

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

IN THE MATTER OF THE CLAIM OF

MARIA J. O'HIGGINS
and
JOHN J. O'HIGGINS

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-2735

Decision No. CU 6225

Counsel for claimant:

George H. Salley, 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 MARIA J. O'HIGGINS and JOHN J. O'HIGGINS in the amended aggregate amount of \$75,388.00 based upon the asserted ownership and loss of interests in real property, debts, and an interest in a Cuban corporation. Claimant, JOHN J. O'HIGGINS has been a national of the United States since birth. Claimant, MARIA J. O'HIGGINS, his wife, has been a United States national since her naturalization in 1944.

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.

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, MARIA J. O'HIGGINS describes her loss as follows:

1. A lot in Varadero	\$15,000.00
2. 1/18 interest in a tract in Varadero	38,888.00
3. A stock interest in Perfumeria Fontenac de Cuba S.A.	18,000.00
4. A mortgage on a house at Second Avenue, Varadero	<u>1,500.00</u>
	\$73,388.00

Claimant, JOHN J. O'HIGGINS, describes his loss in the amount of \$2,000 which is based on the loss of a mortgage on same house at Second Avenue, Varadero.

Pursuant to the Community Property Law of Cuba all properties acquired by a husband and wife during marriage, except properties acquired by gift or inheritance, are owned jointly by both spouses (see Claim of Robert L. Cheaney and Marjorie L. Cheaney, Claim No. CU-0915).

Realty

Claimant, MARIA J. O'HIGGINS, states that she acquired one lot in Mar del Sur, Varadero, as a gift from her mother in 1949, and inherited from her father a 1/18 interest in the other parcel of land in the same city. She states that the value of the former was \$15,000, that she had rejected an offer of \$10,000 for it, and that the value of her interest in the latter was \$38,880 based upon an offer by the Cuban Government to purchase it in 1960 for \$1.75 per meter.

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By Commission letter of September 10, 1970 claimants were informed through counsel that a report from abroad indicated that there was no record of a registration in the name of claimant, MARIA J. O'HIGGINS, and were advised that absent evidence to substantiate this and other items of the claim, it might become necessary to determine the claim on the basis of the existing record. Pursuant to counsel's request the time to submit supporting evidence was extended. Claimant MARIA J. O'HIGGINS submitted an affidavit of November 23, 1970, setting forth the items of her amended claim, and her request for the Commission's assistance in obtaining evidence relative to this realty. No further evidence was received from claimant or any other source.

In view of the foregoing, the Commission is constrained to and does deny these portions of the claims for lack of proof.

Perfumeria Fontenac de Cuba, S.A. (Fontenac)

Claimant, MARIA J. O'HIGGINS, states that in September, 1959 she organized Fontenac, a soap and perfume company in Havana, by investing \$18,000. She has submitted a certificate for 115 shares of \$100 par value (the peso being on a par with the United States dollar) issued on May 10, 1960 in her name.

By Commission letter of August 7, 1967 and the aforementioned letter of September 10, 1970 it was suggested to claimant through counsel to establish the value of this company. Other than her affidavit in which she states that the value of her shares was the \$18,000 which she invested, no further evidence has been submitted.

The record does not establish that this company began operations or its value at the time of any taking by the Government of Cuba. The Commission has consistently held that the Act requires proof of value at the time of loss, and that a claimant's investment cannot in itself serve as a basis for a certification of loss (see Claim of Lucia W. Mendoza, Claim No. CU-3219). Accordingly, the Commission is also constrained to and does deny this portion of the claim.

Mortgages

Claimant, MARIA J. O'HIGGINS states in her claim form that she loaned her uncle \$1500 prior to 1958, that he in consideration agreed in writing to leave her his lot and house at Second Avenue, Varadero when he died, and that she inherited whatever right her uncle had in this property in October, 1964. Thereafter, in the aforementioned affidavit she stated that her uncle pledged this house and lot as security for the loan.

In the aforementioned letters of August 7, 1967 and September 10, 1970 it was suggested through counsel that this portion of her claim be substantiated. No evidence supporting this portion of the claim was submitted and it is therefore denied for lack of proof.

Claimant, JOHN J. O'HIGGINS, asserts that he also loaned the same individual \$2,000 in 1955, that it was his understanding that he had a lien on the same house and lot in this amount, that this realty was taken by the Government of Cuba early in 1961, and that no portion of this debt has been repaid. He however, has submitted a receipt dated July 31, 1955 signed by Casto Carol which acknowledges the receipt of \$2,000 and recites that the house at Second Avenue and 46th Street, Varadero, has been given as collateral.

Based on the entire record the Commission finds that pursuant to the Community Property Law of Cuba claimants jointly owned a mortgage of \$2,000 which was a charge on the house and lot at Second Avenue, Varadero.

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). Moreover, Article 30 provided for the cancellation of mortgages. (See Claim of Estate of Marita Dearing de Lattre, Claim No. CU-0116.)

Based on the entire record the Commission finds, in the absence of evidence to the contrary, that the mortgage interest on the property was cancelled by the Government of Cuba on October 14, 1960, and that claimants suffered a loss in the amount of \$2,000 on that date.

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.

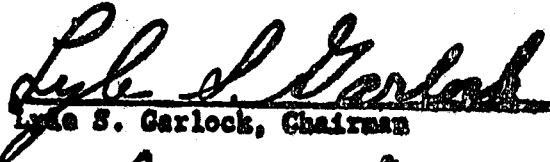
CERTIFICATIONS OF LOSS

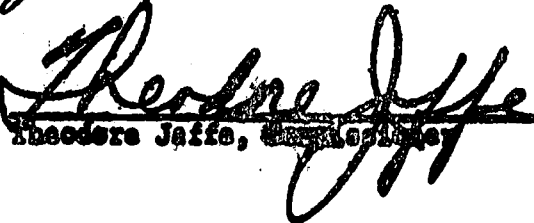
The Commission certifies that MARIA J. O'HIGGINS suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of One Thousand Dollars (\$1,000.00) with interest thereon at 6% per annum from October 14, 1960 to the date of settlement; and

The Commission certifies that JOHN J. O'HIGGINS 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 Thousand Dollars (\$1,000.00) 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 16 1971


Lytle S. Carlock, Chairman


Theodore Jaffe, Vice Chairman

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. 531.10(e) and (g), as amended (1970).)

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