

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

IN THE MATTER OF THE CLAIM OF

SALVADOR GOMEZ

Claim No. CU -2791

Decision No. CU -6258

Under the International Claims Settlement
Act of 1949, as amended

Petition to reopen; Proposed Decision dated and entered July 7, 1971. Final Decision entered August 9, 1971.

Counsel for claimant: _____ Rufus King, Esq.

AMENDED FINAL DECISION

The Commission entered its Final Decision on this claim on August 9, 1971, certifying that claimant suffered a loss in the aggregate amount of \$128,000.00 plus interest. The Certification of Loss represented \$28,000.00 for the value of a farm near Jaruco, Havana Province, known as "Santa Maria", and a debt claim against a Cuban corporation in the amount of \$100,000.00. A portion of the claim based upon the ownership and loss of a building lot in the Havana suburb of Vedado was denied for lack of evidence.

Subsequently, claimant petitioned to reopen the claim on the basis of newly discovered evidence. The new evidence consists of an affidavit of November 29, 1971 from Dr. Gaudencio Castro, former Vice President of the East Havana Bay Land Company concerning the company's offer to buy the "Santa Maria" farm, and a statement from claimant's daughter on the basis of personal knowledge concerning ownership and value of the real property in Vedado, Havana.

Upon consideration of the new evidence in light of the entire record, the Commission amends the decision in this matter as follows:

The Commission finds that the "Santa Maria" farm had a value of \$225,000.00 on June 3, 1959, the date of loss. The Commission also finds

that claimant owned certain real property located at 35th Street and 2d Avenue, Vedado, Havana. The Commission further finds that said property was taken by the Government of Cuba on December 6, 1961 pursuant to Law 989. On the basis of evidence concerning the rental income from the property and an offer to purchase it, the Commission finds that the real property at Vedado, Havana had a value of \$84,000.00 on the date of loss.

Claimant's losses are restated as follows:

<u>Item of Property</u>	<u>Date of Loss</u>	<u>Amount</u>
"Santa Maria" Farm	June 3, 1959	\$225,000.00
Real Property at Vedado	December 6, 1961	84,000.00
Debt	December 31, 1959	<u>100,000.00</u>
	Total	<u>\$409,000.00</u>

The Commission reaffirms that interest shall be allowed, and it is so ordered as follows:

<u>FROM</u>	<u>ON</u>
June 3, 1959	\$225,000.00
December 31, 1959	100,000.00
December 6, 1961	<u>84,000.00</u>
Total	<u>\$409,000.00</u>

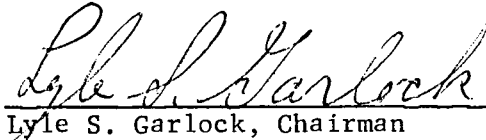
Accordingly the Certification of Loss in the Final Decision of August 9, 1971 is set aside, the following Certification is entered, and in all other respects the Final Decision, as amended herein, is affirmed.

CERTIFICATION OF LOSS

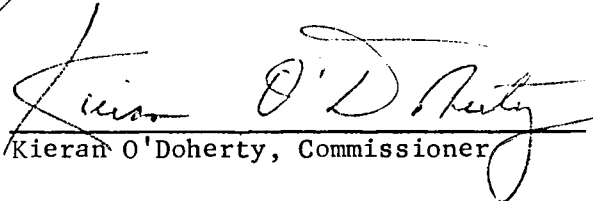
The Commission certifies that SALVADOR GOMEZ suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Four Hundred Nine Thousand Dollars (\$409,000.00) with interest thereon at the rate of 6% per annum from the respective dates of loss to the date of settlement.

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

JUN 30 1972



Lyle S. Garlock, Chairman



Kieran O'Doherty, Commissioner

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IN THE MATTER OF THE CLAIM OF

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Claim No. CU -2791

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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 SALVADOR GOMEZ for \$320,000 based upon the asserted ownership and loss of certain real property and a debt owed by a nationalized enterprise. Claimant has been a national of the United States since 1917.

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 follows:

City lot in Vedado, Havana	\$120,000
Farm in Jaruco, Havana	100,000
Debt	<u>100,000</u>
	\$320,000

Farm in Jaruco

Based upon the entire record including a report from abroad the Commission finds that claimant owned the farm subject of this claim comprised of four caballerias. This farm was dedicated to the growing of sugar cane and known as "Santa Maria".

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.

