

#11 -

Ownership v/o Recorded
Deed.

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

IN THE MATTER OF THE CLAIM OF

WALLACE TABOR
and
CATHERINE TABOR

Claim No. CU-0109

Decision No. CU -14

Under the International Claims Settlement
Act of 1949, as amended

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 WALLACE TABOR and CATHERINE TABOR, for \$1,225.00 based upon the asserted ownership and loss of an interest in land. Claimants have been nationals of the United States since their births in the United States.

Under Section 503 of the International Claims Settlement Act of 1949, as amended (64 Stat. 12; 69 Stat. 562; 72 Stat. 527; 78 Stat. 1110; 79 Stat. 988) the Commission is given jurisdiction over claims of nationals of the United States against the Government of Cuba. That section 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

(a) . . . 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 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.

Section 502(1) of the Act defines the term "national of the United States" to mean "(A) a natural person who is a citizen of the United States, . . . The term does not include aliens."

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.

Claimants contend they have lost an investment in real property in Cuba valued at \$1,225.00. They have submitted a document entitled "Agreement for Deed," dated August 17, 1957, between Edward S. Pearson and Dorothy V.E. Pearson, described as owners of Mountain View Estates, in San Jose, Isle of Pines of Cuba, Cuba as the Sellers, and claimants herein, the Buyers. The document provides that if the Buyers first make payments and perform covenants, the Sellers agree to convey to the Buyers, by Warranty Deed of conveyance, lots 8 and 9 of Block C [Mountain View Estates]. The Buyers agreed to pay \$30.00 cash in hand and \$30.00 each month until \$1,294.00 would be paid in full, and also agreed to pay all taxes to be imposed after 1957.

The document also provides "It is further agreed by the parties hereto that this contract is not to be recorded, and that no assignment or transfer of said contract or the rights thereunder of the

Buyers shall be valid and binding as against the Sellers, unless the Sellers shall consent in writing to such recording or assignment."

Claimants have also submitted copy of an undated "Special Notice" from Pearson Realty, Inc., addressed "To all owners of Mountain View Estates" concerning the bringing into the Estates of an electric power line, and a new road. This notice states in part "All owners are requested to pay an equal share of this expense, in the amount of \$25.00 each, and we would appreciate your cooperation and prompt remittance" The notice states that all taxes for 1958 were paid. Claimants assert this \$25.00 was paid.

The record also contains copy of a letter dated March 11, 1961 to claimant CATHERINE TABOR from Edward S. Pearson of Pearson Realty, Inc., described as Registered Real Estate Brokers with offices in Jupiter, Florida, and Nueva Gerona, Isle of Pines. This letter states in part:

"Regarding the property you purchased from us August 17, 1957, under Contract for Deed, at this time it has not been confiscated by the present Cuban regime and taxes are paid to date. If you wish to complete your balance of \$94.00 at this time, we can give you your Deed, and the Cuban Deed can be secured for you.

"However, as you have requested, your payments may be held in abeyance until January 1, 1963, or longer, if necessary, by mutual consent, without interest or penalty. We do not know what the future holds"

Under Cuban law, a sale is consummated and becomes binding on the purchaser and seller if there has been a meeting of the minds on the object and price, even though neither the thing nor the price has been delivered (Lanzas, A Statement of the Laws of Cuba, 78 (1958). Registration is not necessary for the transfer of ownership or rights in rem between the parties concerned, but it is required if the transaction is to be binding on third parties (Lanzas, supra, 277).

On the basis of the entire record and the state of Cuban law at the time of the transaction, the Commission finds that claimants became the owners, in equal parts, of lots 8 and 9, Block C, of Mountain View Estates in the Isle of Pines, a province of Cuba.

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.

As the record shows, in March, 1961, claimants were resident in Florida. 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.

Based on the entire record the Commission finds that the land, including improvements, had a value of \$1,319.00, but that claimants owed the Sellers a total of \$94.00, which latter amount in fact is not claimed. Accordingly, the Commission concludes that each claimant suffered a loss in the amount of \$612.50 within the meaning of Title V of the Act.

The Commission has decided that in payment of losses on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be allowed at the rate of 6% per annum from the date of loss to the date of settlement (See the Claim of American Cast Iron Pipe Company, FCSC Claim No. CU-0249).

Accordingly, the Commission concludes that the amount of the loss sustained by claimants shall be increased by interest thereon at the rate of 6% per annum from December 6, 1961, the date on which the loss occurred, to the date on which provisions are made for the settlement thereof.

CERTIFICATION OF LOSS

The Commission certifies that WALLACE TABOR 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 Six Hundred Twelve Dollars and Fifty Cents (\$612.50), with interest thereon at 6% per annum from December 6, 1961 to the date of settlement; and

the Commission certifies that CATHERINE TABOR 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 Six Hundred Twelve Dollars and Fifty Cents (\$612.50), 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.

OCT 26 1966

Edward D. Re

Edward D. Re, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

THIS DECISION WAS ENTERED AS THE COMMISSION'S
FINAL DECISION ON NOV 30 1966

Francis M. ...

Clerk of the Commission

LaVern R. Dilweg

LaVern R. Dilweg, Commissioner

NOTICE: Pursuant to the Regulations of the Commission, if no objections are filed within 20 days after service or receipt of notice of this Proposed Decision upon the expiration of 30 days after such service or receipt of notice, the decision will be entered as the Final Decision of the Commission, unless the Commission otherwise orders. (FCSC Reg., 45 C.F.R. 531.5(e) and (g) (1964))