

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

IN THE MATTER OF THE CLAIM OF

ROBERT M. GONZALEZ
and
OSCAR J. CONZALEZ

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -3685
Claim No. CU-3687

Decision No. CU **6065**

Counsel for claimants:

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

PROPOSED DECISION

These claims against the Government of Cuba, filed under Title V of the International Claims Settlement Act of 1949, as amended, in the amended amounts of \$7,333.33 each, were presented by ROBERT M. GONZALEZ and OSCAR J. GONZALEZ, based upon the asserted loss of certain real property in Cuba. Claimants have been nationals of the United States since June 18, 1965 and November 7, 1955, 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 record shows that claimants' father died intestate on April 21, 1959. It further appears from the evidence of record, including a report from abroad, that claimants' parents were divorced on August 18, 1957; and that pursuant to the decree of divorce title to a house and lot at 6 Goss Street, Vibora, Havana, Cuba, was adjudicated by a Cuban court in favor of claimants' mother, a nonnational of the United States.

No claim has been filed by or on behalf of claimants' mother inasmuch as she does not meet the nationality prerequisites of Section 504 of the Act, which provides as follows:

(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.

Counsel for claimants contends that although their mother has title to the said house and lot, claimants have vested interests therein of 1/3 each as obligatory heirs under the laws of Cuba; and that said interests vested prior to July 15, 1966, the asserted date of loss. Counsel points to the Cuba Law Digest, appearing at 4 Martindale-Hubbell Law Directory 2621 (1964) as authority for his contentions.

An examination of the authority relied upon by counsel leads to an opposite conclusion. It appears from that source that the estate of a decedent passes either by will or by operation of law; and that rights in the estate are transmitted at the moment of death. While children are indicated as obligatory heirs with respect to two-thirds of the estate, it

is clear that such rights as heirs do not vest until the moment of death. Inasmuch as claimants' mother is still living, the Commission holds that claimants owned no interest in the property on the asserted date of loss.

The Regulations of the Commission provide:

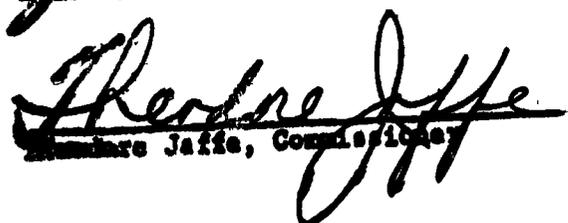
The claimant shall be the moving party and shall have the burden of proof on all issues involved in the determination of his claim. (FCSC Reg., 45 C.F.R. §531.6(d) (1970).)

The Commission finds that claimants have failed to sustain the burden of proof. The record does not establish that claimants owned any interest in the property in question on the date of loss, and that their claims were owned by nationals of the United States on the date of loss and continuously thereafter until the date of filing with the Commission. Accordingly, these claims are denied. The Commission deems it unnecessary to consider other elements of the claims.

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

FEB 11 1971


Lyda S. Gerlock, Chairman


Thelma Jaffe, 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 (1970).)