

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

IN THE MATTER OF THE CLAIM OF

AMANDA GONZALEZ SANCHEZ

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-3594
Claim No. CU-3686

Decision No. CU-6110

Appeal and objections from a Proposed Decision entered March 17, 1971.
Oral hearing requested.

Oral argument on September 8, 1971, by John C. Bierley, Esq.

FINAL DECISION

Under date of March 17, 1971, the Commission entered its Proposed Decision in this matter certifying a loss to claimant in the amount of \$92,750 for her one-half interest in certain improved realty and personal belongings taken by the Government of Cuba on December 6, 1961.

Objections were entered to so much of the decision as denied claim for promissory notes, loans, savings accounts, mortgages and a trust fund. At the oral hearing held on September 8, 1971, argument was made by counsel and testimony given by J. Andreo and Juan Sanchez.

Consideration having been given to the entire record, including testimony, argument and other evidence presented at the oral hearing, the Commission finds that claimant had a one-half interest in mortgages totalling \$68,700 secured by real property in Cuba.

On October 14, 1960, the Government of Cuba published in its Official Gazette, Special Edition, its Urban Reform Law. Article 30 of this law provided for the cancellation of all mortgages. The Commission finds that claimant suffered a loss in the amount of \$34,350 on that date, within the scope of Title V of the Act, in connection with her mortgage interests. (See Claim of The Estate of Marita Dearing de Lattre, Claim No. CU-0116).

With respect to the items of promissory notes and private loans, savings accounts, trust fund and insurance policies, the Commission finds that the record does not warrant a favorable determination on these items, and accordingly, they are denied.

Interest will be added to claimant's losses as follows:

| <u>FROM</u> | <u>ON</u> |
|------------------|------------------|
| December 6, 1961 | \$ 92,750.00 |
| October 14, 1960 | <u>34,350.00</u> |
| | \$127,100.00 |


Accordingly, the Certification of Loss in the Proposed Decision is set aside, the following Certification of Loss will be entered, and in all other respects, the Proposed Decision as amended herein is affirmed.

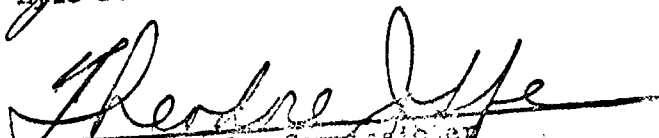
CERTIFICATION OF LOSS

The Commission certifies that AMANDA GONZALEZ SANCHEZ 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-Seven Thousand One Hundred Dollars (\$127,100) with interest thereon at 6% per annum from the respective dates of loss to the date of settlement.

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

OCT 6 1971


Lyle S. Garlock, Chairman


Theodore Jaffe, Commissioner

FOREIGN CLAIMS SETTLEMENT COMMISSION
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IN THE MATTER OF THE CLAIM OF

AMANDA GONZALEZ SANCHEZ

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -3594
Claim No. CU-3686

Decision No. CU 6110

Counsel for claimant:

Macfarlane, Ferguson, Allison & Kelly
By John C. Bierley, Esq.

PROPOSED DECISION

These claims against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, were presented by AMANDA GONZALEZ SANCHEZ, in the total amount of \$359,956.00, based upon the asserted ownership and loss of real and personal property in Cuba and loss of rental income from the 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 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) (1970).)

Claimant asserted that in 1941 she married Juan F. Sanchez, a Cuban national, who obtained nationality of the United States in 1967; and that she resided in Cuba from September 1942 until departure in February 1961. Claimant stated that she jointly acquired and owned an interest in real estate in Sagua la Grande, Las Villas and Vedado, Havana, Cuba; that when leaving Cuba she also owned an interest in several promissory notes payable to her and her husband, as well as savings accounts, personal property, such as household equipment and furniture in her residence, and insurance policies on the life of her husband, Juan F. Sanchez; and that she and her husband also held mortgage interests in six properties in Sagua la Grande, Cuba.

