

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

IN THE MATTER OF THE CLAIM OF

ODETTE K. CARRICARTE

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -3104

Decision No. CU 4412

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 amount of \$673,000.00, was presented by ODETTE K. CARRICARTE, and is based upon the asserted loss of real property located at Havana and Santa Clara, Cuba. Claimant has been a national of the United States since her naturalization on July 15, 1955.

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 504 of the Act provides, as to ownership of claims, that

(a) A claim shall not be considered under section 503(a) of this title unless the property on which the claim was based was owned wholly or partially, directly or indirectly by a national of the United States on the date of the loss and if considered shall be considered only to the extent the claim has been held by one or more nationals of the United States continuously thereafter until the date of filing with the Commission.

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).)

Claimant submitted a document prepared in Cuba on September 3, 1946, No. 464, "Segregaciones y Division de Condominio", which purportedly referred to properties stated to have been owned by Luis F. Kohly, father of claimant, who died intestate in 1937. Claimant asserted that the document divided the aforesaid properties among three children, including claimant, a brother (Luis) and a sister (Josefina), with a usufruct interest of one-fourth being inherited by claimant's mother who died in May 1966. An examination of the document discloses that it contains only a description of various items of property, rural or urban, and does not establish ownership of such property in the late Luis F. Kohly or his heirs, either at the time of preparation of the document in 1946 or at the time the properties were assertedly nationalized or otherwise taken by the Government of Cuba in 1960.

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Since evidence was not submitted in clarification or support of this claim to establish ownership, loss and value of the properties at the asserted date of loss, the Commission made suggestions to claimant in letter of June 29, 1967, with respect to the type of evidence proper for submission to document this claim under the Act. Thereafter, by Commission letter of August 24, 1967, claimant was again invited to submit any evidence available to her within 45 days from that date; and claimant was also informed that, absent such evidence, it might become necessary to determine the claim on the basis of the existing record.

Claimant responded by letter received by the Commission on September 7, 1967, wherein she requested further information concerning the documentation of her claim. Accordingly, by Commission letter of September 11, 1967, claimant was again invited to submit supporting evidence pertaining to ownership, loss and value of the properties, subject of her claim, and the type of evidence proper for submission was again explained to claimant.

Claimant submitted her affidavit, executed on October 14, 1967, which disclosed that her father died intestate in 1938; and that her brother, Luis A. Kohly, and sister, Josefina Kohly Vda de Rodriguez, both nationals of Cuba, as well as claimant, were the sole surviving heirs of their late father at this time.

Thereafter, by Commission letters of November 6, 1967, December 9, 1968, and July 16, 1969, as well as August 8, 1969, additional suggestions were made to claimant concerning the submission of evidence in clarification and support of this claim. However, claimant has failed to submit such supporting evidence and has not responded to the suggestions of the Commission.

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The Commission finds that claimant has not met the burden of proof in that claimant has failed to establish ownership of rights and interests in property which was nationalized, expropriated or otherwise taken by the Government of Cuba. Neither has claimant established the loss or value of such property. Accordingly, this claim 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

13 JAN 1970

Theodore Jaffe

Theodore Jaffe, Commissioner

Sidney Freidberg

Sidney Freidberg, 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).)

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