

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

IN THE MATTER OF THE CLAIM OF

CELITA GOMEZ DE ESTEVEZ

Claim No. CU -2792

Decision No. CU -2564

Under the International Claims Settlement
Act of 1948, as amended

Counsel for claimant:

Rufus King, Esq.

Petition to Reopen; Proposed Decision entered July 31, 1968; Final Decision entered September 8, 1970.

AMENDED FINAL DECISION

This claim based on the asserted ownership and loss of certain real and personal property in Cuba, was denied by Proposed Decision entered July 31, 1968, for failure of proof. After an extension of time during which no substantiating evidence was submitted, the decision was entered as final on September 8, 1970.

Thereafter certain evidence, discussed below, was submitted and claimant petitions to reopen the matter. After due consideration, the petition is granted. Claimant has been a national of the United States at all times pertinent to this claim.

Pursuant to the community property law of Cuba, property purchased or acquired during coverture, other than inherited property, is owned in equal parts by the spouses. Claimant's spouse is not a national of the United States and any interest he may have is not certifiable under the Act.

The claim was originally based on a poultry business with related equipment (\$250,000); other personal property in connection with a residence (\$30,000); and a one-third interest in a family holding company called "Jocesa" (\$283,333.33).

By letter of April 15, 1972, claimant valued her poultry and pigraising business, including equipment, buildings, etc. at \$250,000; furnishing and household equipment at \$50,000; her participation in "Jocesal" at \$485,000; and has added certain lots of land assertedly owned in Reparto Biltmore between 11 and 13th, on Street No. 214 (\$36,000).

I. Poultry Business

The record discloses that claimant operated a poultry business on a farm originally known as "Josefina" and later called "Granja Azul." Her ownership included a one-half interest in buildings, equipment, livestock and related personalty, but did not include the land, which is further discussed under III below.

On December 6, 1961, the Cuban Government published its Law 989 which effectively confiscated all assets, personal property and real estate, rights, shares, stocks, bonds and securities of persons who left the country. The Commission finds that claimant's poultry business, and her other property interests in Cuba, were taken by the Government of Cuba on December 6, 1961, pursuant to the provisions of Law 989 (See Claim of Wallace Tabor and Catherine Tabor, Claim No. CU-0109, 25 FCSC Semiann. Rep. 53[July-Dec. 1966]).

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 the statement of one Fernando Macia v Del Monte, formerly of Cuba, who, while there, was Secretary of Ralston Purina Company's subsidiary, and who states his understanding that one of Purina's clients in Cuba was the farm Granja Azul, (i.e., the business) owned by Mr. and Mrs. Estevez, to whom Purina sold substantial amounts of feed and the like. The record also includes the statement of Gustavo J. Galdo,

formerly in the insurance business in Cuba, and now of Venezuela, who states that he had the buildings and equipment of the farm (business) insured for \$200,000. He has not indicated in what year the policy issued.

Claimant's father, Salvador Gomez (Sr.) visited the offices of the Commission on April 19, 1972, acting as attorney-in-fact for his daughter. He has no interest in the properties of this claim. At the time of the conference he indicated that in fact the business held buildings and equipment, although not the land; he stated that eggs were sold to wholesalers; that the accounts receivable and accounts payable would balance out; and that in his opinion the buildings and equipment had a value of \$150,000 and the remainder of the claimed value would be attributable to livestock.

Claimant has stated that the farm had 20,000 chickens, as well as buildings, latest equipment, trucks, service wagons, office equipment, materials, feeds, etc. On the basis of the entire record, and considering that the buildings and equipment are not described in the utmost detail, nor is the date of the insurance policy known, the Commission finds that the buildings of the poultry business, as well as vehicles, and other equipment used in this business, had a value of \$150,000 at the time of loss.

The Commission further finds that the business had 20,000 chickens at the time of loss. The ages of this livestock are not given. Based on information available in a similar type of claim, the Commission finds that the poultry had an average value of \$2.75, or \$55,000 for 20,000 poultry.

Accordingly, the Commission finds that the total value of the poultry business was \$205,000 and that claimant suffered a loss of \$102,500 within the scope of Title V of the Act, in this connection.

The record does not include any probative evidence of hogs being raised, which would permit an affirmative finding by the Commission, and this item of claim is denied.

II. Personal Property

The farm Granja Azul included a residence which did not belong to the

claimant, although the Commission finds that she and her spouse owned the furnishings therein, and that these were also taken by the Government of Cuba on December 6, 1961.

On several occasions the Commission suggested to claimant that she furnish a detailed list of the personalty, showing the age of the items, and indicating which were community property and which may have been her separate property. Claimant has submitted a list of personalty described and valued generally by rooms, including some appliances, silver, paintings, animals and several cars, which she totals to \$42,300. Other than the cars, age of the items is not shown.

