

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

IN THE MATTER OF THE CLAIM OF

FRANK SALLANO

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-2614

Decision No. CU -4890

Counsel for claimant:

Jack J. Weiss, Esq.
By Timothy Kenney, Esq.

Appeal and objections from a Proposed Decision entered May 27, 1970.

Oral hearing requested and held on February 24, 1971.
Testimony by claimant and argument by Timothy Kenney, Esq.

FINAL DECISION

By Proposed Decision issued May 27, 1970, the Commission certified losses of the claimant in the amount of \$27,517.50 for real and personal property and denied a portion of the claim for lack of proof as to ownership, value and taking by the Government of Cuba.

At an oral hearing held on February 24, 1971, claimant FRANK SALLANO presented testimony with additional supporting evidence. Argument was made also by counsel for claimant as to the extent of the ownership of the property by claimant, which property was subject to the Cuban community property laws, the loss thereof and the value of the property at the time of loss.

Based upon the record, including testimony of claimant and the additional evidence, the Commission finds that claimant was the sole owner of (1) the residence at 702 - 96th Street, Miramar and its furnishings, (2) Orallano Corporation, (3) Compagnie de Diversiones Mansall, S.A. with its interests in the amusement park and shooting gallery, and (4) a note due from Cia. Operadora Cabaret Casino del Rio. The Commission further finds that claimant and his wife, a Cuban national whom he married on March 3, 1958, in accordance with the

Cuban community laws were the joint owners of (5) a beauty shop with its building and equipment, (6) two automobiles, and (7) one-half interest in a farm located in South Marianao with its buildings and livestock.

The Commission finds that the claimed properties were taken by the Government of Cuba within the meaning of Title V of the Act and that the dates of loss, in the absence of evidence to the contrary, were (1) for the residence and its furnishings - October 14, 1960, (2) Orallano Corporation - December 6, 1961, (3) Compagnie de Diversiones Mansall, S.A. - January 31, 1959, (4) note of Cia. Operadora Cabaret Casino del Rio - May 31, 1960, (5) Beauty shop - October 14, 1960, (6) Automobiles - December 6, 1961, and (7) Farm - June 17, 1959.

The Commission has determined that on the aforesaid dates of loss, the value of claimant's interests in the properties which are the subject of this claim were:

(1) Residence and furnishings	\$ 36,000.00 ✓
(2) Orallano Corporation	18,000.00
(3) Compagnie de Diversiones Mansall, S.A.	75,000.00
(4) Note of Operadora	20,000.00 ✓
(5) Beauty Shop (1/2)	7,500.00
(6) Automobiles (1/2)	1,600.00
(7) Farm, buildings and livestock (1/4)	<u>25,000.00</u> ✓
Total	\$183,100.00

The Commission concludes that claimant suffered a loss in the amount of \$183,100.00 within the meaning of Title V of the Act as the result of the taking of the property by the Government of Cuba.

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 claim it is so ordered as follows:

<u>FROM</u>	<u>ON</u>
January 31, 1959	\$ 75,000.00
June 17, 1959	25,000.00
May 31, 1960	20,000.00
October 14, 1960	43,500.00
December 6, 1961	<u>19,600.00</u>
	\$183,100.00

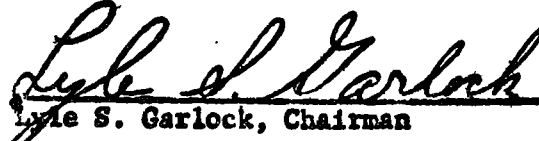
The Certification of Loss, as re-stated below, will be entered and the remainder of the Proposed Decision, as amended herein, is affirmed.

CERTIFICATION OF LOSS

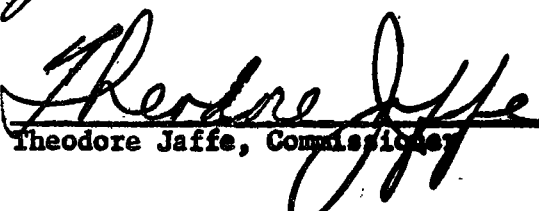
The Commission certifies that FRANK SALLANO suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of One Hundred Eighty-Three Thousand One Hundred Dollars (\$183,100.00) with interest 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

JUL 6 1971



Lyle S. Garlock, Chairman



Theodore Jaffe, Commissioner

FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
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IN THE MATTER OF THE CLAIM OF

FRANK SALLANO

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-2614

Decision No. CU 4890

Counsel for claimant:

Jack J. Weiss, Esq.

