

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

IN THE MATTER OF THE CLAIM OF

ELOISA S. RODRIGUEZ,
REGINA M. ROGERS, and
MARY ALICE McLAINE

Claim No. CU-2547
Claim No. **CU** -2548
Claim No. CU-2549

Decision No. **CU** 5089

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 amended aggregate amount of \$89,680.00 were presented by ELOISA S. RODRIGUEZ, REGINA M. ROGERS, and MARY ALICE McLAINE based upon the asserted ownership and loss of certain improved real 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. 188 (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 total losses as follows:

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|---|------------------|
| 1. Improved realty at 513 San Rafael Street, Vedado, Havana | \$68,080.00 |
| 2. Improved realty at 458 Animas Street, Vedado, Havana | <u>21,600.00</u> |
| | \$89,680.00 |

Based on the entire record including death certificates; a copy of a compromise agreement signed by the brother of claimant ELOISA S. RODRIGUEZ; a letter from The Exchange National Bank of Tampa, Florida which had formerly acted as trustee; and reports from abroad, the Commission finds that claimant ELOISA S. RODRIGUEZ owned a one-half interest, and that claimants REGINA M. ROGERS and MARY ALICE McLAINE each owned a one-fourth interest in the real properties subject of these claims.

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 was outlawed (Article 2). The law covered residential, commercial, industrial and business office properties (Article 15). Following Chapter VI of the law appears a section entitled "Temporary Provisions", and the third paragraph thereof provides that citizens of foreign countries who do not have the status of legal residents shall be excluded from the rights and benefits conferred by this law.

Based on the foregoing and the evidence of record, the Commission finds that claimants' real properties in Havana were taken by the Government of Cuba pursuant to the provisions of the Urban Reform Law; and, in the absence of evidence to the contrary, that the taking occurred on October 14, 1960, the date on which the law was published in the Cuban Gazette. (See Claim of Henry Lewis Slade, Claim No. CU-0183, 1967 FCSC Ann. Rep. 39.)

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 descriptions of the two improved real properties. The one at 513 San Rafael Street is described as a very old two-story house, brick walls, roofs of boards, floors mostly cement and the remainder stone. The carpentry is in very bad condition. All the stairs up to the flat roof are made of wood. For many years the building was used for the storage of tobacco leaves. The building is on a lot of about 751 square meters. In 1948 it had an estimated value of \$67,200.00. In 1958 it is said to have been appraised at \$60,080.00.

The property at 458 Animas Street has been described as a two-story very old building, made of brick with slab roofs, the floors of rather worn mosaic, the marble stairs in bad condition. The land is about 332 square meters. In 1948 it had an estimated value of \$21,600.00.

An officer of The Exchange National Bank of Tampa states that they were offered \$18,000.00 and \$21,000.00 in 1956 and 1958, respectively, for the realty at 458 Animas Street and that these offers were declined.

Claimant ELOISA S. RODRIGUEZ states that she and her husband claimed an income tax deduction in 1960 of \$20,742.43 for her one-half share of the realty at 513 San Rafael Street which she states appears to have been allowed; and a deduction in 1961 of \$19,200.00 for her one-half share of the realty at 458 Animas Street which she states it appears that \$10,912.50 has been allowed.

Based on the entire record and evidence of the value of similar properties available to the Commission, the Commission finds that on the date of loss the value of the improved realty at 513 San Rafael Street was \$41,500.00, and the improved realty at 458 Animas Street had a value of \$22,000.00.

Accordingly, the Commission concludes that claimants succeeded to and suffered losses in the aggregate amount of \$63,500.00 within the meaning of Title V of the Act, as the result of the taking of their fractional interests in the improved real properties in question by the Government of Cuba as of October 14, 1960.

The Commission has decided that in certification of losses 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 ELOISA S. RODRIGUEZ succeeded to and 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 Thirty-one Thousand Seven Hundred Fifty Dollars (\$31,750.00) with interest thereon at 6% per annum from October 14, 1960 to the date of settlement;

The Commission certifies that REGINA M. ROGERS succeeded to and 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 Fifteen Thousand Eight Hundred Seventy-five Dollars (\$15,875.00) with interest thereon at 6% per annum from October 14, 1960 to the date of settlement; and

The Commission certifies that MARY ALICE McLAINE succeeded to and 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 Fifteen Thousand Eight Hundred Seventy-five Dollars (\$15,875.00) with interest thereon 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

JUN 30 1970


Lyda S. Garlock, Chairman


Theodore Jaffe, Commissioner


Sidney Freidberg, 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. 1.5(e) and (g), as amended, 32 Fed. Reg. 412-13 (1967).)