

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

IN THE MATTER OF THE CLAIM OF

CLEMENCIA MEDINA
and
DIANA HARDOUIN

Claim No. CU-3615

Decision No. CU-4471

Under the International Claims Settlement
Act of 1949, as amended

Appeal and objections from a Proposed Decision entered on February 5, 1970.
No hearing requested.

Hearing on the record held on September 1, 1971.

FINAL DECISION

Under date of February 5, 1970, the Commission issued its Proposed Decision certifying a loss in favor of DIANA HARDOUIN in the amount of \$1,000.00 plus interest. The claim of CLEMENCIA MEDINA, mother of DIANA HARDOUIN, was denied for failure of proof. Subsequently further supporting evidence was submitted by claimants.

Upon consideration of the new evidence in light of the entire record, the Commission now makes the following findings:

Claim of CLEMENCIA MEDINA

The Commission finds that CLEMENCIA MEDINA, a national of the United States since March 20, 1912, owned a residence and lot at El Cano, Marianao, Havana, Cuba. The Commission further finds that said property was taken by the Government of Cuba on July 15, 1966 pursuant to Law 989. On the basis of the entire record, the Commission finds that claimant's valuation of the property is fair and reasonable. Accordingly, the Commission finds that the value of the house and lot on July 15, 1966 was \$15,000.00. Since there was an outstanding mortgage of \$2,528.00 on the date of loss, the Commission finds that claimant's equity in the property was \$12,472.00.

The Commission finds that claimant owned a 1958 automobile, furniture and other household possessions which she maintained at her residence in

Cuba, all of which properties were taken by the Government of Cuba on July 15, 1966. Considering the fact that claimant acquired the properties, except the automobile, in 1956 and after taking into account appropriate depreciation, the Commission finds that the aggregate value of claimant's personal properties on July 15, 1966 was \$3,415.00.

A portion of the claim is based upon a cemetery plot in Cuba which was owned by Pedro L. Medina, claimant's son. It is asserted that her son is a United States national, but no evidence has been submitted to support claimant's statement. Accordingly, this portion of the claim is denied.

The Commission finds that in 1961 the Cuban authorities granted claimant an annual pension of \$1,068.95 as a result of her service as a school teacher in Cuba. The record shows that the pension was paid to claimant until July 1966.

The Commission has held that the refusal of the Government of Cuba to pay retirement benefits to claimant constituted a taking of property within the meaning of Title V of the Act. (See Claim of A. M. Joy de Pardo, Claim No. CU-1906.) Accordingly, the Commission finds that a claim for this loss arose on July 15, 1966. The record shows that claimant was 76 years of age on the date of loss.

The Commission has adopted as a basis for the evaluation of annuities the Makehamized mortality table employed by the United States Treasury Department for the collection of gift and estate taxes. According to that method of evaluation, the value of the annuity for a person 76 years of age amounts to 5.9137 times \$1,068.95, the yearly amount of the pension. The Commission therefore finds that the value of claimant's pension on July 15, 1966 was \$6,321.45.

Claimant has also asserted the loss of a bank account in the amount of \$800.00. However, claimant has submitted neither the bank book nor a bank statement nor any evidence of equal dignity in support of this portion of her claim. Accordingly, this portion of the claim is denied.

CU-3615

CLEMENCIA MEDINA's losses on July 15, 1966 are summarized as follows:

<u>Item of Property</u>	<u>Amount</u>
House and lot	\$ 12,472.00
Automobile and other personal property	3,415.00
Pension	<u>6,321.45</u>
Total	\$ 22,208.45

DIANA HARDOUIN's CLAIM

The Commission found in the Proposed Decision that this claimant owned a lot adjacent to her mother's residence in El Cano, Marianao, Havana, Cuba, which was taken by Cuba on July 15, 1966. Upon consideration of the entire record, the Commission now finds that the value of that lot on July 15, 1966 was \$1,500.00.

The Commission finds that claimant acquired in 1962 another lot in Marianao, Havana, Cuba, having an area of 3,422.92 square meters. Claimant improved this property by the installation of an irrigation system, the planting of trees, the erection of fences and the construction of a cabin and a tool shed in which she placed appropriate tools. The Commission finds that the value of the improved property on July 15, 1966, when it was taken by the Government of Cuba, was \$7,000.00

The Commission finds that claimants owned a 1959 automobile and other items of personal property maintained at her mother's residence, which were taken by the Government of Cuba on July 15, 1966. Considering the age of the properties and after taking into account appropriate depreciation, the Commission finds that the aggregate value of claimant's personal properties on July 15, 1966 was \$2,110.00.

A portion of the claim is based upon a life insurance policy with Pan-American Life Insurance Company, with respect to which claimant paid \$405.23. Claim is asserted for \$405.23. No evidence has been submitted in support of this claim except a receipt showing payment of the premiums by claimant.

Upon consideration of the entire record, the Commission finds that claimant has failed to meet the burden of proof with respect to the portion of the claim based upon the life insurance policy. The evidence does

not establish that the proceeds of claimant's policy were taken by the Government of Cuba, or that claimant's rights under the policy were taken by Cuba. Accordingly, this portion of the claim is denied.

DIANA HARDOUIN's losses on July 15, 1966 are summarized as follows:

<u>Item of Property</u>	<u>Amount</u>
Lot in Marianao	\$ 1,500.00
Improved property at Marianao	7,000.00
Automobile and other personal property	<u>2,110.00</u>
Total	\$10,610.00

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.

