

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

IN THE MATTER OF THE CLAIM OF

PYLAR FERNANDEZ

Under the International Claims Settlement  
Act of 1949, as amended

Claim No. CU-4624

Decision No. CU-5539

Counsel for claimant:

Erasmus F. Carrasquillo, Esq.

AMENDED PROPOSED DECISION

Under date of August 6, 1970, the Commission issued its Proposed Decision denying this claim for lack of proof. Subsequently, further supporting evidence was submitted.

Upon consideration of the new evidence in the light of the entire record, the Proposed Decision is hereby amended. Claimant has been a national of the United States since birth.

The evidence of record now includes claimant's affidavit of October 3, 1966 executed before a Notary Public in Havana, Cuba, in which she listed each item of property claimed herein; a report from abroad concerning the real property in question; a deed pursuant to which claimant acquired the real property; copies of certain receipts relating to the real property; a copy of a lease covering one of the apartments in question; and statements by claimant. On the basis of the foregoing evidence, the Commission finds that claimant owned certain items of real and personal property in Cuba, discussed in detail below.

On December 6, 1961, the Cuban Government published in its Official Gazette its Law 989, which effected the confiscation of all assets, personal property, bank accounts, and other rights of persons who left the country. The Commission finds that this law applied to claimant who left Cuba on June 2, 1968, and that her properties were taken by the Government of Cuba on June 2, 1968 pursuant to Law 989. (See Claim of Wallace Tabor and Catherine Tabor, Claim No. CU-0109, 25 FCSC Semiann. Rep. 53 [July-Dec. 1966]; and Claim of Floyd W. Auld, Claim No. CU-0020, id. at 55.)

Although the claim arose subsequent to the close of the period for filing claims of this nature against the Government of Cuba, the Commission has held that it will consider on their merits claims for losses sustained subsequent to the deadline, so long as consideration thereof does not impede the determination of claims which arose prior to the close of the filing period. (See Claim of Vivian Morales, Claim No. CU-8739.)

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.

#### Real Property

The Commission finds that claimant acquired by deed of April 27, 1950 a house and lot at 360 Finlay Street, Havana, Cuba. The property consisted of land measuring 362.30 square meters in area, improved by a wooden house, which served as claimant's residence. The record shows that claimant paid \$2,500.00 for the real property, which was not encumbered by any mortgages or other liens. It further appears that claimant added three apartments to the house, each one consisting of a bedroom, living room, kitchen and bathroom. The record indicates that one of the apartments had been rented in 1960 for \$20.00 per month. The lease provided that the tenant was to make certain repairs at his own expense.

Claimant asserts that the value of the improved real property without the three new apartments was \$4,000.00, and that the three apartments had a value

of \$9,000.00. Considering the location of the property and the fact that the value of real property had increased between 1950 and 1968, the Commission finds that claimant's valuation of the property without the addition is fair and reasonable. The Commission therefore finds that the value of the house and lot, exclusive of the three new apartments, on June 2, 1968, the date of loss, was \$4,000.00.

As indicated above, the three new apartments were identical and one of them had been rented for \$20.00 per month or \$240.00 per year. Claimant's asserted valuation of \$9,000.00 for the three apartments is not supported by the record. The Commission finds that the valuation most appropriate to the property and equitable to the claimant is the result obtained by applying a multiple of 10 to the annual rental of the apartments. Accordingly, the Commission finds that the value of the three apartments on June 2, 1968 was \$7,200.00. Therefore, the total value of the improved real property was \$11,200.00.

#### Personal Property

The Commission finds on the basis of the evidence of record that claimant owned furniture and other household possessions which were maintained at her residence in Havana, Cuba. The Commission further finds that this property was taken by the Government of Cuba on June 2, 1958 when the real property was taken.

Claimant's affidavit of October 3, 1966 before the Notary Public includes a listing of the various items of personal property and valuations for each one. However, the record fails to show the age or original cost of the items, although the Commission suggested the submission of evidence in this respect.

