

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

IN THE MATTER OF THE CLAIM OF

JOSE MARTINEZ

Claim No.CU -3116

Decision No.CU -
6226

Under the International Claims Settlement
Act of 1949, as amended

Counsel for claimant:

Royall, Koegel & Wells
By Stuart Rothman, Esq.

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 JOSE MARTINEZ for \$74,500 based upon the asserted ownership and loss of certain real and personal property and an interest in a business in Cuba. Claimant has been a national of the United States since his naturalization in 1937.

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 provide 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:

House and lot in Havana	\$17,500
Adjacent lot	4,500
1/3 interest in business in Vedado	40,000
Personal property	<u>12,500</u>
	\$74,500

Realty

Based upon the entire record including copies of deeds and a report from abroad the Commission finds that claimant, pursuant to the Community Property Law of Cuba, owned a one-half interest in the residence and lot located in Marianao, Havana, subject of this claim.

Claimant's wife has not asserted a claim for the loss of her one-half interest in this property, and so much of the claim as may be based on her one-half interest is hereby denied.

Claimant states that he was unable to leave Cuba until July 23, 1965 and that his home and real and personal property were taken three days before.

Based on the foregoing and the evidence of record, the Commission finds that claimant's real properties in Marianao were taken by the Government of Cuba and that the taking occurred on July 20, 1965. The Commission further finds that the personal property was also taken on that date.

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 in support of the claimed values the aforementioned documents and report, and three photographs of the house. The lot measuring 350 square meters was purchased in 1958 for \$2,920.27. The residence built thereafter was of one level with about five rooms and usual facilities.

The record reflects that this improved realty was subject to a mortgage of \$10,700 providing for monthly payments of \$76.00 until February 1, 1978. It was suggested to claimant, through counsel, that evidence be submitted of the amount paid, before the home was taken by the Government of Cuba. No reply or evidence in this connection has been received.

Based on the record, including evidence available to the Commission as to the value of similar properties in Mariana, the Commission finds that the value of the residence, including the adjacent lot was \$18,000 on the date of loss. The mortgage of \$10,700 however, must be deducted leaving an equity of \$7,300.

Personalty

With regard to the portion of this claim based on the loss of personality claimant has submitted a list of jewelry and household furnishings. He also asserts the loss of a 1957 Chevrolet. The jewelry having been placed in a private depository, has not been taken by the Government of Cuba.

By letter of October 23, 1967 and at various times thereafter it was suggested to claimant, through counsel, that he submit an affidavit listing the personality with dates of purchase and purchase price. Claimant has not submitted this information and in the absence of a basis for evaluation, the Commission is constrained to and does deny the portion of the claim for household furnishings, as well as the jewelry. As to the loss of a 1957 Chevrolet, the record includes a copy of the title.

Based upon the evidence of record the Commission finds that claimant owned a one-half interest in the automobile and that the value of the 1957 Chevrolet on July 20, 1965, the date of loss, was \$500.

Interest in Business

Claimant asserts a one-third interest in a partnership which is said to have owned a 21-room motel in Vedado, Havana. On several occasions it was suggested that claimant clarify and support this portion of the claim.

Claimant states that he operated this property with two partners from January, 1958 until November 19, 1963 when it was taken, and that he is unable to obtain a copy of the original contract and has not substantiated this item. The Commission is therefore constrained to also deny this portion of the claim for lack of proof and it is hereby denied.

In view of the foregoing, the Commission concludes that claimant suffered a loss in the total amount of \$3,900 within the meaning of Title V of the Act, as the result of the taking of his one-half interest in the realty and the automobile by the Government of Cuba on July 20, 1965.

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.

CERTIFICATIONS OF LOSS

The Commission certifies that JOSE MARTINEZ 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 Thousand Nine Hundred Dollars (\$3,900.00) with interest at 6% per annum from July 20, 1965 to the date of settlement.

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

JUN 16 1971

Lyle S. Garlock
Lyle S. Garlock, Chairman

Theodore Jaffe
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).)