

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

IN THE MATTER OF THE CLAIM OF

EDNA G. PORTER

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-3540

Decision No. CU 6237

Counsel for claimant:

Sullivan, Admire & Sullivan
by Jack G. Admire, 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 \$33,309.87 was presented by EDNA G. PORTER, based upon the asserted loss of cash and real property. 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, 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 owned 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 states that she owned the following property which was taken by the Government of Cuba:

- (1) Cash in bank;
- (2) A 1/30 interest in the Hotel Presidente, Havana;
- (3) A 1/5 interest in house No. 3 Gertrudis, Havana;
- (4) A 1/30 interest in realty at San Nicolas and Cuba, Havana;
- (5) An interest in two houses 418/420 Calzada del Monte, Havana;
- (6) An interest in a house No. 1502 Calzada del Monte, Havana;
- (7) An interest in part of a former ranch "La Josefita" in Santiago de Las Vegas, province of Havana.

In support of the claim, claimant submitted a bank statement, a description and appraisal of the real property, compiled in 1950 by Rafael Garcia Bango, an engineer and architect of Havana. Additionally, the Commission obtained documentation from other members of the family, also claimants before this Commission.

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 "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.

On the basis of the evidence of record, the Commission makes its findings of fact regarding the various property items under separate headings, as set forth below:

(1) Cash in Bank

A statement of the Trust Company of Cuba dated April 30, 1959, shows that claimant, a resident of the United States, had on deposit with that bank \$3,614.54, which balance remained unpaid.

On September 29, 1959 there was published in the Cuban Official Gazette Law No. 568, which purports to regulate the transferring of funds from Cuba abroad. Paragraph (9) of Article 1 prohibited payments to foreign residents without the permission of the Cuban Currency Stabilization Fund. The Commission has ascertained, through examination of numerous claims that applications made for the transfer of funds to the United States remained fruitless. The Commission has therefore held that Cuban Law 568 and the Cuban Government's implementation thereof with respect to the rights of the claimant herein, was not in reality an exercise of its sovereign authority to regulate the foreign exchange of Cuba, but that it constituted an intervention by the Cuban Government in the contractual rights of creditors, such as the claimant herein, which resulted in the ultimate taking of American-owned property within the meaning of Section 503(a) of the Act. (See Claim of The Schwarzenbach Huber Company, Claim No. CU-0019, 25 FCSC Semiann. Rep. 58 [July-Dec. 1966]; and Claim of Etna Pozzolana Corporation, Claim No. CU-0049, 1967 FCSC Ann. Rep. 46.)

(2) Hotel Presidente

The record shows that claimant's father Eduardo Hidalgo Gato Marquez died intestate on March 8, 1948, leaving five children, one of whom is the claimant herein. The major part of the property remained undivided, and claimant retained in the Hotel Presidente property a 1/30 interest. The property consisted of land measuring 1,133.33 square meters with a building thereon, located at the intersection of Calle G (Avenida de los Presidentes) and Calle 7 (Calzada) in the Vedado section of Havana. The building was in use as one of the major hotels in Havana.

This real property, as well as all the other real property described below, was subject to the Cuban Urban Reform Law, published in the Official Gazette of October 14, 1960, and the Commission holds that the properties were taken on that date. (See Claim of Henry Lewis Slade, Claim No. CU-0183, 1967 FCSC Ann. Rep. 39.)

In 1950 this property was appraised by Rafael Garcia Bango in the amount of \$506,000.00, and the Commission finds that claimant's 1/30 interest therein had a value of \$16,866.67.

(3) No. 3 Gertrudis Street

The record shows that claimant's father owned a building lot measuring 180.79 square meters improved with a house No. 3 Gertrudis Street in the Arroyo Apolo section of Havana. Upon the death of claimant's father, claimant inherited a 1/5 interest therein.

Rafael Garcia Bango appraised the property in the amount of \$8,511.70, and the Commission finds that claimant's 1/5 interest was worth \$1,702.34.

