

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

IN THE MATTER OF THE CLAIM OF

ARTURO OLIVERA

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-3343

Decision No. CU 5843

Counsel for claimant:

Maurice L. Cowen, 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 amended amount of \$195,772.50, was presented by ARTURO OLIVERA based upon the asserted loss of certain real and personal property in Cuba. Claimant has been a national of the United States since August 9, 1960.

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:

1/4 Interest in improved real property at 263 Aguiar Street, Havana	\$ 40,500.00
1/2 Interest in improved real property at 3405 First Avenue, Miramar, Havana	45,000.00
1/4 Interest in improved real property at 14607 Ninth Avenue, Marianao, Havana	18,750.00
1/2 Interest in lot at Miramar, Havana	10,000.00
1/2 Interest in home furnishings	15,612.50
100% Interest in cash	35,000.00
100% Interest in gold coins	5,910.00
100% Interest in jewelry	15,000.00
1/2 Interest in certain Cuban government bonds	<u>10,000.00</u>
Total	<u>\$195,772.50</u>

The evidence includes copies of deeds establishing ownership of the real property in question; appraisals of the items of real property; submitted copies of claimant's income tax returns showing the allowance of deductions for losses of real properties in Cuba; and statements of claimant concerning his claim. On the basis of the foregoing, the Commission finds that claimant owned interests in certain items of real and personal property in Cuba, discussed in detail below.

The Commission finds that the above three items of improved real property were within the purview of the Urban Reform Law, published in the Cuban Official Gazette on October 14, 1960. In the absence of evidence to the contrary, the Commission finds that the improved real properties were 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.)

On December 6, 1961, the Cuban Government published in its Official Gazette its Law 989, which effected the confiscation of all assets, personal property and other 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 his interest in the said lot was 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].)

The record shows that claimant and his wife, stated to have acquired nationality of the United States on August 7, 1962, were married on June 26, 1955. Pursuant to the community property laws of Cuba, all properties acquired during coverture are owned in equal shares by both spouses, except properties acquired by gift or inheritance. (See Claim of Robert L. Cheaney and Marjorie L. Cheaney, Claim No. CU-0915.) As indicated hereafter, claimant's wife acquired interests in some of the properties in question by virtue of the community property laws of Cuba. However, no claim has been filed by her or on her behalf because she was not a national of the United States on the dates of loss, a prerequisite for favorable action pursuant to Section 504(a) of the Act which provides in pertinent part as follows:

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.

REAL PROPERTY

The evidence establishes and the Commission finds that claimant owned interests in real property as follows:

1. A 1/4 interest in improved real property at 263 Aguiar Street, Havana, Cuba, acquired before his marriage. The property consisted of a lot having an area of 394.7 square meters improved by a five-story apartment house. Claimant states that each story had 27 apartments.

2. A 1/2 interest in improved real property at 3405 First Avenue, Miramar, Havana Province, Cuba, acquired before his marriage. The property

consisted of a lot having an area of 900 square meters improved by a two-story building containing one apartment on each floor. The first-story apartment was used by claimant and his wife as their residence. It contained a porch, dining room, living room, hall, two bedrooms, bathroom, kitchen, servant's quarters and bathroom, closets and a two-car garage. Subsequently, two bedrooms and two bathrooms were added. The other apartment was rented and consisted of a living room, dining room, hall, three bedrooms, bathroom, kitchen, servant's quarters and bathroom, and closets.

3. A 1/4 interest, his wife also owning a 1/4 interest, in improved real property at 14607 Ninth Avenue, Marianao, Havana Province, Cuba, acquired during coverture. The property consisted of a lot having an area of 428.50 square meters improved by a three-story building with a separate apartment on each floor. Each apartment contained a living room, dining room, two bathrooms, three bedrooms, servant's quarters and bathroom. In addition, there was a garage for six automobiles available to the occupants.

4. A 1/2 interest, his wife also owning a 1/2 interest, in a lot at Fifth Avenue and 78th Street, Miramar, Havana, Cuba, acquired during coverture.

As noted above, the three items of improved real property were taken by Cuba on October 14, 1960, and the lot was taken by Cuba on December 6, 1961.