According to the community property laws of Cuba, the properties acquired by one or both spouses during the marriage with money of the marriage partnership or by the industry, salary or work of either or both spouses, and the fruits thereof, belong in equal parts to both spouses (see Claim of Robert L. Cheaney, et ux., Claim No. CU-0915). Accordingly, the property discussed below will be deemed as having been owned by the claimant and her husband,

since no evidence has been submitted to establish that such property was acquired by the claimant prior to the marriage, or by gift or inheritance. Inasmuch as there is no evidence that claimant's husband was a national of the United States at any time pertinent to this claim and no claim has been filed by him or on his behalf, his interests in the properties will not be considered here.

The claimant asserted that the real and personal property, subject of the claim, includes the following:

| | |
|--|--------------|
| Two-story concrete structure building with two commercial establishments on the ground floor and two residential apartments on the upper floor, located at No. 55 Maceo Street, Sagua la Grande, L. V., Cuba. Purchased 1955 | \$ 25,000.00 |
| One-story concrete structure building rented to the La Moda Elegante Shoe Store, location at No. 77 Maceo Street, Sagua la Grande, L.V., Cuba Purchased 1954 | 15,000.00 |
| Two-story concrete structure building with one commercial establishment on the ground floor (La Casa Menendez) and one residential apartment on the upper floor, located at No. 83 Maceo Street, Sagua la Grande, L.V. Cuba. Purchased 1946 | 18,000.00 |
| Two-story concrete structure building with one commercial establishment on the ground floor (El Encanto shoe store) and one residential apartment on the upper floor. Location: Carmen Ribalta 109 for the lower floor entrance and Maceo 91 for the upper floor entrance, at Sagua la Grande, L.V. Cuba. Purchased 1956 | 40,000.00 |
| One concrete structure single dwelling building, ground floor only located at No. 68 Carmen Ribalta Street, Sagua la Grande, L.V., Cuba. Purchased 1943 | 7,000.00 |
| One concrete structure single dwelling building, ground floor only located at No. 114 Carmen Ribalta Street, Sagua la Grande, L.V., Cuba. Purchased 1948 | 8,000.00 |
| One concrete structure ground floor residence with 6000 meters sq. of adjacent grounds located at Carretera de Resulta s/n, Reparto de Ona, Sagua la Grande, L.V. Cuba. Purchased 1954 | 15,000.00 |

| | |
|--|-----------------|
| Two-story concrete residence with 800 meters sq. of adjacent grounds located at No. 1157 - 43 Street, Alturas del Vedado, Havana, Cuba. Purchased 1959 | \$ 50,000.00 |
| Personal property in residence in Vedado, Havana, Cuba, including household furnishings | <u>7,500.00</u> |
| Total Real and Personal Property | \$185,500.00 |

The claimant submitted several affidavits of persons who were former residents of Cuba with personal knowledge of her ownership interest in the claimed real and personal property. The record also includes correspondence and other evidence concerning the real property which claimant submitted to the State Department in 1960 concerning actions taken by the Government of Cuba. Further, the claimant submitted photographs of some of the improvements on land at the aforesaid locations, newspaper clippings of events relating to claimant and her family in Cuba and her own statements in support of the claim. A report concerning the claimant's residence in Vedado was received by the Commission from sources abroad. On the basis of the entire record, the Commission finds that under the community property laws of Cuba claimant herein, AMANDA GONZALEZ SANCHEZ, owned a one-half interest in the aforesaid real and personal property.

On December 6, 1961, the Cuban Government published its Law 989 which effectively confiscated all assets, personal property and real estate, shares, stocks, bonds and securities of persons who had left the country. As stated, the record reflects that claimant and her husband left Cuba in February 1961.

