law, under certain conditions and after payment of taxes and expenses, recovery of property sold at public auction for tax indebtedness may have been possible. The Commission, however, does not hold that title to the property after the sale remained in the former owner. If the former owner were to request that the property be returned, and if this were approved by the appropriate authorities, title would revert to the former owner. Here, claimant's predecessor lost title in 1944 and the evidence does not disclose that recovery proceedings were instituted, that they were successfully completed.

The Commission finds it unnecessary to determine the validity of local tax proceedings. The asserted invalid sales occurred prior to the statutory date of January 1, 1959, and therefore are outside of the scope of Title V of the Act.

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) (1970).)


The Commission finds that claimant has failed to meet the burden of proving ownership and taking by the Government of Cuba subsequent to January 1, 1959 of the property upon which her claim is based. Accordingly, the claim must be and it is hereby denied.

The Commission deems it unnecessary to determine other elements of the claim.

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

AUG 11 1971


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 (1970).)

CU-2506