An examination of the list indicates that it includes furniture which is subject to depreciation at the rate of 5% per year and appliances which are subject to a 10% per year depreciation rate. Claimant's list aggregates \$3,826.00, but she claims that the value thereof was \$5,181.00.

Upon consideration of the entire record and in the absence of evidence to the contrary, the Commission finds that the personal property should be

depreciated by 1/3. Accordingly, the Commission finds that the aggregate value of claimant's furniture and household possessions on June 2, 1968 was \$2,550.67.

Bank Account

Based on the evidence of record, the Commission finds that claimant owned a bank account, # 10,523, at the National Bank of Cuba. The Commission further finds that the bank account was taken by the Government of Cuba on June 2, 1968.

The record indicates that the credit balance of claimant's bank account on the date of loss was \$1,279.31. The Commission therefore finds that claimant sustained a loss in that amount.

Recapitulation

Claimant's losses on June 2, 1968 are summarized as follows:

<u>Item of Property</u>	<u>Amount</u>
Real Property	\$11,200.00
Personal Property	2,550.67
Bank Account	<u>1,279.31</u>
	<u>\$15,029.98</u>

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.

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

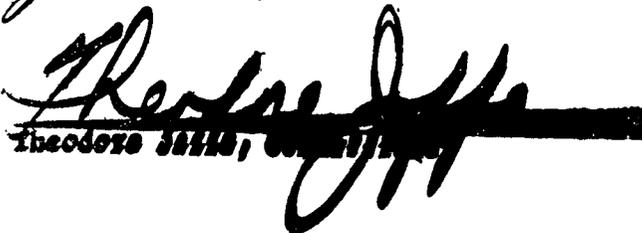
CERTIFICATION OF LOSS

The Commission certifies that PYLAR FERNANDEZ 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 Fifteen Thousand Twenty-Nine Dollars and Ninety-Eight Cents (\$15,029.98) with interest thereon at 6% per annum from June 2, 1968 to the date of settlement.

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

JUN 30 1971

  
Paul S. Garibok, Chairman

  
Theodore Sells, Chairman

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 Amended 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).)

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

IN THE MATTER OF THE CLAIM OF

PYLAR FERNANDEZ

Under the International Claims Settlement  
Act of 1949, as amended

Claim No. CU -4624

Decision No. CU 5539

PROPOSED DECISION

This claim against the Government of Cuba, filed under Title V of the International Claims Settlement Act of 1949, as amended, was opened by the Commission on behalf of PYLAR FERNANDEZ who has since presented claim in the amount of \$19,460.31, based upon the asserted loss of certain real and personal property in Cuba. Claimant states that she 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.

Claimant states that she has been a national of the United States since birth. The only evidence submitted in support thereof is claimant's own affidavit, dated October 3, 1966, in which she recites that she is a native-born American citizen.

Under date of June 4, 1970, the Commission suggested, among other things, that claimant submit evidence to establish that she is a national of the United States. The other suggestions in that letter related to proof of ownership of the properties claimed and the values thereof on the asserted date of loss. To date, no reply has been received.

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. §531.5(d) (1969).)

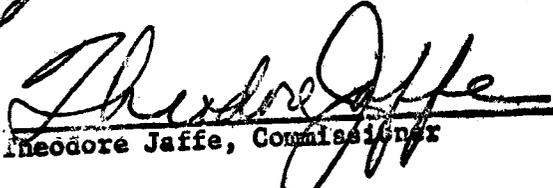
The Commission finds that claimant has failed to sustain the burden of proof with respect to her claim. The record does not establish that claimant is a national of the United States, and that her claim was owned by a national of the United States on the date of loss and continuously thereafter until the date of filing with the Commission, a prerequisite to favorable action under Section 504 of the Act.

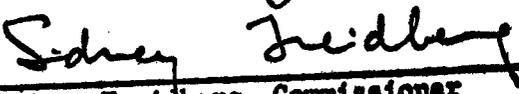
Accordingly, this claim is denied in its entirety. The Commission deems it unnecessary to consider other elements of the claim.

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

AUG 6 - 1970

  
Lytle S. Garlock, Chairman

  
Theodore Jaffe, Commissioner

  
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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