

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

IN THE MATTER OF THE CLAIM OF

ARMANDO PINERO

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU - 2779

Decision No. CU
6286

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 ARMANDO PINERO for \$260,000 based upon the asserted ownership and loss of real property in Cangrejas and Bauta, Province of Havana, Cuba. Claimant has been a national of the United States since his 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 describes his loss as a rural estate of 7-1/4 caballerias in the town of Cangrejas, which he values at \$250,000; and further, an urban estate of 4,000 yards in Punta Brava, which he values at \$10,000.

Based upon the entire record, including a report from abroad, affidavits and explanations by claimant, the Commission finds that claimant owned by inheritance areas measuring 5 caballerias, 2 caballerias, and 2-1/4 caballerias. In addition, he inherited a one-half interest in an area of 2-3/8 caballerias. Later he purchased his brother's one-half interest in this last listed area.

Under the Community Property Law of Cuba, spouses acquire equal interests in property acquired during coverture, except that acquired by inheritance or gift. Thus, the Commission finds that claimant's spouse acquired a one-half interest in the 1-3/16 caballerias he purchased from his brother. The record is devoid of evidence as to the nationality of claimant's spouse and accordingly, so much of the claim as is based on her interest must be and is denied.

Thus claimant's real property interests totalled 10-7/16 caballerias, plus 19/32 of a caballeria.

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The 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. (See Claim of Council Bluffs Savings Bank, Claim No. CU-1290.) In the absence of evidence to the contrary, the Commission finds that claimant's properties described above were taken by the Government of Cuba on June 3, 1959.

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 Commission has considered the evidence of record, including the values included in the report from abroad, which claimant states were as of 25 years ago; and his assertion that he had been offered \$250,000 for the farm. However, no evidence has been submitted in support of this offer. Considering evidence available to the Commission as to the value of similar properties in Cuba, the Commission finds that the property had a value of \$5,000 per caballeria, and that the structures on the farm as described by claimant had a value of \$3,000. Accordingly, the farm and

structures owned by claimant had a value of \$58,156.25, but were encumbered by a mortgage in the amount of \$13,000 which must be deducted in order to arrive at claimant's equity. Thus, the Commission finds that claimant suffered a loss in the amount of \$45,156.25 as a result of the taking of his property by the Government of Cuba on June 3, 1959.

Claim has also been asserted for 4,000 yards in Punta Bauta which claimant asserts he inherited from his father. However, although claimant has submitted some affidavits in support of this item of claim, the Commission finds the record not of sufficient probative value to support this item.

The Commission appreciates the difficulties encountered by some claimants in establishing their claims against the Government of Cuba. However, the Commission must be guided by the evidence of record pertaining to the ownership, loss and value of the property included in each claim. Thus, the Commission finds that claimant has not met the burden of proof in that he has failed to establish ownership of rights and interests in the asserted 4,000 yards of urban property. Accordingly, the Commission is constrained to deny this portion of the claim and it is hereby denied.


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.

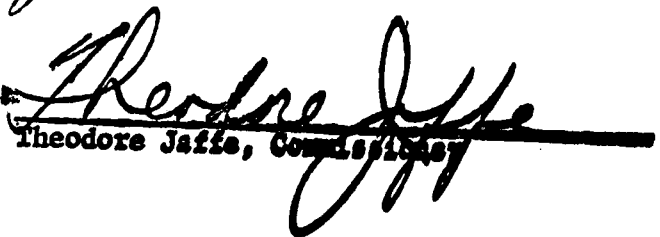
CERTIFICATION OF LOSS

The Commission certifies that ARMANDA PINERO 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 Forty Five Thousand One Hundred Fifty-Six Dollars and Twenty-Five Cents (\$45,156.25) with interest thereon at 6% per annum from June 3, 1959 to the date of settlement.

Dated at Washington, D. C.,
and entered as the Proposed
Decision of the Commission

JUL 28 1971


Lyle S. Garlock, Chairman


Theodore Jaffe, 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 (1970).)