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 FRANK SALLANO for \$235,200.00 based upon the asserted ownership and loss of real and personal property, and stock interests in Cuba. 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 describes his losses as follows:

Residence at 702 96th Street, Miramar, air conditioned	\$ 30,000.00
Furnishings	6,000.00
Two automobiles	3,200.00
Beauty shop, building and equipment (adjoining the residence)	15,000.00
One-half interest in a farm, with structures and livestock	68,000.00
Amusement park or shooting gallery investment, with all related appurtenances	75,000.00
Note receivable from Cia. Operadora Cabaret Casino del Rio	20,000.00
Sole ownership of Orollano Corporation, a lumber company	<u>18,000.00</u>
	\$235,200.00

Claimant has submitted in support of his claim an affidavit of Agustin de Varona, who served as claimant's attorney in Cuba, and who is now in the United States, who outlines his familiarity with claimant's property and states that he assisted claimant and his attorney of record in preparing this claim, by refreshing his memory in pertinent respects. Additionally claimant has submitted a copy of the note of Cia. Operadora Cabaret Casino del Rio as well as a photograph of the residence and beauty shop. The Commission has also received reports from abroad concerning the farm, subject of this claim, and concerning the formation of Cia. de Diversiones Mansall, S.A., under which claimant apparently operated the shooting gallery venture. Moreover, he has submitted his own affidavit concerning the various items of his claim.

96th Street Property

Based upon the entire record the Commission finds that claimant owned a 7-room house at 702-96 Street, Marianao, of two stories, the furnishings

therein, and a beauty shop which he erected adjacent to his residence, and the equipment therein.

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).

The Commission finds that the claimant's residence, and the beauty shop and its equipment, 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 Gazette. (See Claim of Henry Lewis Slade, Claim No. CU-0183, 1967 FCSC Ann. Rep. 39.) Further, the Commission finds that the furnishings of the residence were taken at the same time.

The Commission further finds, on the basis of the record, and claimant's affidavit that he owned two automobiles in Cuba, a 1958 Dodge and a 1957 Chevrolet.

On December 6, 1961, the Cuban Government published its Law 989 which effected confiscation of all assets, personal property and real estate, and other interests of persons who had left the country.

Based on the foregoing, the Commission finds that the claimant's automobiles were taken by the Government of Cuba on December 6, 1961, pursuant to the provisions of Law 989.

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.

Based on the description and photograph of the house, the Commission finds that it and the land had a value of \$14,000.00 and further that the beauty shop and its equipment had a value of \$7,500.00 at the time of loss.

Claimant has described the furnishings of the house, room by room, including air conditioners and a new electric range. The Commission finds, on the basis of this description, and evidence of record with the Commission as to the value of similar properties, that the furnishings and appliances of the residence had a value of \$3,500.00 at the time of loss.

Farm

The evidence of record, including the report from abroad, establishes that claimant owned a one-half interest in a farm in South Marianao consisting of 11,686.15 square meters with certain improvements such as caretaker's house, stables, and the like.

The Cuban Agrarian Reform Law of May 17, 1959, published in the Cuban Official Gazette on June 3, 1959, established the National Agrarian Reform Institute and provided for the expropriation of rural properties and distribution among peasants and agricultural workers. The Fifth Transitory Provision provided that until regulations for the Law were promulgated, it should be applied through resolutions of the National Agrarian Reform Institute. The regulations for carrying out the expropriation of such rural property were contained in Law 588, published in the Official Gazette on October 7, 1959.

The Commission finds that this farm was taken by the Government of Cuba, in June, 1959, as asserted by claimant, and specifically on June 17, 1959, pursuant to said Agrarian Reform Law. (See Claim of Estate of Grenville M. Dodge, Deceased, Claim No. CU-1290.)

Claimant has stated that no income was being received from the farm. He has failed to establish that the property had a value of \$100,000.00 as asserted in correspondence, or even that the price paid was \$68,000.00. On the basis of evidence available to the Commission as to the value of similar properties in Cuba, the Commission finds that the farm had a value of

\$15,000.00 and that the improvements had a value of \$1,500.00 at the time of loss. Claimant's one-half interest therefore had a value of \$8,250.00.

