

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

IN THE MATTER OF THE CLAIM OF

SUSAN W. GODINEZ

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU - 3640

Decision No. CU - 5756

Counsel for claimant:

Spaulding, Reiter & Rose
By Robert H. Reiter, Esq.

Appeal and objections from a Proposed Decision entered on September 9, 1970;
oral hearing requested.

Oral hearing held on October 13, 1971

FINAL DECISION

Under date of September 9, 1970, the Commission issued its Proposed Decision certifying a loss in favor of claimant in the amount of \$2,523.75 plus interest. Certain portions of the claim were denied for lack of proof.

Claimant objected to the Proposed Decision and requested an oral hearing which was held on October 13, 1971. At that hearing, counsel for claimant presented oral argument and introduced documentary evidence in the support of the claim. Claimant's husband offered oral testimony. Although counsel was granted an extension of time to file further supporting evidence, no such material was submitted.

Upon consideration of the entire record, including the argument and evidence presented at the oral hearing, the Commission amends the decision in this matter as follows:

The Commission finds that claimant owned 1/2 interests in improved real property at 206 Avenida de las Palmas, Reparto Biltmore, Havana, Cuba, and in improved real property at Lot No. 20, Block No. 55 of Reparto Miramar, Havana, Cuba. The Commission further finds that said properties were taken by the Government of Cuba on December 6, 1961 pursuant to Law 989.

On the basis of an affidavit of November 9, 1966 prepared in Havana, Cuba by Dr. Leopoldo Ledon y Quijano, a Cuban attorney who apparently has personal knowledge of the facts, the Commission finds that the improved real properties at Reparto Biltmore and Reparto Miramar had values of \$33,000.00 and \$35,000.00, respectively, on the date of loss. Therefore, claimant's interests therein had values of \$16,500.00 and \$17,500.00, respectively.

Claimant's losses on December 6, 1961 are summarized as follows:

<u>Item of Property</u>	<u>Amount</u>
Personal property	\$ 2,523.75
Reparto Biltmore	16,500.00
Reparto Miramar	<u>17,500.00</u>
Total	<u>\$36,523.75</u>

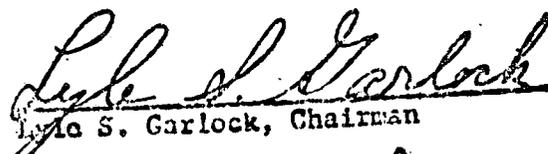
Accordingly, the Certification of Loss in the Proposed Decision of September 9, 1970 is set aside and the following Certification of Loss will be entered, and in all other respects the Proposed Decision as amended herein is affirmed.

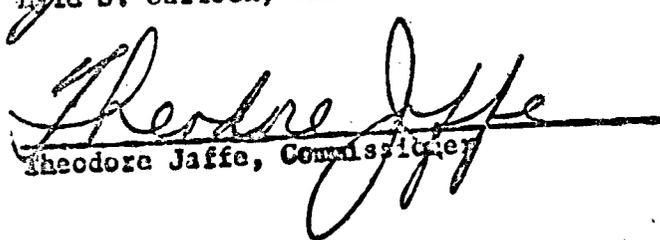
CERTIFICATION OF LOSS

The Commission certifies that SUSAN W. GODINEZ 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 Thirty-Six Thousand Five Hundred Twenty-Three Dollars and Seventy-Five Cents (\$36,523.75) with interest thereon at 6% per annum from December 6, 1961 to the date of settlement.

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

OCT 20 1971


Lyle S. Garlock, Chairman


Theodore Jaffe, Commissioner

FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
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IN THE MATTER OF THE CLAIM OF

SUSAN W. GODINEZ

Under the International Claims Settlement
Act of 1949, as amended

Counsel for claimant:

Claim No. CU -3640

Decision No. CU 5756

Spaulding, Reiter & Rose
by Robert H. Reiter, Esq.

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 \$1,010,051.00, was presented by SUSAN W. GODINEZ based upon the asserted loss of certain real and personal property in Cuba. 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.

INHERITED PROPERTIES

The record shows that claimant married Antonio Godinez, a nonnational of the United States, on April 26, 1946. It further appears that claimant's husband inherited from his father, who died on April 17, 1956, all of the properties claimed herein, except certain items of personal property maintained by claimant and her husband at their residence in Havana, Cuba.

Claimant asserts an interest in each item of real and personal property, including all of the property inherited by her husband.

