

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

IN THE MATTER OF THE CLAIM OF

ASUNCION CARIDAD W. VAZQUEZ

Under the International Claims Settlement  
Act of 1949, as amended

Claim No. CU -2639

Decision No. CU 5535

Counsel for claimant:

Sankary, Sankary and Horn  
By David Horn, Esq.

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 \$88,264.00, was presented by ASUNCION CARIDAD W. VAZQUEZ based upon the asserted loss of certain real and personal property 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 asserts the following losses:

<u>Colonia Cardona</u>	
Land	\$47,800.00
Personal property	1,400.00
<u>Santa Maria</u>	
Land	18,000.00
Personal property	4,814.00
<u>Santa Rita</u>	
Land	2,500.00
Buildings	5,000.00
<u>La Socapa</u>	
Land	2,000.00
Buildings	5,000.00
Personal property	<u>1,750.00</u>
Total	<u>\$88,264.00</u>

Real Property

The record includes a copy of a Deed of Donation executed by claimant's mother on March 14, 1953 and filed with the land register authorities in Santiago de Cuba, Oriente Province, Cuba. On the basis of the foregoing, the Commission finds that claimant acquired on March 14, 1953: (a) certain land, having an area of 6.270 caballerias, known as Lot Number Four of the Cardona farm, referred to as Colonia Cardona by claimant; (b) an interest equivalent to 12 caballerias of land in property known as Santa Maria and San Prudencio in Caney, Oriente, Cuba; (c) a 1/4 interest in a house and lot on Diego Palacios Street, Santiago de Cuba, referred to as Santa Rita by claimant; and (d) a house and lot in an area of El Cobre, Oriente, Cuba, known as La Socapa. Although claimant's mother, a national of the United States, retained a life estate in the property, this interest terminated upon her death on July 25, 1961, prior to the date of loss.

On December 6, 1961, the Cuban Government published Law 989, which confiscated all real property, personal property, rights, shares, stocks,

bonds, securities and bank accounts of persons who had left the country. The Commission finds that this law applied to claimant, who had left Cuba prior to that date, and that her interests in the said real properties were taken by the Government of Cuba on December 6, 1961 pursuant to Law 989. The Commission further finds that as a result of said action claimant sustained a loss of property within the meaning of Title V of the Act. (See Claim of Wallace Tabor and Catherine Tabor, Claim No. CU-0109, 25 FCSC Semiann. Rep. 53 [July-Dec. 1966].)

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 question, in all cases, will be to determine the basis of valuation which, under the particular circumstances, is "most appropriate to the property and equitable to the claimant." This phraseology does not differ from the international legal standard that would normally prevail in the evaluation of nationalized property. It is designed to strengthen that standard by giving specific bases of valuation that the Commission shall consider.

Claimant asserts that Colonia Cardona (Lot No. 4) had a value of \$47,800.00, representing \$16,800.00 for planted sugar cane and \$31,000.00 for the land. In support thereof, claimant has submitted a two-page affidavit, dated September 17, 1967, from a Cuban national. Affiant states that he was the Vice President and Manager of a Cuban corporation that operated a sugar mill in San Luis, Oriente, Cuba; that he is acquainted with claimant's property; and that in 1959 the value of Colonia Cardona was \$8,000.00 per caballeria. Apart from the Deed of Donation and the foregoing affidavit, claimant's valuations are not supported by any other evidence of record. Claimant has submitted another affidavit from a Cuban national which merely attests to claimant's ownership of the real property herein in general terms, but contains no reference to valuation.

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Upon consideration of the entire record, the Commission finds that the valuations most appropriate to the properties and equitable to the claimant are those appearing in the Deed of Donation. The Commission finds the said affidavit of the Cuban national of September 17, 1967 insufficient to justify the conclusion that Colonia Cardona had a value of \$8,000.00 per caballeria on the date of loss. Accordingly, the Commission finds that claimant's real properties had the following values on December 6, 1961, the date of loss:

Colonia Cardona	\$16,000.00
12 caballerias of land in the Santa Maria and San Prudencio property, having a total area of 45 caballerias and a value of \$666.66 per caballeria	7,999.92
Santa Rita (Diego Palacios Street - 1/4 interest in improved real property)	4,000.00
La Socapa	<u>3,333.33</u>
Total	<u>\$31,333.25</u>

A portion of the claim is based upon the asserted loss of buildings on Diego Palacios Street, valued by claimant at \$5,000.00, and buildings on the La Socapa property, also valued by claimant at \$5,000.00. As noted above, claimant has submitted no evidence to support this portion of her claim. Moreover, it is noted that the real property on Diego Palacios Street included a building.

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).)

The Commission finds that claimant has failed to sustain the burden of proof with respect to this portion of her claim. Accordingly, this portion of the claim is denied.

Personal Property

Claimant asserts the loss of personal property, in the amount of \$1,400.00 maintained on the Colonia Cardona property; \$4,814.00 on the Santa Maria property; and \$1,750.00 on the La Socapa property. Claimant's statements are not supported by any evidence of record.

The Commission finds that claimant has failed to sustain the burden of proof with respect to her claim for the loss of personal property. Accordingly, the Commission is constrained to deny this portion of the claim, and it is so denied.


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.


CERTIFICATION OF LOSS


The Commission certifies that ASUNCION CARIDAD W. VAZQUEZ 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 Three Hundred Thirty-three Dollars and Twenty-five Cents (\$31,333.25) with interest thereon 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

JUL 29 1970

  
Lyle 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).)

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