Evidence of record also establishes that claimant was owed \$20,000.00 by the Cia. Operadora Cabaret Casino del Rio. This company was confiscated by the Government of Cuba by Resolution 3604, published in the Official Gazette on May 31, 1960, all pursuant to Cuban Law 715. The Commission finds that claimant suffered a loss in this amount as a result of the taking of this Cuban corporation by the Government of Cuba. (See Claim of Kramer, Marx, Greenlee and Backus, Claim No. CU-0105, 25 FCSC Semiann. Rep. 62 [July-Dec. 1966].)

Amusement Park

It appears that claimant operated this business through Cia. de Diversiones Mansall, S.A., as stated above. He has listed his investment in the arcade in Coney Island park, as including the shooting gallery with rifles, electrical attachments, 50 games, workshop, drills and tools, light fixtures, 25 outlets for games; as well as 150 games on location, 20 juke boxes, 4 mechanic cars, telephone intercom, and spare parts. He has stated that he was earning approximately \$400.00 net per week from the machines, both juke boxes and pinball machines. He stated that he went out of business with this venture in January of 1959 when the Castro Army marched into Havana and the people of Havana then ran around in mobs and broke up all kinds of amusement devices, together with stores, etc., and that he lost his machines and juke boxes through the mob scenes of the people, who at that time were also breaking up parking meters, telephone installations, etc., for the money, and everything they could touch, since the police had stopped acting in their capacity with reference to public rule. This had reference to the period January 1 to January 7, 1959.

The Act provides in Section 503(a) for the determination of claims against the Government of Cuba for losses resulting from 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.

Claimant's statements are clear that the loss of the property of his amusement enterprise was occasioned by mob scenes and did not constitute a taking of any kind by the Government of Cuba. Accordingly, the Commission holds that this item of claim is not within the scope of Title V of the Act and it is therefore denied.

Stock Interest

Claim has been made for loss in connection with asserted sole ownership of Orollano, S.A., organized by claimant to engage in a lumber business.

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) (Supp. 1967).)

Claimant has submitted no evidence of his ownership of this entity, nor of its taking by the Government of Cuba, the Commission having no such evidence in its records.

The Commission finds that claimant has not met the burden of proof in respect to this item, and it is hereby denied. The Commission deems it unnecessary to make determinations with respect to other elements of this item of claim.

Under the Community Property Law of Cuba, claimant's spouse had a one-half interest in the items of claim. However, she is not a national of the United States. Accordingly, so much of the claim as is based on her interest is denied. (See Claim of Sigridur Einarsdottir, Claim No. CU-0728, 25 FCSC Semiann. Rep. 45 [July-Dec. 1966].)

Recapitulation

Claimant's losses within the scope of Title V of the Act may be summarized as follows:

<u>Item</u>	<u>Date of Loss</u>	<u>Value of Claimant's Interest</u>
Farm and improvements	June 17, 1959	\$ 4,125.00
Debt of nationalized enterprise	May 31, 1960	10,000.00
Residence with plot	October 14, 1960	7,000.00
House furnishings and appliances	October 14, 1960	1,750.00
Beauty shop and equipment	October 14, 1960	3,750.00
Two automobiles	December 6, 1961	<u>892.50</u>
		\$27,517.50

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, as follows:


<u>FROM</u>	<u>ON</u>
June 17, 1959	\$ 4,125.00
May 31, 1960	10,000.00
October 14, 1960	12,500.00
December 6, 1961	<u>892.50</u>
	\$27,517.50

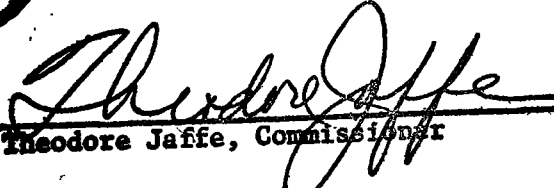
CERTIFICATION OF LOSS

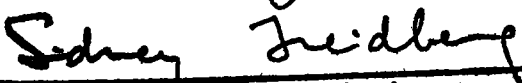
The Commission certifies that FRANK SALLANO suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Twenty-seven Thousand Five Hundred Seventeen Dollars and Fifty Cents (\$27,517.50) 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 Proposed
Decision of the Commission

MAY 27 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. 531.5(e) and (g), as amended, 32 Fed. Reg. 412-13 (1967).)