

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

IN THE MATTER OF THE CLAIM OF

GERALDINE F. WALSH
MARGY F. THIEL
JOSEPH E. FITZGERALD

Claim No. CU-2727

Decision No. CU - 5995

Under the International Claims Settlement
Act of 1949, as amended

Counsel for claimants:

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, MARGY F. THIEL and JOSEPH E. FITZGERALD in the amount of \$5,518.50 based upon claims arising from asserted ownership and loss by their parents of property in Cuba. Claimants, children of C. C. Fitzgerald, a native born United States citizen now deceased, 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. 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,

Claimants describe their losses as follows:

(1) 1/2 the realty of 305 Calle 8, Miramar	\$25,000
(2) Furniture and furnishings	20,000
(3) 50 shares of Trust Co.	6,250
(4) Civil engineer's pension	4,600

REAL PROPERTY

The Commission finds, on the basis of evidence in this and related claim No. CU-2726, (Claim of Geraldine F. Walsh) that the improved realty at 305 Calle 8, Miramar, had been owned in one-half part by claimants' parents, (United States nationals since birth), Eugenia S. Fitzgerald, who died on December 20, 1963, and C. C. Fitzgerald, who died on October 8, 1964. The Commission has found that the property was taken by the Government of Cuba on December 19, 1960, pursuant to the Urban Reform Law. Subsequent to the deaths of the parents, these claimants became the owners of the claim arising from the taking of the one-half interest involved; as well as of all claims the parents held against the Government of Cuba.

The Commission has also found, for reasons set out in the decision on Claim No. CU-2726, that the improved realty had a value of \$50,000 and accordingly, the Commission concludes that these three claimants suffered a loss in the aggregate amount of \$25,000 in this respect.

PERSONAL PROPERTY

Claim has been presented in the amount of \$20,000 based on the loss of household furnishings, including silver and antiques, formerly owned by claimants' parents.

The Commission finds that the claimants' parents did own such personalty and that it was taken by the Government of Cuba on December 19, 1960 when the house was taken.

In support of the asserted value claimants have submitted an itemized list. The Commission finds that the antiques and silver on the list had a value of \$5,000. With respect to the remainder of the personalty, some of

which had been owned since the parents' marriage in 1903, the Commission finds that it had depreciated to the extent of 50 per cent and had a value therefore of \$7,500 on the date of loss.

The Commission therefore concludes that claimants inherited a claim against the Government of Cuba in the aggregate amount of \$12,500 based on the loss of the said personalty.

SECURITIES

The record shows that claimants' parents owned 50 shares of The Trust Company of Cuba, now the Banco Nacional de Cuba.

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

The record discloses that claimants' parents left Cuba on December 2, 1960. Accordingly, the Commission finds, in the absence of evidence to the contrary, that their interest in the shares of The Trust Company of Cuba were taken on December 6, 1961.

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 stock certificates submitted by claimants reflect a par value of 100 pasos. No other evidence of value has been submitted by claimants. However, in another claim before the Commission it appears that a number of shares of The Trust Company were part of an estate adjudicated in 1959, and were accorded a value equivalent to \$210.8433. The Commission finds that the shares held by claimants' parents had therefore an aggregate value of \$10,542.17 at the time of loss on December 6, 1961.

RETIREMENT PENSION

The record contains a certification by the Civil Engineer Social Security, of March 19, 1956, establishing that C. C. Fitzgerald was thereafter entitled to a pension in the amount of \$100 monthly.

The Civil Engineers' Social Insurance Fund was established by Law Decree No. 1765 of November 2, 1954, and amended by Law Decree No. 1964 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 C. C. Fitzgerald lost his retirement pension. (See Claim of A. M. Joy de Pardo, Claim No. CU-1906; 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 87 amounts to 3.1601 times the yearly sum of the annuity. Since on December 2, 1960, C. C. Fitzgerald was 87 years of age the value of his discounted annuity on that date amounted to \$1,200 (the peso being on a par with the United States dollar) times 3.1601 or \$3,792.12.

Recapitulation

Losses to which claimants succeeded, 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	12,500.00
Shares of stock	December 6, 1961	10,542.17
Civil Engineer's pension	December 2, 1960	3,792.12

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.

CERTIFICATIONS 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 Seventeen Thousand Two Hundred Seventy-Eight Dollars and Nine Cents (\$17,278.09) with interest at 6% per annum from the respective dates of loss to the date of settlement;

The Commission certifies that MARGY F. THIEL 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 Seventeen Thousand Two Hundred Seventy-Eight Dollars and Ten Cents (\$17,278.10) with interest at 6% per annum from the respective dates of loss to the date of settlement; and

The Commission certifies that JOSEPH E. FITZGERALD 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 Seventeen Thousand Two Hundred Seventy-Eight Dollars and Ten Cents (\$17,278.10) 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: Claimant Geraldine F. Walsh may be the subject of another Certification of Loss in CU-2726.

NOTICE TO TREASURY: The above-referenced securities may not have been submitted to the Commission or if submitted, may have been returned; accordingly, no payment should be made until claimant establishes retention of the securities or the loss here certified.

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).)