

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

IN THE MATTER OF THE CLAIM OF

NORMAN ZIMMERMAN

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-3340

Decision No. CU

4821

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, was presented by NORMAN ZIMMERMAN in the amended amount of \$129,008.84 based upon the asserted ownership and loss of certain real and personal property in Cuba and a debt due from the Cuban Government. Claimant has been a national of the United States since his naturalization in 1927.

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 describes his loss as follows:

5/48 interest in a farm known as "Itabo" in Escambray, Cuba	\$ 99,596.35
5/48 interest in personalty on "Itabo" including household furnishings, power plant, livestock, shucking machines, and 2 trucks	5,161.67
1/2 interest in residence in Marianao, Havana	10,175.00
1/2 interest in personalty therein, and 1955 Cadillac	8,867.50
5/48 interest in debt due from National Institute of Agrarian Reform (INRA)	<u>5,208.32</u>
	\$129,008.84

The record includes reports received by the Commission from abroad; as well as copies of portions of insurance policies on the residence in Marianao and on a warehouse on the farm, including its contents, a copy of an insurance policy on the family home on "Itabo", and a copy of a certification from a Register of Deeds regarding claimant's wife's interest in "Itabo".

Based on the foregoing, the Commission finds that claimant owned the interests he asserts in the real and personal property subject of this claim, other than the asserted debt, discussed further below.

A resolution was issued on November 13, 1960 by the National Institute of Agrarian Reform pursuant to the Agrarian Reform Law of May 17, 1959, and the Commission finds that the farm "Itabo" was thereby intervened by the Government of Cuba on November 13, 1960.

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 other 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). Following Chapter VI of the law appears a section entitled "Temporary Provisions" and the third paragraph thereof provides that citizens of foreign countries who do not have the status of legal residents shall be excluded from the rights and benefits conferred by this law.

Claimant states that he left Cuba in November, 1960, and assumes that the residence in Marianao, Havana was taken when he left.

Based on the foregoing and the evidence of record, the Commission finds that claimant's residence in Marianao, including its contents, was taken by the Government of Cuba pursuant to the provisions of the Urban Reform Law; and, in the absence of evidence to the contrary, that the taking occurred on November 30, 1960. (See Claim of Henry Lewis Slade, Claim No. CU-0183, 1967 FCSC Ann. Rep. 39.)

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.

Farm "Itabo"

The record includes photograph of the main house, and of the warehouse on this property.

The farm is described as consisting of about 1,700 acres including an orange grove of 6,000 trees on 66 acres; a coffee plantation of 600,000 coffee plants; a warehouse to house the machinery and equipment; a one-room schoolhouse; 21 clay cottages of 2 and 3 rooms for the employees and their families; and a main house having about 16 rooms.

Claimant states that the main house, including additions, cost \$34,000.00, that the warehouse was a stone cyclone-proof building which

cost \$9,000.00, that the schoolhouse cost \$3,500.00, and that the cottages cost a total of \$2,625.00. He states that the orange trees were worth at least \$50.00 per tree and that the average cost of a coffee plant is \$1.00.

Claimant has also submitted an affidavit from an individual who states he visited claimant's home and farm many times, and his own affidavit compiling a detailed list of the personalty on the farm.

Based on the evidence of record the Commission finds that the value of the farm and improvements, not including the personalty, was \$650,000.00 on the date of loss.

Marianao Residence

The record includes copy of a photograph of this residence, further described by claimant as a 2-story building on a plot 120 feet by 180 feet, with about 10 rooms and usual facilities, purchased new in 1953 for \$20,000.00. He states it was completely surrounded by a hurricane fence. Additionally he asserts that he was offered \$25,000.00 for the home two weeks after its purchase, and that the hurricane fence installed after the purchase cost \$350.00.

Based on the record, including evidence available to the Commission as to the value of similar properties in Marianao, the Commission finds that the value of the residence, not including the personalty, on the date of loss was \$20,350.00.

Personalty

With regard to the portion of this claim based upon the loss of personalty on the farm "Itabo" including the livestock and the 2 GMC trucks; and in claimant's residence in Marianao, as well as the 1955 Cadillac, the Commission finds, upon consideration of claimant's listing, and after appropriate depreciation, that the personalty had values of \$28,030.00 and \$16,100.00, respectively, on the date of loss.

Debt

Concerning the portion of the claim based on the debt assertedly due from the National Institute of Agrarian Reform, claimant states this debt represents sales of coffee to various customers during the early months of 1959 after the crop was harvested, for which the money due was collected by INRA and never paid. However no documents or other evidence have been submitted to support this item or the amount thereof. The Commission is therefore constrained to hold that claimant has not established this portion of his claim, and therefore it is denied for failure to meet the burden of proof.

Accordingly, the Commission concludes that claimant suffered a loss in the aggregate amount of \$102,394.79 within the meaning of Title V of the Act, as the result of the taking of his property by the Government of Cuba, summarized as follows:

<u>Item</u>	<u>Date of Loss</u>	<u>Value of Claimant's Interest</u>
1. 5/48 interest in the farm "Itabo"	Nov. 13, 1960	\$ 81,250.00
2. 5/48 interest in the personalty on "Itabo"	Nov. 13, 1960	2,919.79
3. 1/2 interest in residence in Marianao	Nov. 30, 1960	10,175.00
4. 1/2 interest in the personalty therein and Cadillac	Nov. 30, 1960	<u>8,050.00</u>
		\$102,394.79

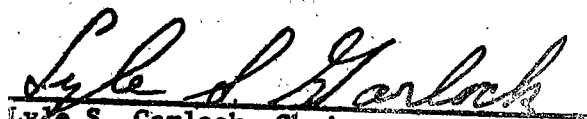
The Commission has decided that in certification of losses on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be included at the rate of 6% per annum from the date of loss to the date of settlement (see Claim of Lisle Corporation, Claim No. CU-0644), and in the instant case it is so ordered.


CERTIFICATION OF LOSS

The Commission certifies that NORMAN ZIMMERMAN 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 Two Thousand Three Hundred Ninety-four Dollars and Seventy-nine Cents (\$102,394.79) 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

MAY 6 1970


Lytle 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).)