The Commission has considered the list at length and finds that in the absence of evidence of dates of acquisition, most of the items should be reduced by one-third to reach the value at the time of loss. This does not include silver. Some items such as china and paintings, absent evidence substantiating the values asserted, have been revalued in line with other similar claims. Accordingly the Commission finds that the household furnishings had a value of \$21,505 at the time of loss. Additionally the Commission finds that the six animals listed had a total value of \$1,200.

With respect to the automobiles, described as a 1958 Buick sedan, a 1957 4-door Ford and a 1958 4-door Chevrolet, the Commission finds, after consulting the 1961 Guide of the National Automobile Dealers Association, that these vehicles had values of \$1,295, \$775 and \$975, respectively, at the time of loss.

Accordingly, the Commission finds that claimant's one-half interest in the personalty had a value of \$11,352.50.

III. 1/3 Interest in "Jocesal"

The record discloses that certain properties in Cuba, further described below, originally belonged to one Jose Alvarez Riuz, grandfather of claimant. Upon his death in 1951, the properties were inherited by his two daughters. They were appraised in 1952 and the portion accruing to Celia Maria Martinez was placed in a holding company "Jocesal." The name

had been formed from the initials of the three children of Celia Maria Martinez (mother of the claimant) who had been divorced from Salvador Gomez (Sr.) in about 1949, and remarried. Ownership of the company was given to the three children, equally, the mother retaining however, a life estate.

The Commission finds that claimant's interest in "Jocesal" was also taken by the Government of Cuba on December 6, 1961.

In support of this item, claimant has submitted a Financial Statement of Inmobiliaria Jocesal, C.A., reconstructed in 1972, as of December 31, 1958.

This reflects the following:

1. Building at Obispo St., No. 1	\$ 100,000
2. Six houses in Buen Retiro in Marianao, near Columbia Barracks	90,000
3. Building at Infanta & Principe Sts.	170,000
4. Building at Principe No. 47	120,000
5. Building at San Jose No. 120	100,000
6. Building named Jose Antonio near Marti's Monument	125,000
7. Farm Josefina, later called Granja Azul	<u>250,000</u>
	\$ 955,000
8. 1,000 shares of Tropical Brewery, par \$100, market \$500 each	<u>500,000</u>
	\$1,455,000

These properties were discussed in detail with Salvador Gomez (Sr.) at the time of his visit, who stated that the values in the Statement are those set by the appraiser at the time of dividing the properties in about 1952. The Commission finds that any accounts receivable and accounts payable of "Jocesal" would balance out, and the Commission also finds that the improvements on the properties should be subjected to 2 per cent depreciation from 1952 to about 1960, whereas subsequent to that time depreciation and appreciation would be about equivalent. Accordingly, the Commission finds that the properties, as further described below, had the values ascribed below, at the time of loss:

1. Building at Obispo St., No. 1: a large old warehouse, on a good site	
Land (1/2 total claimed value)	\$ 50,000
Building	42,000
2. Six houses in Buen Retiro: new, of brick, 1 family each	
Land (1/2 total claimed value)	45,000
Houses	37,800
3. Building at Infanta & Principe Sts.: large, old, 3-floor, used for distributorship	
Land (1/4 total claimed value)	42,500
Building	107,100
4. Building at Principe No. 47: built 1928, ground and 3 stories	
Land (1/5 total claimed value)	24,000
Building	80,640
5. Building at San Jose No. 120: This building once had three floors, but was razed, and efforts made to sell land:	
Land (1/4 the total claimed value)	25,000
6. Building called Jose Antonio: Built about 1949, 5 stories:	
Land (1/6 the total claimed value)	20,833
Building	87,500
7. Farm Granja Azul (site of claimant's poultry business)	
Land, about 500 acres	50,000
25-year old residence, of about ten rooms with all appointments (not including furnishings)	
	<u>75,000</u>
	\$687,373

As shown above, the Financial Statement for "Jocesal" also lists 1,000 shares of Tropical Brewery (Cerveceria Tropical, S.A.). It is said that these shares had a par value of \$100. Mr. Gomez (Sr.) has stated that this company was owned by a small group, of which Jose Alvarez Riuz (deceased) had been one, that it was owned mainly by Cubans, that it was the main distributor of beer, the largest in Cuba, and had 70 per cent of the market for beer in Cuba; that the company held large tracts in the city; had been in business for 100 years; paid big dividends; and further, that the holders of these shares never sold.

The Commission has found no mention of this company in its excerpts from the Cuban Official Gazette of nationalized enterprises, nor is it listed in several available commercial directories. Moreover, other than the above recitation, the record contains no probative evidence upon which the Commission could make a finding of value. Clearly, par value or investment value is no measure of value as of the date of taking (See Claim of Warren and Arthur Smadbeck, Claim No. CU-2465). Similarly, the asserted market value of stock may bear little relation to the real value as it might be affected by many things, including the progress of Castro in Cuba.

