

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

IN THE MATTER OF THE CLAIM OF

JOSEPH AGUSTI

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU - 8307

Decision No. CU-6026

Counsel for claimant:

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

Appeal and objections from a Proposed Decision entered on January 12, 1971.
Oral hearing requested.

Oral argument March 29, 1971 by John C. Bierley, Esq.

FINAL DECISION

By Proposed Decision issued on January 21, 1971 the Commission found that claimant and his wife, not a national of the United States, owned improved real property with a value of \$40,000.00 and personal property with a value of \$3,000.00, and certified a loss to claimant in the aggregate amount of \$21,500.00 for his one-half interest therein.

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 Mr. Agusti within the allowable period for timely filing of such claims, nor does the Commission have any record of any communication concerning his asserted loss.

CU-8307

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.

Additional evidence has been submitted and oral testimony and arguments were presented at a hearing held on March 29, 1971.

Upon consideration of the new evidence in the light of the entire record, the Commission now finds that the home in Miramar had a value of \$75,000.00 on October 14, 1960, the date of loss; that claimant owned a 1/2 interest in improved real property in the Playa Section of Havana and in Los Pinos, Havana; that these properties and their contents were also taken on October 14, 1960 pursuant to the provisions of the Urban Reform Law; and that the value of these realties on the date of loss was \$35,000.00 and \$25,000.00, respectively.

Further, the Commission finds that claimant owned a 1/2 interest in personalty in the three residences and that their aggregate value including the value of a 1958 Mercedes Benz automobile, after appropriate depreciation was \$36,050.00.

Claimant's one-half interest in the losses sustained had a value of \$85,525.00.


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

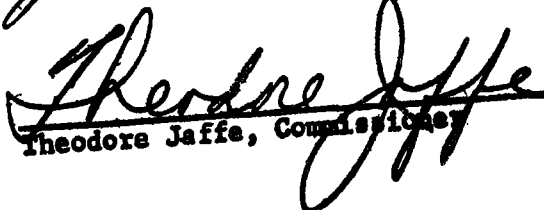
CERTIFICATION OF LOSS

The Commission certifies that JOSEPH AGUSTI 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 Eighty-five Thousand Five Hundred Twenty-five Dollars (\$85,525.00) with interest thereon at 6% per annum from October 14, 1960 to the date of settlement.

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

APR 21 1971


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.

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

IN THE MATTER OF THE CLAIM OF

JOSEPH AUGUSTI

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -8307

Decision No. CU 6026

Counsel for claimant:

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

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 JOSEPH AUGUSTI for \$138,000.00 based upon the asserted ownership and 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.

Claimant describes his loss as follows:

1. Home in Miramar Section of Havana	\$75,000.00
Furniture	1,500.00
2. Residence in Playa Section of Havana	35,000.00
Furniture	1,000.00
3. Residence in Los Pinos, Havana	25,000.00
Furniture	500.00
	<u>\$138,000.00</u>

Home in Miramar Section

Based upon the entire record including a report from abroad and considering the community property laws of Cuba, the Commission finds that claimant owned a 1/2 interest in this home and in a portion of the household furnishings therein. Since claimant's wife was not a United States national on the date of loss, so much of this claim as is based on her interest is hereby denied.

On October 14, 1960, the Government of Cuba published in its Official Gazette, Special Edition, its Urban Reform Law. Under this law the renting of urban properties, and all other transactions or contracts involving transfer of the total or partial use of urban properties were outlawed (Article 2). The law covered residential, commercial, industrial and business office properties (Article 15).

Based on the foregoing and the evidence of record, the Commission finds that claimant's real property in Miramar was taken by the Government of Cuba pursuant to the provisions of the Urban Reform Law; and, in the absence of evidence to the contrary, that the taking occurred on October 14, 1960, the date on which the law was published in the Cuban Gazette. (See Claim of Henry Lewis Slade, Claim No. CU-0183, 1967 FGSC Ann. Rep. 39).

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.

Claimant describes the improved realty as a 2-1/2 story residence having about 24 rooms, an underground water reservoir with electric pump and 2 storage tanks.

The record includes, in support of the claimed values, the aforementioned report from abroad which describes the home as a 2 independent story residence of 580 square meters valued at \$40,000.00.

On the basis of the evidence of record, and evidence available to the Commission regarding the value of similar properties in Miramar, the Commission finds that on October 14, 1960, the date of loss, the improved realty had a value of \$40,000.00 and concludes that claimant suffered a loss in the amount of \$20,000.00 for his 1/2 interest therein.

Other Realty

Claimant has stated that he owned residences in the Playa Section and in Los Pinos, Havana. On January 23, 1970 the Commission attempted to obtain evidence of this interest on behalf of claimant, but no report has been received. In support of this portion of his claim claimant has submitted affidavits from two individuals who state that they have known claimant many years and are familiar with these properties owned by claimant. These affidavits, however, do not set forth the facts upon which their conclusions are based.

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).)

In view of the above the Commission is constrained to hold that claimant has not established this portion of his claim and accordingly this part of the claim is denied.

Personalty

It is noted that claimant listed the value of the furniture and furnishings in the total amount of \$3,000.00 in his original claim. Thereafter, he submitted a detailed list of household furnishings including appliances and a 1958 Mercedes Benz SL racer, all of which he states was owned by him. In this listing the personalty assertedly had a total value of \$74,485.00. With the exception of the automobile and furnishings with an asserted value of \$3,825.00, the list shows acquisition new in 1953. By letter of September 3, 1970 it was suggested to counsel that claimant furnish evidence to support this portion of his claim, to clarify the value of certain items on the list submitted, and to indicate which items represented a dowry of his wife whom he married in February, 1953.

In reply counsel submitted an affidavit of claimant and his wife in which they state that all the items of personal property were purchased by claimant with his funds and were not brought into the marriage as dowry. Counsel also submitted affidavits of two individuals who state that they are personally familiar with the items of personalty and know that they were purchased with claimant's funds.

Based on the entire record and in the absence of evidence to the contrary, the Commission finds that the claimant's personalty had a value of \$3,000.00, as originally claimed, and that it was taken on October 14, 1960, the same date on which the Government of Cuba took the home in Miramar. Pursuant to the community property laws of Cuba, the Commission concludes that claimant suffered a loss in the amount of \$1,500.00 for his 1/2 interest therein.



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.

CERTIFICATION OF LOSS

The Commission certifies that JOSEPH AUGUSTI 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 Twenty-one Thousand Five Hundred Dollars (\$21,500.00) with interest thereon at 6% per annum from October 14, 1960 to the date of settlement.

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

JAN 12 1971


Louis S. Gussak, 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 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. 31.5(e) and (g), as amended (1970).)