

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

IN THE MATTER OF THE CLAIM OF

M. H. DAVIS PROPERTIES, INC.

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-2844

Decision No. CU - 6025

Counsel for claimant:

Kurt Wellisch, Esq.

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 \$374,000.00, was presented by M. H. DAVIS PROPERTIES, INC. based upon the asserted loss of stock interests in two Cuban corporations.

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.

Section 502(1)(B) of the Act defines the term "national of the United States" as a corporation or other legal entity which is organized under the laws of the United States, or of any State, the District of Columbia, or the Commonwealth of Puerto Rico, if natural persons who are citizens of the United States own, directly or indirectly, 50 per centum or more of the outstanding capital stock or other beneficial interest of such corporation or entity.

The record shows that claimant was organized under the laws of Florida, and that at all pertinent times 100% of claimant's outstanding capital stock was owned in equal shares by three persons; namely, Milton H. Davis, Sr., Fabio E. DeMoya and Milton H. Davis, Jr., nationals of the United States at all pertinent times. (See Claim No. CU-2841 of Milton H. Davis, Jr., Claim No. CU-2842 of Fabio E. DeMoya and Claim No. CU-2843 of Milton H. Davis, Sr.) The Commission holds that claimant is a national of the United States within the meaning of Section 502(1)(B) of the Act.

Claimant asserts the following losses:

2,940 shares of stock in Rancho El Tesoro, S.A. (Treasure Ranch Corp.)	\$294,000.00
200 shares of stock in Ranchos Grandes Davis, S.A. (Davis Large Ranchs Inc.)	<u>80,000.00</u>
Total	<u>\$374,000.00</u>

Since Treasure Ranch Corp. and Davis Large Ranchs Inc. were organized under the laws of Cuba, they do not qualify as corporate "nationals of the United States" within the meaning of Section 502(1)(B) of the Act, supra. In this type of situation, it has been held that an American stockholder is entitled to file a claim for the value of his ownership interest. (See Claim of Parke, Davis & Company, Claim No. CU-0180, 1967 FCSC Ann. Rep. 33.)

Treasure Ranch Corp.

The evidence includes a copy of the constitution of Treasure Ranch Corp. showing its organization in Cuba on December 9, 1957; copies of stock certificates; and the joint affidavit of August 25, 1967 from two of the three stockholders of claimant.

On the basis of the foregoing evidence, the Commission finds that claimant owned 2,940 shares of stock in Treasure Ranch Corp., constituting all of the outstanding capital stock. At various times prior to the date claimant acquired said stock interest in Treasure Ranch Corp., all of the stock was owned by the three stockholders of claimant, who transferred their interests to claimant apparently in consideration of stock interests in claimant.

The articles of incorporation of Treasure Ranch Corp., recorded in the Mercantile Register of the Isle of Pines as Document No. 296, show that the corporation's authorized capital stock was \$300,000.00, the Cuban peso being on a par with the United States dollar. Initially the corporation issued 1,440 shares of stock with a par value of \$100.00 per share. Upon incorporation in 1957, the corporation acquired title to the following properties:

1. A stone residence situated on lot 6, Brazo Fuerte Subdivision, Isle of Pines, the land having an area of 900 square meters and the total value of the property was \$4,500.00.
2. Buildings appropriate for a motel situated on lot 16, Brazo Fuerte Subdivision, Isle of Pines, the land having an area of 42.90 acres and the total value of the property was \$75,500.00.
3. Furniture and furnishings contained in the house (item 1 above), having an aggregate value of \$1,000.00.
4. Furniture, household goods, and an inventory of stock suitable for a motel, having an aggregate value of \$53,000.00.

The record shows that the foregoing items of property, aggregating \$134,000.00, were not encumbered by any mortgages or liens. It further appears from the record that the real property was improved by the construction of a modern 44-unit hotel, fully furnished, and air-conditioned. The

hotel had an appropriate dining room, a large kitchen, employee quarters, a cocktail lounge, two swimming pools, dock and boat facilities, including a 32-foot Chris Craft and 10 smaller boats, riding horses, bicycles, 2 buses for private shuttle service and other motor vehicles.

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 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). The Commission finds that the improved real properties of Treasure Ranch Corp. were within the purview of the Urban Reform Law. In the absence of evidence to the contrary, the Commission finds that Treasure Ranch Corp.'s improved real properties were taken by the Government of Cuba on October 14, 1960. (See Claim of Henry Lewis Slade, Claim No. CU-0183, 1967 FCSC Ann. Rep. 39.) Further, the Commission finds that the personal properties on those premises were also taken on October 14, 1960.

The Commission finds that the properties so taken had an aggregate value of \$134,000.00. The record further shows that the corporation expended the sum of \$213,090.00 to erect new buildings and swimming pools, to acquire furniture and furnishings, buses, boats and other personal property. An itemized schedule of these expenditures at cost, follows:

Land and cost of clearing the land	\$ 22,000.00
Three 10-unit motels	75,690.00
Rebuilding old structure and adding a duplex unit	22,000.00
Reception room, dining room and kitchen facilities	9,690.00
Cocktail lounge and equipment	7,500.00
Commercial washers, dryers and ironers	3,500.00
El Tesoro boat	9,400.00
Smaller boats and fishing equipment	4,500.00
Swimming pool	2,500.00
Air conditioners and radios	4,100.00
Furniture	13,900.00
Paving roads in and around the premises	5,000.00

Linens, dishes, utensils, television sets	\$ 5,000.00
Buses and vehicles	6,000.00
Living quarters for manager and employees	6,000.00
Sundry items of property, including horses, saddles, bicycles, landscaping, road signs, advertising, water system, dock, etc.	<u>16,310.00</u>
Total	<u>\$213,090.00</u>

Some of the equipment listed above as well as additional related items of personal property for the hotel-motel were acquired through the use of a bank account maintained by Treasure Ranch Corp. in Miami, Florida, from which \$53,388.26 was drawn for these purposes.

