

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

IN THE MATTER OF THE CLAIM OF

GERALDINE F. WALSH

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU - 2726

Decision No. CU 5996

Counsel for claimant:

Daisy Richards Bisz
Attorney at Law

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 GERALDINE F. WALSH in the amount of \$76,211.87 based upon the asserted ownership and loss of real property, personalty, retirement pensions and stock interests. 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 her losses as follows:

1) 1/2 interest in house and lot at 305 Calle 8, Miramar	\$25,000.00
2) Furniture and furnishings	5,000.00
3) Automobile	2,000.00
4) Silver	7,000.00
5) Cash in Trust Co. of Cuba	6,000.00
6) Cash in Royal Bank of Canada	8,761.97
7) 400 shares of United Cuban Oil	100.00
8) 700 shares of Perforaciones Oro Negro, S.A.	100.00
9) 1,118 shares of Minimax Super- Mercados, S.A.	Apparently: 10,000.00
10) Engineers Social Security	3,009.90
11) Sugar Social Security	9,240.00
	<hr/>
	\$76,211.87

REAL PROPERTY

The record includes a deed, declaration by claimant's parents, evidence of participation in cost by claimant's husband, now deceased, copy of his will, and affidavits. On the basis of this record, the Commission finds that claimant owned a one-half interest in a house and lot at 305 Calle 8, Miramar.

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 record reflects that on December 19, 1960, subsequent to claimant's departure from Cuba, Cuban Urban Reform authorities sealed the house. The Commission finds that this property was taken by the Government of Cuba on December 19, 1960, pursuant to the provisions of the Urban Reform Law.

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 a copy of the deed which indicates that the price paid for the property in 1951 was \$30,000; a list of improvements and repairs bringing the total value to about \$46,149; a description indicating the building had twelve or more rooms, three baths and other usual facilities; photographs, as well as an affidavit of one with pertinent knowledge reflecting the opinion that at the time of loss the land had a value of \$30,000 and the depreciated building \$20,000, a total of \$50,000. Moreover, this was the value reported to the American Embassy in 1960. The Commission finds that at the time of loss the property had a value of \$50,000 and that claimant thus suffered a loss of \$25,000 in this connection.

PERSONALTY

The Commission finds that claimant owned certain furniture and furnishings in the residence, which were also taken on December 19, 1960.

Claimant has furnished a listing of her solely owned personal property which she has valued at \$5,000, some of which was acquired in 1946. The Commission finds that the average age of the personalty was seven years and after appropriate depreciation of five per cent per annum, finds that it had a value of \$3,250 on the date of loss.

The record also includes a listing of the silver owned by claimant, which was located in the same residence and taken on December 19, 1960. Claimant has valued this at \$7,000 and the Commission finds, after comparison with similar properties, that this evaluation is fair and reasonable, and that it had a value of \$7,000 on the date of loss.

Claimant also owned an automobile used at the domicile at 305 Calle 8, Miramar, which the Commission also finds was taken by the Government of Cuba on December 19, 1960. The file reflects that on February 23, 1960, an insurance company had increased the insurable value of this vehicle to \$2,000, and the Commission finds that it had such value on the date of loss.

Accordingly, the Commission finds that claimant suffered a loss within the scope of Title V of the Act in the amount of \$12,250 in connection with her personalty, as a result of the taking thereof by the Government of Cuba.

BANK ACCOUNTS

The record discloses and the Commission finds that claimant had a balance of 8,761.97 pesos in the Royal Bank of Canada, an agency of the National Bank of Cuba, as of May 25, 1961.

On December 6, 1961, the Cuban Government published its Law 989 which effectively confiscated all assets, personal property, real property, rights, shares, stocks, bonds, securities and bank accounts of persons who had left the country.

In the absence of evidence to the contrary, the Commission finds that claimant's above described bank account, totalling 8,761.97 pesos, which were on a par with United States dollars, was taken by the Government of Cuba on December 6, 1961. (See Claim of Floyd W. Auld, Claim No. CU-0020, 25 FCSC Semiann. Rep. 55 [July-Dec. 1966].)

Claim has also been asserted for \$6,000 said to be on deposit in the Trust Company of Cuba.

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).)

Claimant has not submitted documentation in support of this item of claim and the Commission finds that she has failed to maintain the burden of proof. Accordingly, the Commission is constrained to and does deny this item.

SECURITIES

Claim has been presented based on 400 shares of United Cuban Oil, Inc., certificates for which were submitted.

Section 502(1)(B) of the Act defines the term "national of the United States" as a corporation or other legal entity which is organized under the laws of the United States, or of any State, the District of Columbia, or the Commonwealth of Puerto Rico, if natural persons who are citizens of the United States own, directly or indirectly, 50 per centum or more of the outstanding capital stock or other beneficial interest of such corporation or entity.

The stock certificates of United Cuban Oil, Inc., reflect that it was incorporated in the State of Delaware. The President of the United Cuban Oil, Inc., has informed the Commission that over 50 per centum of the capital stock of said corporation is owned by United States citizens, which would qualify it as a United States national within the purview of Section 502(1)(B) of the Act.

Section 505(a) of the Act provides that

"A claim under section 503(a) of this title based upon an ownership interest in any corporation, association, or other entity which is a national of the United States shall not be considered. . . ."

