

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

IN THE MATTER OF THE CLAIM OF

JAMES W. GAVAGAN

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU - 5115

Decision No. CU **5757**

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, was presented by JAMES W. GAVAGAN for \$10,878.00 based upon the asserted ownership and loss of an interest in improved real property and personal property on the Isle of Pines, 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.

The Commission's Regulations provide that claims under Title V of the Act (Cuban claims) shall be filed with the Commission on or before May 1, 1967 (FCSC Reg., 45 C.F.R. Sec 531.1(d) (1969)); and further that any initial written indication of an intention to file a claim received within 30 days prior to the expiration of the filing period thereof shall be considered as a timely filing of a claim if formalized within 30 days after the expiration of the filing period. (Reg., Sec. 531.1(g))

No claim was filed with this Commission by or on behalf of claimant within the allowable period for timely filing of such claims, nor does the Commission have any record of any communication concerning his asserted loss.

The Commission has held, however, that it will accept for consideration on their merits claims filed after the deadline so long as the consideration thereof does not impede the determination of those claims which were timely filed. (See Claim of John Korenda, Claim No. CU-8255.) This is such a claim.

Claimant contends among other things that he lost an investment in real property on the Isle of Pines, Cuba.

The record contains a contract of sale evidencing the fact that claimant acquired through purchase 10 acres of land on the Isle of Pines on April 17, 1959.

On the basis of the entire record, the Commission finds that the claimant owned 10 acres of unimproved real property at Nueva Gerona on the Isle of Pines.

On December 6, 1961 the Cuban Government published its Law 989 (Official Gazette, XXIII, No. 237, p. 23705) which confiscated all assets, personal property and real estate, rights, shares, stocks, bonds and securities of persons who had left the country.

The record indicates that claimant left Cuba subsequent to September 1, 1959. The Commission finds, in the absence of evidence to the contrary, that the subject real property was taken by the Government of Cuba on December 6, 1961 pursuant to the provisions of Law 989.

In arriving at the value of the real property the Commission has considered claimant's description of the real property, recitations in the deed, contract of sale, and other information available to the Commission as to the value of similar property on the Isle of Pines.

Based on the entire record, the Commission finds that the fair value of claimant's unimproved acreage on the Isle of Pines at the time of loss was \$125.00 per acre and that his 10-acre tract therefore had a value of \$1,250.00. Accordingly, the Commission concludes that claimant suffered a loss in that amount within the meaning of Title V of the Act.

The balance of this claim is asserted in the amount of \$7,878.00 which, according to claimant's statement, consists of the loss of buildings comprising a house and shed, \$5,260.00; personal property, \$2,456; and \$162.00 of flying time assertedly owed to him for services rendered by claimant to the "rebel government" of Cuba. In this regard, the Regulations of the Commission provide that claimant has 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).)

By Commission letter of December 19, 1967, claimant was advised as to the type of evidence proper for submission to establish his claim under the Act with particular reference to the asserted loss of improvements and personal property. Thereafter, by letters dated October 2, 1968 and September 23, 1969, and November 13, 1969, further reminders and detailed

suggestions for supporting evidence were addressed to claimant. On April 17, 1970, claimant was allowed an additional 45 days in which to reply to prior requests and suggestions of the Commission and was advised that a determination of this claim might be made on the basis of the record then available. No evidence in support of this portion of the claim has been submitted to date.

With respect to this portion of this claim covering buildings, personalty, and flying time, the Commission finds that claimant has not met the burden of proof in that he has failed to establish ownership of rights and interests in property which was nationalized, expropriated or otherwise taken by the Government of Cuba. Thus, the Commission is constrained to deny this portion of the claim and it is hereby denied.

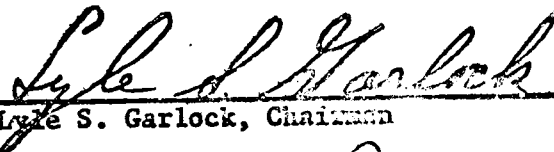
The Commission has decided that in certification of losses on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be included at the rate of 6% per annum from the date of loss to the date of settlement (see Claim of Lisle Corporation,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

CERTIFICATION OF LOSS

The Commission certifies that JAMES W. GAVAGAN 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 One Thousand Two Hundred Fifty Dollars (\$1,250.00) 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 Proposed
Decision of the Commission

9 SEP 1970


Lyle 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).)