

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

IN THE MATTER OF THE CLAIM OF

ELENA DIAZ DE LA BARCENA

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-3432

Decision No. CU 401

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 \$31,750.00, was presented by ELENA DIAZ DE LA BARCENA and is based upon the asserted loss of personal property, consisting of books, clothing, and furniture, and also upon loss sustained in connection with mortgage bonds of \$30,000.00 secured by real property in Havana, Cuba. Claimant, ELENA DIAZ DE LA BARCENA, has been a national of the United States since her birth on November 25, 1939.

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 has failed to submit supporting evidence with her Statement of Claim, filed for the loss of personal property, consisting of books, clothing, and furniture in Havana, Cuba, and also for loss sustained in connection with mortgage bonds secured by real property in Havana.

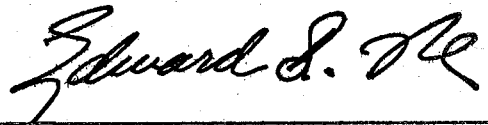
By Commission letter of June 28, 1967, claimant was advised as to the type of evidence proper for submission to establish this claim under the Act. In her reply of July 22, 1967, claimant submitted her Certificate of Birth and advised the Commission that the documents concerning the mortgage are in a package deposited with the Spanish Embassy in Cuba by Ana Maria Martin in the name of Dr. Jose de Valle. Claimant also gave the name of two individuals who were witnesses to the making of the deposit. Claimant requested assistance by the Commission in regaining possession of the deposited material. In reply claimant was advised on August 18, 1967, of the conditions under which the Commission might attempt to obtain the documents in question, and suggested that claimant submit a letter by the depositor requesting the return of the documents to claimant. Claimant

was also advised that if the suggested material were not received within 30 days from the date of such letter, it might become necessary to determine the claim on the basis of the present record. No evidence or request for the return of the documents has since been submitted.

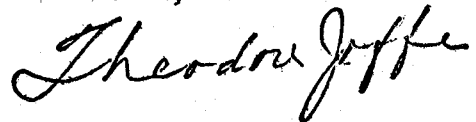
The Commission finds that claimant has not met the burden of proof in that she has failed to establish ownership of rights and interests in property which was nationalized, appropriated or otherwise taken by the Government of Cuba. Thus, the Commission is constrained to deny this claim and it is hereby 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

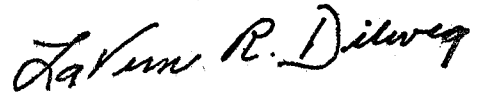
OCT 4 1967



Edward D. Re, Chairman

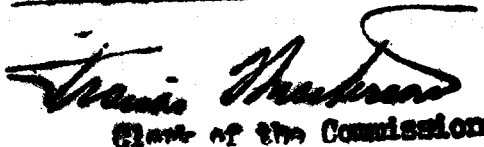


Theodore Jaffe, Commissioner



LaVern R. Dilweg, Commissioner

is a true and correct copy of the decision
the Commission signed as entered as the final
decision on 6 NOV 1967



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).)