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 question, in all cases, will be to determine the basis of valuation which, under the particular circumstances, is the "most appropriate to the property and equitable to the claimant." This phraseology does not differ from the international legal standard that would normally prevail in

the evaluation of nationalized property. It is designed to strengthen that standard by giving specific bases of valuation that the Commission shall consider.

The record includes an affidavit from a Registered Architect appraising the four items of real property herein on the basis of personal knowledge. His appraisals conform substantially with the tax deductions claimant was permitted to take by the Internal Revenue Service on account of the loss of said real properties.

Upon consideration of the entire record, the Commission finds that the valuations most appropriate to the real properties and equitable to the claimant are the appraisals set forth in the affidavit of the architect, dated June 29, 1970. Accordingly, the Commission finds that claimant's interests in the real properties had the following values on the dates of loss as indicated.

<u>Item of Property</u>	<u>Date of Loss</u>	<u>Value of Claimant's Interest</u>
263 Aguiar Street, (1/4 interest)	October 14, 1960	\$ 40,500.00
3405 First Avenue (1/2 interest)	October 14, 1960	45,000.00
14607 Ninth Avenue (1/4 interest)	October 14, 1960	18,750.00
Lot at Fifth Avenue (1/2 interest)	December 6, 1961	<u>10,000.00</u>
Total		<u><u>\$114,250.00</u></u>

HOME FURNISHINGS

The evidence establishes and the Commission finds that claimant and his wife each owned a 1/2 interest in the furniture and furnishings at their home in Miramar, Havana Province, Cuba. The Commission further finds that said personal property was taken by the Government of Cuba on October 14, 1960, when the improved real property in which the personal property was situated was taken by Cuba.

The record includes a detailed list setting forth the various items of furniture and furnishings that were contained in claimant's apartment with costs thereof. In a letter, dated August 11, 1970, claimant stated that the items of personal property were "between ten to fifteen years old and that a proportionate depreciation should apply." That letter was in response to a Commission suggestion that the list of personal property include approximate dates of acquisition so that the values thereof on the date of loss could be best determined.

An examination of the list of personal property, which aggregates \$31,225.00, indicates that the property consisted primarily of items that were subject to depreciation at the rate of 5% per year. On the basis of the entire record and in the absence of evidence to the contrary, the Commission finds that the personal property should be depreciated by 50% to arrive at the reasonable value thereof on the date of loss. Accordingly, the Commission finds that the aggregate value of the items of personal property on October 14, 1960, the date of loss, was \$15,612.50. Therefore, claimant's 1/2 interest therein had a value of \$7,806.25.

CASH, GOLD COINS, JEWELRY AND BONDS

Claimant asserts that he owned \$35,000.00 in Cuban currency which he had left in his home in Cuba. In response to Commission inquiries, claimant stated in his letter of August 11, 1970 that he retained the cash at home rather than in a bank because he was trying to exchange it for American currency and take it to the United States.

It is also asserted by claimant that he maintained at his home in Cuba jewelry having a value of \$15,000.00; and gold coins of Cuba, the United States, Mexico, and Austria, having an aggregate value of \$5,910.00, as set forth in a list accompanying claimant's letter of August 8, 1968.

Another portion of the claim is based upon an asserted 1/2 interest in certain Cuban government bonds which claimant states he had left in Cuba.

It is noted that claimant failed to claim any of the above items of property as tax deductions. According to counsel's letter of February 23, 1968 and claimant's statements, no documentary evidence is available to support the portion of the claim based on cash, gold coins, jewelry and bonds.

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) (1969).)

The Commission finds that claimant has failed to sustain the burden of proof with respect to the portion of the claim based on cash, gold coins, jewelry and bonds. 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>
Improved real property	October 14, 1960	\$104,250.00
Unimproved real property	December 6, 1961	10,000.00
Personal property	October 14, 1960	<u>7,806.25</u>
Total		<u>\$122,056.25</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>
October 14, 1960	\$112,056.25
December 6, 1961	<u>10,000.00</u>
TOTAL	<u>\$122,056.25</u>


CERTIFICATION OF LOSS

The Commission certifies that ARTURO OLIVERA 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 Twenty-two Thousand Fifty-six Dollars and Twenty-five Cents (\$122,056.25) with interest thereon at 6% per annum from October 14, 1960 on \$112,056.25, and from December 6, 1961 on \$10,000.00 to the date of settlement.

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

SEP 16 1970


Lyle S. Garlock, Chairman


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