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


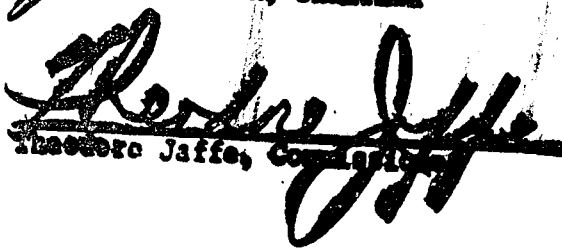
CERTIFICATIONS OF LOSS

The Commission certifies that CLEMENCIA MEDINA 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 Twenty-two Thousand Two Hundred Eight Dollars and Forty-five Cents (\$22,208.45) with interest thereon at 6% per annum from July 15, 1966 to the date of settlement; and

The Commission certifies that DIANA HARDOUIN 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 Ten Thousand Six Hundred Ten Dollars (\$10,610.00) with interest thereon at 6% per annum from July 15, 1966 to the date of settlement.

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

SEP 1 1971


Louis 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.

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

IN THE MATTER OF THE CLAIM OF

CLEMENCIA MEDINA and
DIANA HARDOUIN

Claim No. CU-3615

Decision No. CU 4471

Under the International Claims Settlement
Act of 1949, as amended

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 \$35,597.26, was presented by CLEMENCIA MEDINA and DIANA HARDOUIN based upon the asserted loss of certain real and personal property in Cuba. Claimant, CLEMENCIA MEDINA, states that she has been a national of the United States since 1912. Her daughter, DIANA HARDOUIN, has been a national of the United States since naturalization on March 2, 1917.

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 claim was filed by CLEMENCIA MEDINA, originally in her own behalf. Subsequently, it appeared that her daughter, DIANA HARDOUIN, had an interest in the matter, and she was added as co-claimant.

CLEMENCIA MEDINA asserted a claim for various items of real and personal property. She stated that she had acquired nationality of the United States by her first marriage on March 20, 1912 to Ralph I. Hardouin. While she submitted a copy of her marriage certificate, she failed to establish that Ralph I. Hardouin was a national of the United States on the date of her marriage to him. Moreover, CLEMENCIA MEDINA failed to establish that she owned the property she claimed and that said property was taken by Cuba within the meaning of Title V of the Act.

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).)

On several occasions, the Commission suggested the submission of certain supporting evidence. CLEMENCIA MEDINA submitted a copy of a document in Spanish, but failed to submit a translation thereof so that its significance could be understood. The Commission's letter of

CU-3615

November 26, 1969 to CLEMENCIA MEDINA and DIANA HARDOUIN at the last known address of record was returned by the Post Office Department with the notation "Moved Left no address." Subsequently, the Commission was advised by the local postmaster that CLEMENCIA MEDINA had moved and that he had no other address for her, but gave a new address for DIANA HARDOUIN. A letter to DIANA HAROUIN at her new address for further supporting evidence has remained unanswered.

The Commission has received a report from abroad concerning the property claimed herein, but it relates only to property belonging to DIANA HARDOUIN, which is discussed below. There is no corroborating evidence whatsoever to support the claim of CLEMENCIA MEDINA.

The Commission finds that CLEMENCIA MEDINA has not met the burden of proof in that she has failed to establish ownership of rights and interests in property that was nationalized, expropriated, intervened or otherwise taken by the Government of Cuba. Moreover, she has failed to establish that she is a national of the United States within the meaning of Title V of the Act. Accordingly, the claim of CLEMENCIA MEDINA is denied in its entirety.

As noted above, the Commission has received a report from abroad. That report shows that DIANA HARDOUIN acquired on April 10, 1962 a parcel of real property having a value of \$1,000.00. It appears from the statements of CLEMENCIA MEDINA that she and DIANA HAROUIN left Cuba on July 15, 1966. CLEMENCIA MEDINA stated that the property was taken on July 15, 1966 when she and her daughter left Cuba to come to the United States.

On December 6, 1961, the Cuban Government published Law 989, which confiscated all real property, personal property, rights, shares, stocks, bonds, securities and bank accounts of persons who had left the country. The Commission finds that this law applied to DIANA HARDOUIN, who had left Cuba on July 15, 1966, and that her interest in the above property was taken by the Government of Cuba on July 15, 1966 pursuant to Law 989.

CU-3615

The Commission further finds that as a result of said action claimant sustained a loss of property within the meaning of Title V of the Act. (See Claim of Wallace Tabor and Catherine Tabor, Claim No. CU-0109, 25 FCSC Semiann. Rep. 53 [July-Dec. 1966].)

The record contains no evidence concerning the value of the real property thus taken, except for the report from abroad. As stated above, DIANA HARDOUIN has not communicated with the Commission and has failed to answer correspondence directed to her new address that was supplied by a local postmaster. In the absence of evidence to the contrary, the Commission finds that the real property of DIANA HARDOUIN had a value of \$1,000.00 on July 15, 1966, the date of loss.

The Commission has decided that in certification 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.

CU-3615

CERTIFICATION OF LOSS

The Commission certifies that DIANA HARDOUIN 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 Thousand Dollars (\$1,000.00) with interest at 6% per annum from July 15, 1966 to the date of settlement.

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

5 FEB 1970

Theodore Jaffe

Theodore Jaffe, Commissioner

Sidney Freidberg

Sidney Freidberg, 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).)

CU-3615