On the basis of the record before it, the Commission is constrained to deny so much of the claim as based on an interest in the Tropical Brewery.

Accordingly, the Commission finds that the value of a one-third interest in "Jocesal" on December 6, 1961, was \$229,124.33. However, as stated above, this was encumbered by a life estate in favor of claimant's mother, who was 58 years old on the date of loss.

With respect to the values of life estates the Commission has adopted the Makehamized mortality table used by the United States Treasury Department in connection with the collection of gift and estate taxes. (See Claim of Richard Franchi Alfaro and Anna Alfaro, Claim No. CU-0048, 1967 FCSC Ann. Rep. 71). Pursuant to that method of valuation a life estate in property of a person 58 years old is valued at .42191 of the estate. Since the one-third interest had a value of \$229,124.33, the value of the life estate was \$96,669.85 and the value of claimant's interest was \$132,454.48, on the date of loss. Claimant's spouse has no interest in this property.

IV. Two lots in Miramar

By letter of April 15, 1972 claimant added an item of two lots of land, which she states she owned in the Reparto Biltmore in Street 214 between 11-13th, which she purchased from A. Mendoza for \$36,000 in 1957. Further, she states the value has increased since that time. However, although her father informed the Commission earlier that claimant said she owned these two lots, the record is otherwise devoid of probative evidence on which the

Commission could make an affirmative finding of ownership and value. Accordingly, the Commission is constrained to and does deny this item of claim.

Recapitulation

Claimant's losses, as of December 6, 1961, are summarized as follows:

Poultry business (1/2 interest)	\$102,500.00
Personalty (1/2 interest)	11,352.50
1/3 interest in "Jocesal" (less the life estate)	<u>132,454.48</u>
	\$246,306.98

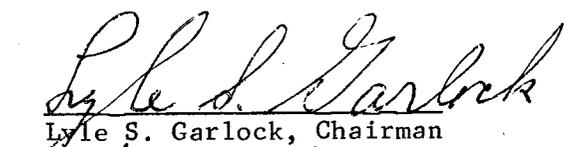
The Commission has decided that in certifications of loss on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be included at the rate of 6% per annum from the date of loss to the date of settlement (see Claim of Lisle Corporation, Claim No. CU-0644), and in the instant case, it is so ordered.

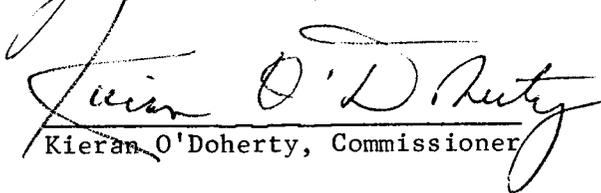
CERTIFICATION OF LOSS

The Commission certifies that CELITA GOMEZ DE ESTEVEZ 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 Two Hundred Forty-Six Thousand Three Hundred Six Dollars and Ninety-Eight Cents (\$246,306.98) with interest at 6% per annum from December 6, 1961 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

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.

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

IN THE MATTER OF THE CLAIM OF

CELITA GOMEZ DE ESTEVEZ

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -2792

Decision No. CU 2564

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, in the amount of \$563,333.33, was presented by CELITA GOMEZ DE ESTEVEZ and is based upon the asserted ownership and loss of certain real and personal property in Cuba. Claimant states that she had been a national of the United States since her 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.

Claimant contends that she owned certain real and personal property in Cuba, including a poultry farm, certain personal property and a 1/3 interest in the family firm of "Jocesal, S. A." all of which were expropriated by the Government of Cuba. However, except for her own letters and statements, claimant has submitted no documentary evidence to establish her claim.

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) (Supp. 1967).)

By letter of July 10, 1967, the Commission advised claimant concerning the type of evidence proper for submission to establish this claim under the Act. On August 22, 1967, claimant was again invited to submit any evidence available to her within 45 days from that date, and she was informed that absent such evidence, it might become necessary to determine the claim on the basis of the existing record. Finally, by letter of September 21, 1967, the Commission made additional suggestions to claimant concerning the submission of supporting evidence in this matter.

The only communication received from claimant on the matter is a letter requesting the Commission's assistance. The evidence suggested has not been submitted. In this connection the Commission has received a report from sources in Cuba which indicates that a search of the appropriate property registries did not disclose the registration of any property in claimant's name.

Accordingly, the Commission finds that claimant has not met the burden of proof in that she has failed to establish ownership by a national of the United States of rights and interests in property which was nationalized, expropriated or otherwise taken by the Government of Cuba. Thus, the Commission is constrained to deny this claim and it is hereby denied. The Commission deems it unnecessary to make determinations with respect to other elements of the claim.

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

JUL 31 1968

Leonard v. B. Sutton

Leonard v. B. Sutton, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

Sidney Feidberg

Sidney Feidberg, Commissioner

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, 32 Fed. Reg. 412-13 (1967).)