

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

IN THE MATTER OF THE CLAIM OF

ELIZABETH B. LENDIAN

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -2870

Decision No. CU 4631

Counsel for claimant:

Barnes & Sumner
By E. David Tyner, Esq.

PROPOSED DECISION

This claim against the Government of Cuba, filed under Title V of the International Claims Settlement Act of 1949, as amended, in the amended amount of \$148,577.50, was presented by ELIZABETH B. LENDIAN based upon the asserted loss of interests in certain real and personal property in Cuba. Claimant has been a national of the United States since 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.

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 evidence establishes and the Commission finds that pursuant to the community property laws of Cuba, claimant and her husband, a Cuban national, owned equal interests in certain real and personal property in Cuba, described in detail hereafter.

On December 6, 1961, the Cuban Government published Law 989, which confiscated all real property, personal property, rights, shares, stocks, bonds, securities and bank accounts of persons who had left the country. The Commission finds that this law applied to claimant, who had left Cuba prior to that date, and that her interests in the property claimed were taken by the Government of Cuba on December 6, 1961 pursuant to Law 989, except as noted below. The Commission further finds that as a result of said action claimant sustained a loss of property within the meaning of Title V of the Act. (See Claim of Wallace Tabor and Catherine Tabor, Claim No. CU-0109, 25 FCSC Semiann. Rep. 53 [July-Dec. 1966].)

Stock Interests

Based upon the evidence of record as well as evidence included in the Claim of Allied Chemical Corporation, Claim No. CU-2169, and the Claim of Patricia F. Mederos, Claim No. CU-1592, the Commission finds that claimant owned a one-half interest in 1,689 shares of stock in Electroquímica del Caribe, S.A., and in 330 shares of stock in Silicatos Cubanos, S.A., hereafter referred to as Caribe and Silicatos, respectively.

The Commission has found that Caribe was nationalized by the Government of Cuba on October 13, 1960, pursuant to Law 890, and that Silicatos was nationalized by Cuba on December 2, 1960, pursuant to Resolution 60-613. (See Claim of Patricia F. Mederos, supra.)

Inasmuch as Caribe and Silicatos were organized under the laws of Cuba, neither qualifies as a corporate "national of the United States" defined by

Section 502(1)(B) of the Act as a corporation or other legal entity organized under the laws of the United States, or of any State, the District of Columbia, or the Commonwealth of Puerto Rico, whose ownership is vested to the extent of 50 per centum or more in natural persons who are citizens of the United States. In this type of situation, it has been held that a 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.)

Claimant has asserted that the values of her interests in Caribe and Silicatos were \$84,450.00 and \$16,500.00, respectively, based upon the par values of these shares of stock, \$100.00 per share, the Cuban peso being on a par with the United States dollar. The Commission, however, has determined the values of these stock interests on the basis of more reliable information.

In the Mederos decision, the Commission found that the values of one share of stock in Caribe and Silicatos on the said dates of loss were \$105.20 and \$143.62, respectively. Accordingly, the values of 1,689 shares in Caribe and 330 shares in Silicatos were \$177,682.80 and \$47,394.60, and claimant's one-half interests therein had the values of \$88,841.40 and \$23,697.30, respectively.

Poultry and Egg Business

The record shows that claimant's husband and his brother acquired a poultry and egg business in February 1956, in which partnership each owned a one-half interest. The business was conducted on leased premises, which were improved by the partnership by the installation of shelters, wire cages, water connections and electrical outlets, storage and equipment facilities, a truck, an air-conditioning system, a grader, fencing, and 8,900 laying hens. On the basis of an extract from the books and records of the partnership, the Commission finds that the poultry and egg business had a value of \$62,250.00 on December 6, 1961, the date of loss. Accordingly, claimant's one-quarter interest therein had a value of \$15,562.50, as claimed.

Apartment House

The Commission finds on the basis of the evidence of record, that in April 1958, claimant's husband acquired a one-third interest in an apartment house and lot in Marianao, Havana, Cuba. Accordingly, claimant owned a one-sixth interest in the property.

On October 14, 1960, the Government of Cuba published in its Official Gazette, Special Edition, its Urban Reform Law. Under Article 2 of 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. The law covered residential, commercial, industrial and business office properties (Article 15). The Commission finds that the improved real property herein was within the purview of the Urban Reform Law and was 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.)

The record shows that the building consisted of three stories and had a full apartment on each floor, one of which was used as claimant's residence. Each apartment contained a living room, dining room, four bedrooms, three bathrooms, a foyer, a kitchen and a terrace, and a garage was available for each apartment.

The evidence includes an affidavit, dated April 14, 1965, from claimant's husband in which he stated that the annual gross income from the rented portion of the property was \$7,500.00, and that the property had an appraised value of \$135,000.00. Claimant therefore asserted a loss in the amount of \$22,500.00. On several occasions, the Commission communicated with counsel for claimant and suggested the submission of a copy of the appraisal or other evidence to establish that the value of the property was \$135,000.00 as asserted by claimant. However, no such supporting evidence has been filed.

Based upon all the evidence of record including evidence of the values of similar properties in Marianao and Havana, the Commission finds that the value of the real property on October 14, 1960, the date of loss, was \$100,000.00. Therefore, claimant's one-sixth interest therein had a value of \$16,666.67.

Household Furnishings

The record establishes that claimant and her husband owned one-half interests in household furniture, furnishings, clothing and related items of property situated in their residence in the above-mentioned apartment house. In addition, claimant and her husband owned an automobile that was used by them and stored in their garage. When claimant and her husband fled Cuba in July 1960, they could not take the automobile with them, and therefore left it on the premises of their residence.

The Commission finds that when the Government of Cuba took the real property on October 14, 1960, it also took claimant's personal property situated therein, including the automobile. Claimant has asserted that her interest in the personal property, including the automobile, had a value of \$9,565.00. Based upon a full description of the various items of personal property and a certified list thereof, the Commission finds that the aggregate value of the personal property on October 14, 1960, the date of loss, was \$15,017.00. Accordingly, claimant's one-half interest in the furnishings and automobile had a value of \$7,508.50.

Recapitulation

Claimant's losses may be summarized as follows:

<u>Item of Property</u>	<u>Date of Loss</u>	<u>Amount</u>
Caribe (stock interest)	October 13, 1960	\$ 88,841.40
Silicatos (stock interest)	December 2, 1960	23,697.30
Poultry and Egg Business	December 6, 1961	15,562.50
Apartment House	October 14, 1960	16,666.67
Personal Property	October 14, 1960	<u>7,508.50</u>
Total		<u>\$152,276.37</u>

It will be noted that the total amount of the losses found herein is in excess of the amount asserted by claimant. However, in determining the amount of loss sustained, the Commission is not bound by any lesser or greater amounts which may be asserted by claimant as the extent thereof.

The Commission has decided that in certification of losses 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 13, 1960	\$ 88,841.40
October 14, 1960	24,175.17
December 2, 1960	23,697.30
December 6, 1961	<u>15,562.50</u>
	\$152,276.37
	<u><u> </u></u>

CERTIFICATION OF LOSS

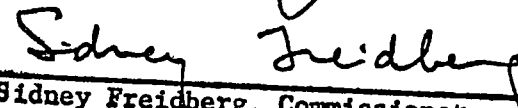
The Commission certifies that ELIZABETH B. LENDIAN suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of One Hundred Fifty-two Thousand Two Hundred Seventy-six Dollars and Thirty-seven Cents (\$152,276.37) 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

18 MAR 1970


Luke S. Garlock, Chairman


Theodore Jaffe, Commissioner


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

CU-2870