Based on the evidence of record the Commission finds, in the absence of evidence to the contrary, that the farm was taken on June 3, 1959 pursuant to the provisions of the Agrarian 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 report from abroad indicates that the farm was acquired in 1947 at which time it was valued at \$10,000. Claimant states that he added improvements including roads, pumps, irrigation canals, houses, a large reservoir, and fencing. In a report of 1961 to the State Department claimant stated that it was valued at \$40,000, that it had a large water well, turbine and motor valued at \$8,000, and that he was offered \$120,000 for the use of the well to provide water for the new suburb "Habana del Este". In his claim

form he estimates the value of the improvements at \$30,000. He stated that he would try to secure affidavits from officials of the development "Habana del Este" but no additional supporting evidence has been received.

On the basis of the entire record, including evidence available to the Commission as to the value of similar properties, the Commission finds that the farm including any improvements had a value of \$28,000 on the date of loss.

Debt

Claimant asserts claim for a debt of \$100,000 due from Envolturas Milprint de Cuba, S.A. In support of this item, claimant has submitted a copy of a draft in this amount made out to him in Havana on June 30, 1958 which provided for payment on June 30, 1959. It was guaranteed by Equipos Convertidores, S.A. and Empaques Celloprint, S.A.

Claimant has stated that 8 per cent annual interest was paid regularly until December 1959 when the owners of Envolturas Milprint de Cuba S.A. had to leave Cuba after confiscation of their factories. The record contains no other information regarding the actual date this company was taken. There is some information available to the Commission indicating that Empaques Celloprint was formally nationalized on July 7, 1961. However, it appears that governmental action affected all these companies prior to that time.

The Government of Cuba, on September 29, 1959, published its Law 568, concerning foreign exchange. Thereafter the Cuban Government effectively precluded not only transfers of funds to creditors abroad, but also payment to creditors within Cuba, by numerous unreasonable and costly demands upon the customers, who were thus deterred from complying with the demands of the Cuban Government. The Commission holds that Cuban Law 568 and the Cuban Government's implementation thereof, with respect to the rights of the claimant herein, was not in reality a legitimate exercise of sovereign authority to regulate foreign exchange, but constituted an intervention by the Government of Cuba in the contractual rights of the claimant, which resulted in the taking of American-owned property within the meaning of Section 503(a) of the Act. (See Claim of The Schwarzenbach Huber Company, Claim No. CU-0019, 25 FCSC

Semiann. Rep. 58 [July-Dec. 1966]; and Claim of Etna Pozzolana Corporation, Claim No. CU-0049, 1967 FCSC Ann. Rep. 46.)

Accordingly, in the instant claim, the Commission finds that the afore-said sum of \$100,000 was lost as a result of intervention by the Government of Cuba, and that in the absence of evidence to the contrary, such loss occurred on December 31, 1959.

Vedado Realty

Claimant states that he acquired a property on 35 Street about 1932 as a result of a foreclosure for nonpayment on a first mortgage. He states that the lot measured 1600 square meters and had a two-story building which was rented to laborers. He values the property at \$120,000.

It is noted that in a prior report to the Department of State dated June 14, 1961 he stated that the property had no buildings on it and was valued at \$96,000. He says that the deed to this property was in the possession of his daughter and was left behind when she left Cuba. The Commission attempted to secure evidence as to this property without result. Claimant has submitted no evidence to support this portion of his claim. The Commission is constrained to and does deny this item for failure of proof.

Recapitulation

Claimant's losses within the meaning of Title V of the Act are summarized as follows:

<u>Item</u>	<u>Date of Loss</u>	<u>Amount</u>
Farm	June 3, 1959	\$ 28,000
Debt	December 31, 1959	<u>100,000</u>
		\$128,000

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.

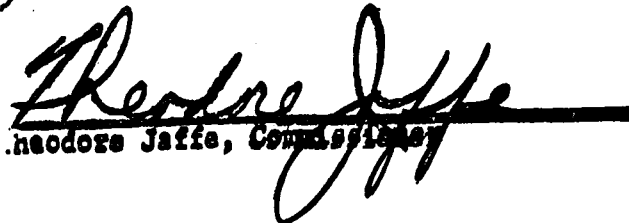
CERTIFICATION OF LOSS

The Commission certifies that SALVADOR GOMEZ 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 Hundred Twenty-Eight Thousand Dollars (\$128,000.00) 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

JUL 7 1971


Paul 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).)