(4) San Nicolas at Cuba Streets.

The record shows that claimant's father owned a 1/6 interest in a building lot measuring 509.30 square meters with a house numbered 516/518 San Nicolas Street, at the corner of Cuba Street, in the center of the city of Havana. Claimant inherited from her father a 1/5 interest therein, or a 1/30 interest in the entire property.

This property, once known as the Hotel Pacifico, was appraised by Rafael Garcia Bango in the amount of \$111,430.00; and the Commission finds that claimant's 1/30 interest was worth \$3,714.33.

(5) 418/420 Calzada del Monte

Claimant states that her father owned a fractional interest of approximately 38% in two houses numbered 418 and 420 Calzada del Monte in Havana. The record shows that these houses were, in fact, owned by claimant's grandfather, Eduardo Hidalgo Gato Badia, but the evidence does not disclose to what extent claimant's father inherited an interest in this property. In the absence of such evidence, the Commission finds that these houses descended

to the six children of claimant's deceased grandfather in equal shares, and that claimant's father owned a 1/6 interest therein. The Commission concludes that claimant inherited from her father a 1/5 interest, or a 1/30 interest in the entire property.

Rafael Garcia Bango appraised this property at \$116,640.00; the Commission therefore finds that claimant's 1/30 interest was worth \$3,888.00.

(6) 1502 Calzada del Monte

Claimant states that her father inherited a fractional interest of approximately 54% in a house numbered 1502 Calzada del Monte in Havana. The record shows that this house was owned by Eduardo Hidalgo Gato Badia, claimant's grandfather, but the evidence does not disclose to what extent claimant's father inherited this property. In the absence of such evidence, the Commission finds that this house descended to the six children of claimant's deceased grandfather in equal shares and that claimant, in turn, inherited a 1/5 interest from her father, resulting in her ownership of a 1/30 interest in the property.

Rafael Garcia Bango appraised this property in the amount of \$14,164.55, and the Commission finds that claimant's 1/30 interest was worth \$472.15.

(7) La Josefita

The record shows that claimant's grandfather, Eduardo Hidalgo Gato Badia, owned a farm "La Josefita" in Santiago de las Vegas, a town near Havana. Upon the death of the grandfather the farm was appraised and found to be worth \$98,400.00. The major part of the farm was sold, and a smaller part, appraised by Rafael Garcia Bango at \$20,276.50 was divided among the six children of the grandfather. Claimant states that the land owned by her father was worth \$3,379.42 and that her 1/5 inherited share was worth \$675.88. This sum corresponds approximately to 1/30 of the value placed on the smaller part of the farm and the Commission finds that this valuation properly reflects claimant's interest in the inherited share of the farmland, which at the time of taking consisted, in fact, of building lots in Santiago de las Vegas.

Recapitulation

Claimant's losses within the meaning of Title V of the Act are summarized as follows:

<u>Item</u>	<u>Date of Taking</u>	<u>Value</u>
(1) Cash	September 29, 1959	\$ 3,614.54
(2) Hotel Presidente	October 14, 1960	16,866.67
(3) 3 Gertrudis	October 14, 1960	1,702.34
(4) San Nicolas & Cuba	October 14, 1960	3,714.33
(5) 418/20 Calzada del Monte	October 14, 1960	3,888.00
(6) 1502 Calzada del Monte	October 14, 1960	472.15
(7) La Josefita	October 14, 1960	<u>675.88</u>
		\$30,933.91

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>
September 29, 1959	\$ 3,614.54
October 14, 1960	<u>27,319.37</u>
	\$30,933.91

CERTIFICATION OF LOSS

The Commission certifies that EDNA G. PORTER suffered a loss, as a result of actions of the Government of Cuba, within the meaning of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Thirty Thousand Nine Hundred Thirty-Three Dollars and Ninety-One Cents (\$30,933.91) with interest thereon at 6% per annum from the respective dates of taking to the date of settlement.

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

JUN 23 1971


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. 1.5(e) and (g), as amended (1970).)

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