

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

IN THE MATTER OF THE CLAIM OF

ROBERT M. DULZAIDES
and
MARIA A. DULZAIDES

Claim No. CU-3544

Decision No. CU 2979

Under the International Claims Settlement
Act of 1949, as amended

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, for \$130,000.00 was presented by ROBERTO M. DULZAIDES and MARIA A. DULZAIDES based upon the asserted loss of real and personal property in Cuba. Claimants have been nationals of the United States since their naturalization on March 16, 1956, and April 19, 1957, respectively.

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.

The claim is based upon the asserted loss of property in Havana, Cuba, as follows:

1. a one-half interest in the real property at 756 Maximo Gomez Street;
2. a one-half interest in the real property at 408 Corrales Street;
3. land parcel 2 of Section 60 at Fifth Avenue in Marianao;
4. a portion of land parcel 28 of Section 63 at First Avenue in Marianao;
5. real property identified at first as 1313/1315 78th Street in Marianao, and later as 2919 Calle 70 in Marianao, acquired by Public Deed No. 33;
6. one share of stock in the Havana-Biltmore Yacht and Country Club;
7. several shares of stock of the Cia. Urbanizadora Centro Civico, S.A.;
8. life insurance policy issued by the Occidental Life Insurance Co. of Raleigh, North Carolina;
9. loss of use of capital for over eight years.

Evidence of record, obtained by the Commission, reflects, and the Commission finds that claimant ROBERTO M. DULZAIDES owned a one-half interest in the real properties of 756 Maximo Gomez Street and 408 Corrales Street in Havana, Cuba, in October 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). The law further provided that if a tenant did not occupy the property, or had subleased or transferred its use to another, the property could be sold to the occupant; and further, that an occupant, whether a tenant or subtenant, or not, could purchase the property in the

manner outlined (Article 9). Article 21 of the law provided that present owners of urban buildings sold under the law should receive the assigned price; however, under Article 25 ownership of so-called tenement houses would be transferred to the State without compensation to the erstwhile owners. Moreover, Article 30 provided that if urban buildings transferred under the law were mortgaged, execution of the contract of sale should have the effect of cancelling the mortgage. 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 ROBERTO M. DULZAIDES stated that the real property at 756 Maximo Gomez Street was used as a small furniture store and the real property at 408 Corrales Street with a two-story building had two small apartments. Claimants left Cuba in 1949.

Based upon the foregoing and the evidence of record, the Commission finds that the interests owned in the real properties now in question by claimant ROBERTO M. DULZAIDES were 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 October 14, 1960.

Accordingly, the Commission concludes that claimant ROBERTO M. DULZAIDES suffered a loss in connection with his ownership interest in the real properties now mentioned within the meaning of Title V of the Act.

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.

Claimants value the real properties at 756 Maximo Gomez Street and 408 Corrales Street at \$15,000.00 and \$10,000.00, respectively. Claimant ROBERTO M. DULZAIDES acquired his interest in the properties through inheritance from his late father in 1951 when the properties were valued at 5,787.30 and 4,300 pesos, respectively. Claimants described the improvements of the real property at 756 Maximo Gomez Street as a small furniture store. The improvements of the real property at 408 Corrales Street, are stated to be a two story building with two small apartments. There is no evidence of record to indicate the land area of either of the real properties now mentioned. Admittedly, both improvements are older buildings in the center of Havana.

Based upon the entire record, the Commission finds that the real properties at 756 Maximo Gomez Street and 408 Corrales Street had the value of \$8,700.00 and \$6,600.00 as of October 14, 1960, the date of loss, of which the value of the one-half interest owned by claimant ROBERTO M. DULZAIDES amounted to \$4,350.00 and \$3,300.00, respectively, a total of \$7,650.00. The Commission concludes that claimant ROBERTO M. DULZAIDES sustained a loss in the amount of \$7,650.00 within the meaning of Title V of the Act, as a result of the taking of his ownership interest in the said real properties by the Government of Cuba on October 14, 1960.

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).)

By Commission letter of July 28, 1967, claimants were advised of the type of evidence suggested for submission in order to establish their claim. Such suggestions were repeated and new suggestions were added in Commission letter of April 30, 1968, simultaneously advising claimants that except for the real properties at 756 Maximo Gomez

Street and 408 Corrales Street, the Commission's efforts failed to establish their ownership of real properties in Marianao and stockholder interests in the Havana-Biltmore Yacht & Country Club and the Cia. Urbanizadora Centro Civico, S.A. as asserted.

On June 11, 1968, claimants were advised that they should submit all evidence (e.g., affidavits, "copia simple" of Public Deed No. 224, etc.) they wished to have considered. In reply, claimants submitted an affidavit by Orestes A. Dulzaides and Maria T. Dulzaides in effect stating that affiants erroneously reported in their Federal income tax return for the year 1963 that the eight shares of stock of the Cia. Urbanizadora Centro Civico, S.A., covered by certificate No. 33, were owned by them because such eight shares of stock belong to claimant ROBERTO M. DULZAIDES. Affiants also furnished a chart concerning the asserted capitalization, returned capital and loss of the corporation in question.

The Commission finds that claimants have failed to establish their asserted ownership and loss of the real properties at Fifth Avenue, First Avenue, and at 78th Street (or Calle 70?) in Marianao, and of their asserted stockholder interest in the Havana-Biltmore Yacht & Country Club, and the Cia. Urbanizadora Centro Civico, S.A. and for that reason the claim based upon such properties is denied with respect to both claimants.

Inasmuch as claimant ROBERTO M. DULZAIDES stated that he received payment on his life insurance policy with the Occidental Life Insurance Co. and for that reason "the matter is closed", the Commission deems such portion of the claim as withdrawn by claimants.

The remaining portion of the claim based upon loss of use of capital during the period 1959-1967 is also denied inasmuch as the nationalized real properties belonged to the Republic of Cuba after October 14, 1960, rather than to the claimant. However, 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.)

Accordingly, the Commission concludes that the amount of the loss sustained by claimant ROBERTO M. DULZAIDES shall be increased by interest thereon at the rate of 6% per annum from October 14, 1960, to the date on which the provisions are made for the settlement thereof.

CERTIFICATION OF LOSS

The Commission certifies that ROBERTO M. DULZAIDES sustained 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 Seven Thousand Six Hundred Fifty Dollars (\$7,650.00) with interest thereon at 6% per annum from October 14, 1960 to the date of settlement.

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

SEP 4 1968

Leonard v. B. Sutton

Leonard v. B. Sutton, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

Sidney Freidberg

Sidney Freidberg, Commissioner

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).)

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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.