

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

IN THE MATTER OF THE CLAIM OF

MAYNARD B. ROSS

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-3296

Decision No. CU 6098

Counsel for claimant:

Herbert Wall, 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 \$103,605.43, was presented by MAYNARD B. ROSS, based upon the asserted loss of 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.

Claimant asserts the following losses:

Land	\$ 55,961.47
Furniture	4,245.00
Equipment	9,000.00
Bonds	5,000.00
Life Insurance	2,570.00
Accounts Receivable	<u>26,828.96</u>
Total	<u>\$103,605.43</u>

Pursuant to the community property laws of Cuba, property acquired during coverture is owned by both spouses in equal shares, except property acquired by gift or inheritance. (See Claim of Robert L. Cheaney and Marjorie L. Cheaney, Claim No. CU-0915.)

On the basis of the evidence of record, including claimant's statements made under date of September 11, 1970, the Commission finds that claimant and his wife each owned a 1/2 interest in the properties discussed in detail below.

Inasmuch as claimant stated that his wife has been a national of the United States since birth, the Commission suggested that her interests in the properties may be considered upon written request accompanied by proof of her United States nationality at all pertinent times. However, no such evidence has been received. Accordingly, this claim will be determined on the basis of claimant's 1/2 interests in the properties in question.

Land

The evidence includes sales agreements and affidavits from claimant's Cuban attorney and from his father-in-law, setting forth facts based upon personal knowledge. Upon consideration of the foregoing evidence, the Commission finds that claimant owned 1/2 interests in the following items of real property:

1. A lot acquired on February 13, 1957, located in Marianao, Havana, Cuba, having an area of 1,700.70 square varas, a square vara being equivalent to approximately 1 square yard.

2. Lot 17, Block 77, acquired on May 26, 1958, located in Marianao, Havana, Cuba, having an area of 2,643.53 square varas.

3. Lots 15 and 16, Block 7, acquired on May 5, 1955, located in Reina Amalia, Nueva Gerona, Isle of Pines, Cuba, having an area of 1,793 square meters.

Claimant states that the lots were taken in December 1961 as a result of his having left Cuba.

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 had left the country. The Commission finds that this law applied to claimant who had left Cuba prior to that date, and that the above lots 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].)

Claimant asserts losses of \$14,808.03, \$22,035.44 and \$1,598.00 for items 1, 2 and 3 above, respectively, based upon costs. The contracts show that claimant paid \$13,605.60, \$21,148.24 and \$1,598.00, respectively, for the three items. The differences between the contract costs and the amounts claimed represent fees and expenses involved in purchasing the properties. The amounts claimed are corroborated by the affidavits of claimant's Cuban attorney and his father-in-law.

On the basis of the entire record, the Commission finds that claimant's valuations are fair and equitable. Accordingly, the Commission finds that the said three items of real property had an aggregate value of \$38,441.47 on December 6, 1961, the date of loss, and that claimant's 1/2 interest therein had a value of \$19,220.74.

Claimant also asserts the loss of \$17,520.00 for 2 lots at Alturas de Jaimanitas Avenida 12, Marianao, Havana, Cuba. On September 11, 1970, claimant said that he had not received a copy of the contract pursuant to which he assertedly acquired the 2 lots. He stated that he had in his

possession cancelled checks, a map and some contemporaneous correspondence to show that he had purchased the 2 lots on November 22, 1958 for \$17,520.00 and that he would submit this material.

Claimant was granted extensions of time until November 25, 1970. Subsequently, counsel and claimant were reminded that the material had not been submitted.

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).)

The Commission finds that claimant has failed to sustain the burden of proof with respect to the portion of his claim based on the 2 lots in Marianao, Havana, Cuba. Accordingly, this portion of the claim is denied.

Furniture

The Commission finds on the basis of the evidence of record that claimant owned a 1/2 interest in certain furniture and related personal properties maintained at his residence in Miramar, Havana, Cuba. The Commission further finds that said personal properties were taken by the Government of Cuba on December 6, 1961 pursuant to Law 989.

Claimant asserts a loss of \$4,245.00 for the personal properties and has submitted an itemized list thereof showing approximate costs as of January 1959.