The Commission concludes that since this claim is based on a stock interest in a corporation which qualifies as a United States national, the Commission is precluded, under Section 505(a) of the Act from considering this claim. Accordingly, it is hereby denied. (See the Claim of Mary F. Sonnenberg, FCSC Claim No. CU-0014, 25 FCSC Semiann. Rep. 48 [July-Dec. 1966]; and Claim of Joseph D'Adamo, FCSC Claim No. CU-0831.)

Evidence of record establishes that claimant owned 1,118 shares of Minimax Super-Mercados, S.A., and 700 shares of Perforaciones Oro Negro, S.A., Cuban corporations.

In our decisions entitled the Claim of Libby Holman Reynolds (Claim No. CU-1384, 1969 FCSC Ann. Rep. 24) and Claim of Henry H. Weldon (Claim No. CU-3416), which we incorporate herein by reference, we held that the properties owned by Minimax were intervened by the Government of Cuba on September 1, 1960, and that the properties of Perforaciones were nationalized on November 23, 1959. We need not again detail here the reasons or the method used in determining the value per share of Minimax as \$1.0023 and of Perforaciones as \$.11 per share.

The Commission finds that this claimant has been the owner of 1,118 shares of Minimax since prior to September 1, 1960 and of 700 shares of Perforaciones since prior to November 23, 1959, and that she suffered a loss in the amount of \$1,120.57 in connection with Minimax and \$77.00 in connection with Perforaciones.

RETIREMENT PENSIONS

Claim has been asserted by GERALDINE F. WALSH based on a civil engineer's pension which had been awarded to her father. This pension is also the subject of claim in Claim No. CU-2727, filed by GERALDINE F. WALSH and the other heirs of C. C. Fitzgerald. Accordingly, it will be determined in that claim and is deleted from this claim.

Additionally claim has been asserted based on the loss of a Sugar Retirement Fund pension. The record contains a letter of September 9, 1955, from the Sugar Workers Social Security Fund citing a Resolution No. 7 which clarifies that GERALDINE FITZGERALD WALSH is entitled to an annual pension amounting to \$1,440, following the death of her husband on November 28, 1954. Accordingly the Commission finds that claimant was entitled to an annual pension of \$1,440.

The Sugar Retirement Fund was established by Law No. 20 of March 27, 1941, and amended by Law No. 4 of November, 1948, Law-Decrees No. 586 of December 17, 1952, No. 711 of February 27, 1953 and No. 1239 of January 1, 1954, Decree No. 3394 of September 5, 1949, and Law-Decree No. 1959 of January 25, 1955.

On May 29, 1959, Law No. 351 was enacted which provided for the establishment of the Banco de Seguros Sociales de Cuba (Social Insurance Bank of Cuba) as an agency of the Government of Cuba to supervise and administer social insurance, as well as to direct the policy concerning all social security matters. The law also provided for the transfer of the assets and liabilities of all pension funds to the Banco de Seguros Sociales de Cuba. Information shows that retired employees after departure from Cuba received no retirement benefits. On the basis of evidence of record the Commission finds that on December 2, 1960, claimant lost her retirement pension and suffered a loss within the scope of Title V of the Act. (See Claim of A. M. Joy de Pardo, Claim No. CU-1906; 1969 FCSC Ann. Rep. 71; and Claim of Olive E. Cortis, Claim No. CU-1343.)

The Commission has adopted as a basis for the valuation of annuities the Makehamized mortality table, appearing as Table 38 of the United States Life Tables and Actuarial Tables 1939-41, and a 3-1/2% interest

rate, compounded annually, as prescribed by United States Treasury Department regulations of June 24, 1958, for the collection of gift and estate taxes, respectively. (See 23 F.R. 4547, 26 C.F.R. 2031-7.) According to that method of valuation, the value of the annuity for a person of the age of 51 amounts to 14.5101 times the yearly sum of the annuity. Since on December 2, 1960, claimant was 51 years of age the value of her discounted annuity on that date amounted to \$1,440 (the peso being on a par with the United States dollar) times 14.5101 or \$20,894.54.

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</u>
Improved realty	December 19, 1960	\$25,000.00
Personalty	December 19, 1960	12,250.00
Bank Account	December 6, 1961	8,761.97
Minimax	September 1, 1960	1,120.57
Perforaciones	November 23, 1959	77.00
Sugar Pension	December 2, 1960	<u>20,894.54</u>
		\$68,104.08


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.

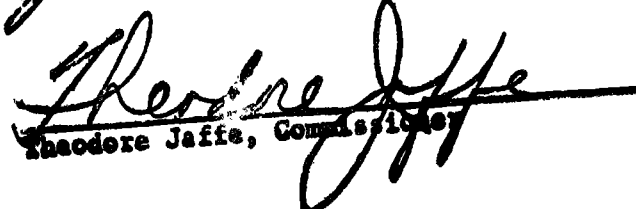
CERTIFICATION OF LOSS

The Commission certifies that GERALDINE F. WALSH 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 Sixty-Eight Thousand One Hundred Four Dollars and Eight Cents (\$68,104.08) with interest 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

DEC 16 1970


Lyle S. Garlock, Chairman


Theodore Jaffe, Commissioner

NOTICE TO TREASURY DEPARTMENT: This claimant may be the subject of another certification of loss in CU-2727 involving asserted losses not covered under this Proposed Decision.

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. (1970).)