The Commission finds, in the absence of evidence to the contrary, that the subject real and personal property was taken by the Government of Cuba on December 6, 1961, pursuant to the provisions of Law 989. (See Claim of Wallace Tabor and Catherine Tabor, Claim No. CU-0109, 25 FCSC Semiann. Rep. 53 [July-Dec. 1966].)

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.

The claimant has submitted a detailed description of the real property, with photographs, affidavits and other material concerning the value of such property. Additionally, claimant has submitted a detailed list of the household furnishings, equipment and machinery which includes the location, purchase prices and approximate dates of purchase. Based upon the entire record, including evidence available to the Commission concerning the value of similar properties in Cuba, the Commission finds that the evaluation most appropriate to the real and personal property, subject of this claim, is that evaluation given by claimant and the affiants with personal knowledge of the properties in question; and that such evaluation is fair and reasonable, and is consistent with the evaluation of like properties in Vedado and other areas of Cuba. Accordingly, the Commission finds that on the date of loss the real and personal property, subject of the claim, had a total value of \$185,500.00, and concludes that claimant, pursuant to the community property laws of Cuba, suffered a loss of \$92,750.00 within the meaning of Title V of the Act.

A portion of this claim has been asserted for loss of rental income from the real property arising after nationalization or other taking of such property by the Cuban Government. The Commission finds that this portion of the claim, based on income subsequent to December 6, 1961, is not compensable

under the Act. The rental income, if any, which may have been realized during the period in question did not belong to the claimant since her title in and to the real property was extinguished in 1961. Accordingly, this part of the claim is denied. However, claimant is being allowed interest on the value of her interest in the property, as discussed hereafter. (See Claim Nos. CU-1528 and CU-1529, Claim of Enrique L. Valdes, et al; and Claim No. FO-5212, Claim of Syda S. Spitzer, FCSC Dec. and Ann. 487 at 491.)

With respect to the remaining portions of this claim including the promissory notes, savings accounts, life insurance policies and mortgage interests, the Commission made suggestions in several letters to claimant, through counsel, as to the type of evidence proper for submission to establish such portions of the claim. While claimant has responded in part to the Commission correspondence, she has not submitted evidence of probative value which would establish that she owned interests in such properties which were taken by the Government of Cuba within the meaning of Title V of the Act.

The Commission has attempted to obtain evidence on behalf of claimant but none has been received nor is there any certainty that such will be forthcoming.

Moreover the evidence of record indicates that the promissory notes made no reference to property as security therein. Such debts, if not a charge on property which was nationalized or otherwise taken by the Government of Cuba, and if not debts of nationalized enterprises, would not be within the provisions of Section 502(3) of the Act, supra.

The Commission appreciates the difficulties encountered by the claimants in establishing their claims against the Government of Cuba. However, the Commission must be guided by the evidence of record pertaining to the ownership, loss and value of the property included in each claim. The Commission is also constrained to find that claimant herein has not met the burden of proof in that she has failed to establish the ownership and value of rights and interests in property which was nationalized, expropriated or otherwise taken by the Government of Cuba. Accordingly, these portions of the claims

are hereby denied for the reasons stated. The Commission deems it unnecessary to make determinations with respect to other elements of these claims.

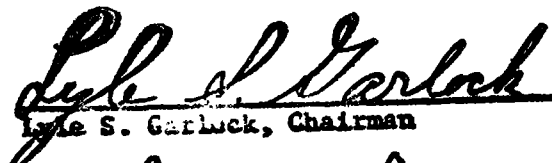
The Commission has decided that in certifications of losses on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be included at the rate of 6% per annum from the date of loss to the date of settlement (see Claim of Lisle Corporation,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


CERTIFICATION OF LOSS

The Commission certifies that AMANDA GONZALEZ SANCHEZ 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 Ninety-two Thousand Seven Hundred Fifty Dollars (\$92,750.00) with interest at 6% per annum from December 6, 1961 to the date of settlement.

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

MAR 17 1971


Lyle S. Garluck, 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 (1970).)

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