The list includes items costing \$2,340.00 which are subject to depreciation at the rate of 5% per year and items costing \$1,905.00 which are subject to a 10% per year depreciation rate. Accordingly, the Commission finds that the aggregate value of the items of personal property on December 6, 1961 after depreciation for 3 years was \$3,322.50 (\$1,989.00 plus \$1,333.50). Therefore, claimant's 1/2 interest therein had a value of \$1,661.25.

Equipment

Based upon copies of invoices and claimant's statements, the Commission finds that claimant owned a 1/2 interest in certain coin-operated

automatic record players which claimant had leased to restaurants and places of amusement in Cuba. The Commission finds in the absence of evidence to the contrary that these record players were taken by the Government of Cuba on December 6, 1961 pursuant to Law 989.

The invoices disclose that claimant had acquired four such record players in 1958 at an aggregate cost of \$5,900.00. Claimant asserts that he owned other record players as well, costing \$3,100.00, representing a total investment of \$9,000.00. Under date of September 11, 1970 claimant stated that he would soon submit further evidence to support his claim for \$9,000.00 invested in automatic record players. However, such proof has not been filed. Accordingly, so much of this claim as is based on automatic record players in excess of the four costing \$5,900.00 is denied for lack of proof.

The Commission finds that the four record players were subject to depreciation at the rate of 10% per year. Therefore, their aggregate value on December 6, 1961 after depreciation for 3 years was \$4,130.00, and claimant's 1/2 interest therein had a value of \$2,065.00.

Bonds

The Commission finds that claimant owned a 1/2 interest in five mortgage bonds having an aggregate face value of \$5,000.00, which were issued by the Cuban Electric Company and were secured by real property of the debtor in Cuba. The Commission further finds that claimant sustained a loss within the meaning of Title V of the Act on August 6, 1960 when the security for his bonds was nationalized by the Government of Cuba. (See Claim of Ebasco Industries, Inc., Claim No. CU-3548.)

The Commission finds that the total indebtedness on these bonds on August 6, 1960, the date of loss, was \$5,000.00. Therefore, claimant's 1/2 interest therein had a value of \$2,500.00.

Life Insurance

Claimant asserts a loss of \$2,570.00 stated to be the cash surrender value of two insurance policies on his life issued by the American International Life Insurance Company. The Commission suggested the submission

of evidence to establish the proceeds of the policies had been taken by the Government of Cuba. No such evidence has been filed, however.

The Commission finds that claimant has failed to sustain the burden of proof with respect to the portion of the claim based upon the two life insurance policies. Accordingly, this portion of the claim is denied.

Accounts Receivable

Claimant asserts the loss of \$26,828.96 for accounts receivable due from certain named individuals. The only evidence of record in support of this portion of the claim is a list indicating the debtors, the dates when the debts arose and the unpaid amounts thereof.

On a number of occasions commencing as early as August 30, 1967, the Commission suggested the submission of supporting evidence, such as invoices, statements, bills and other appropriate documentation to establish that the debts were owed to claimant and that the debts were either charges on properties taken by Cuba or were owed by enterprises taken by Cuba. To date no further evidence has been submitted.

The Commission finds that claimant has failed to sustain the burden of proof with respect to the portion of his claim based upon accounts receivable. Accordingly, this portion of the claim is denied.

Recapitulation

Claimant's losses are summarized as follows:

<u>Item of Property</u>	<u>Date of Loss</u>	<u>Amount</u>
Land	December 6, 1961	\$19,220.74
Furniture	December 6, 1961	1,661.25
Equipment	December 6, 1961	2,065.00
Bonds	August 6, 1960	<u>2,500.00</u>
	Total	<u>\$25,446.99</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>
August 6, 1960	\$ 2,500.00
December 6, 1961	<u>22,946.99</u>
Total	<u>\$25,446.99</u>

CERTIFICATION OF LOSS

The Commission certifies that MAYNARD B. ROSS 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 Twenty-Five Thousand Four Hundred Forty-Six Dollars and Ninety-Nine Cents (\$25,446.99) 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

MAR 11 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).)

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