The evidence also includes brochures used in advertising the resort owned by Treasure Ranch Corp. Those brochures describe the facilities that were available to guests of the hotel-motel, and include pictures of the interior and exterior of the premises.

Apparently, all other records relating to Treasure Ranch Corp. remained in Cuba and are unavailable. It further appears from the evidence of record that Treasure Ranch Corp. owned no assets other than the above-described items of property, and that it had no obligations on October 14, 1960, the date of loss.

Upon consideration of the entire record and considering depreciation applicable to many items, the Commission finds that claimant's valuations are fair and reasonable. Accordingly, the Commission finds that the net worth of Treasure Ranch Corp. on October 14, 1960 was \$294,000.00. Since claimant owned all of the outstanding stock of Treasure Ranch Corp., the Commission concludes that claimant sustained a loss in the amount of \$294,000.00.

Davis Large Ranchs Inc.

Based upon copies of stock certificates and statements of claimant's stockholders, the Commission finds that claimant owned 200 shares of stock

in Davis Large Ranchs Inc., constituting all of its outstanding capital stock. As in the case of Treasure Ranch Corp., the stock of Davis Large Ranchs Inc. was owned by claimant's three stockholders who transferred their stock interests to claimant.

The record shows that Davis Large Ranchs Inc. was organized in Cuba on January 21, 1958 and was duly recorded in the Mercantile Register of the Isle of Pines. Pursuant to a deed of March 13, 1958 (Document No. 95), Davis Large Ranchs Inc. acquired the following items of property:

1. Part of lot 192, Cuchilla Alta suburb of the Isle of Pines, having an area of 2.2 acres.
2. Lots 197 and 227, Cuchilla Alta suburb of the Isle of Pines, having an aggregate area of 9.5 acres.
3. Lots 234 through 236, 243 through 278, 282 through 289, 290A and 291A, Cuchilla Alta suburb of the Isle of Pines, having an aggregate area of 765.3 acres.

On December 6, 1961, Cuba published Law 989 in its Official Gazette which effected a confiscation of all assets, shares, real property, personal property and other property rights of persons who left Cuba or American firms no longer doing business in that country. In the absence of evidence to the contrary, the Commission finds that the properties belonging to Davis Large Ranchs Inc. were taken by the Government of Cuba on December 6, 1961 pursuant to Law 989. (See Claim of Wallace Tabor and Catherine Tabor, Claim No. CU-0109, 25 FCSC Semiann. Rep. 53 [July-Dec. 1966]; and Claim of Boger & Crawford, Claim No. CU-0037.)

It was intended that the land, aggregating 777 acres in area, be subdivided into lots and sold to the general public. For these purposes, Davis Large Ranchs Inc. expended \$20,300.00 for surveying, engineering and related services, for clearing the land, acquiring rights of way, constructing

bridges and culverts, grading the roads, and the construction of an office with equipment. According to statements from the three stockholders of claimant, the actual cost of the land and the said improvements aggregated \$98,000.00. Cuba took the property before any sale was made.

Upon consideration of the entire record, including the values of similar properties in the same area, and considering depreciation applicable to some improvements, the Commission finds that claimant's valuations are fair and reasonable. Accordingly, the Commission finds that the value of Davis Large Ranchs Inc.'s real and personal property on December 6, 1961 aggregated \$80,000.00.

It appears from the record that Davis Large Ranchs Inc. owned no assets other than the said real and personal property, and that it had no liabilities on the date of loss. The Commission therefore finds that the net worth of Davis Large Ranchs Inc. on December 6, 1961 was \$80,000.00, and the Commission concludes that claimant sustained a loss in that amount.

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

<u>Item of Property</u>	<u>Date of Loss</u>	<u>Amount</u>
Treasure Ranch Corp.	October 14, 1960	\$294,000.00
Davis Large Ranchs Inc.	December 6, 1961	<u>80,000.00</u>
	Total	<u>\$374,000.00</u>

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 as follows:

<u>FROM</u>	<u>ON</u>
October 14, 1960	\$294,000.00
December 6, 1961	<u>80,000.00</u>
Total	<u>\$374,000.00</u>

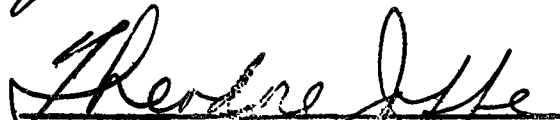
CERTIFICATION OF LOSS

The Commission certifies that M. H. DAVIS PROPERTIES, INC. 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 Three Hundred Seventy-four Thousand Dollars (\$374,000.00) 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

JAN 12 1971


Lyle S. Garlock, Chairman


Theodore Jaffe, Commissioner

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