Pursuant to the community property laws of Cuba, all properties acquired by a husband and wife during coverture, except properties acquired by gift or inheritance, are owned jointly by both spouses. (See Claim of Robert L. Cheaney and Marjorie L. Cheaney, Claim No. CU-0915.)

Counsel for claimant was fully advised of these circumstances and it was suggested that evidence be submitted to support the claim for ownership interests in the properties claimed herein. Several extensions of time were granted for this purpose pursuant to requests of counsel. In counsel's letters of January 5, 1970, and March 13, 1970, it was stated, in effect, that attempts were being made to establish that the inherited properties increased in value through the joint efforts of claimant and her husband. This matter was also discussed in detail with counsel at a conference at the offices of the Commission on November 6, 1969. Since that time, several extensions of time have been granted; but no such evidence has been filed.

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) (1969).)

The Commission finds that claimant has failed to sustain the burden of proof with respect to the portions of her claim based upon properties inherited by her husband and upon asserted increments in the values thereof. Accordingly, these portions of the claim are denied.

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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.

Inasmuch as claimant's husband is a nonnational of the United States, any claim he may have against the Government of Cuba cannot be considered pursuant to the express provisions of Section 504 of the Act cited above, and no claim has been filed by him or on his behalf.

PERSONAL PROPERTY

The Commission finds on the basis of the evidence of record that claimant and her husband owned one-half interests each in furniture and other items of personal property maintained at their residence in Havana, Cuba, which was one of the pieces of property claimant's husband had inherited.

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 claimant and her husband, who had left Cuba prior to that date, and that their interests in the personal property at their residence were taken by the Government of Cuba on December 6, 1961 pursuant to Law 989. 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].)

Claimant has submitted a detailed list itemizing the various pieces of furniture and other personal property situated at their residence, which list indicates that she had depreciated some of the items to some extent. The list shows dates of acquisition and costs. Upon examination of this list, the Commission finds that the items of personal property should be depreciated as follows:

Furniture, refrigerator, stove, water cooler, freezer, and washing machine	5% per year
Artificial flowers, stereo, pots and pans, saddles, garden equipment, and television	10% per year
Household linens	20% per year

Accordingly, the Commission finds that the items of personal property had the following values on December 6, 1961, the date of loss:

Items depreciated at 5% per year for 15 years 25% of \$3,930.00	\$ 982.50
Item depreciated at 5% per year for 14 years 30% of \$200.00	60.00
Items depreciated at 5% per year for 13 years 35% of \$1,125.00	393.75
Item depreciated at 5% per year for 12 years 40% of \$125.00	50.00
Items depreciated at 5% per year for 11 years 45% of \$270.00	121.50
Items depreciated at 5% per year for 9 years 55% of \$370.00	203.50
Items depreciated at 5% per year for 5 years 75% of \$1,000.00	750.00
Items depreciated at 5% per year for 4 years 80% of \$1,045.00	836.00
Item depreciated at 5% per year for 1 year 95% of \$225.00	213.75
Items depreciated at 10% per year for over 10 years residual value	70.00
Item depreciated at 10% per year for 9 years residual value	40.00
Items depreciated at 10% per year for 5 years 50% of \$725.00	362.50
Items depreciated at 10% per year for 4 years 60% of \$100.00	60.00
Items depreciated at 10% per year for 2 years 80% of \$180.00	144.00
Household linens depreciated at 20% per year - residual value in absence of proof as to dates of acquisition	160.00
Antiques, as claimed	<u>600.00</u>
TOTAL	<u>\$ 5,047.50</u>

Therefore, claimant's one-half interest in the items of personal property had a value of \$2,523.75.

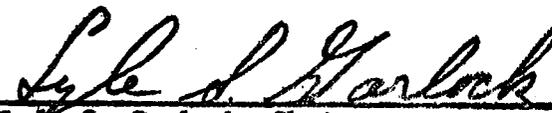
The Commission has decided that in certification of losses on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be included at the rate of 6% per annum from the date of loss to the date of settlement (see Claim of Lisle Corporation,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

CERTIFICATION OF LOSS

The Commission certifies that SUSAN W. GODINEZ 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 Two Thousand Five Hundred Twenty-three Dollars and Seventy-five Cents (\$2,523.75) 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

9 SEP 1970


Lytle 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. §531.5(e) and (g), as amended, 32 Fed. Reg. 412-13 (1967).)

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