

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

IN THE MATTER OF THE CLAIM OF

CAROLINA PANERAI MANDEL

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-0186

Decision No. CU-1416

Counsel for claimant:

Hopkins, Sutter, Owen, Mulroy & Davis
By: Anderson A. Owen, Esq.

Appeal and objections from a Proposed Decision entered February 28, 1968;
oral hearing requested.

Oral argument heard June 20, 1968 by counsel for claimant.

FINAL DECISION

By Proposed Decision dated February 28, 1968, the Commission denied this claim for the reason that claimant had not met the burden of proof in that she had failed to establish ownership of rights and interests in property which had been nationalized or otherwise taken by the Government of Cuba.

Claimant filed objections to the Proposed Decision, objecting generally to the denial of the claim, and submitted, through counsel, certain supporting evidence. At an Oral Hearing held on June 20, 1968, argument was made by claimant, through counsel, as to the extent of her ownership interest in the real and personal property, subject of the claim, and the value of such property at the time of loss.

Claimant contends that upon the death of her late father, Camilo Panerai, a Cuban citizen who died in Cuba in 1938, his estate included certain real property; and that her late mother, Elvira Bertini Panerai, also a Cuban citizen who died in 1968, had a community property or one-half interest in the subject real property; and that when Camilo Panerai died the claimant, her brother, Camilo B. Panerai, a Cuban citizen, and the aforesaid widow inherited interests in the one-half interest held by the late Camilo Panerai.

Claimant has submitted a document dated August 21, 1964, indicating that Elvira Bertini Panerai had assertedly made an oral gift of her interests in the real and personal property in question to her daughter (claimant) and to her son, Camilo B. Panerai, on or about September 1, 1958, but while such gift had not previously been reduced to writing the gift was assertedly affirmed in the 1964 document of transfer or gift.

The purported gift to claimant included the following properties:

1. One-half interest in residential improved real property, known as Calle 13, No. 305, Vedado, Havana, Cuba, with a total value of \$60,000.00;
2. One-half interest in residential improved real property, known as Calle 8, No. 255, Vedado, Havana, Cuba, with at total value of \$12,000.00;
3. One-half interest in mortgage loan due from Rogelio Santos Ortega, with a total amount outstanding of \$2,704.20;
4. One-half interest in United States currency located in safe deposit box #1628, First National City Bank of New York, Havana Branch, valued at \$2,750.00; and
5. One-half interest in checking account at First National City Bank of New York, Havana Branch, valued at \$1,958.80.

With respect to the first three items, as listed above, the Commission finds that such properties or property interest were owned by the late Camilo Panerai and Elvira Bertini Panerai as community property and that upon his death in 1938, the claimant, her brother and her mother inherited the decedent's interests therein, as follows:

His widow, Elvira Bertini Panerai, who held the one-half interest in the real property under the Community Property Laws of Cuba, inherited a life estate in a one-sixth interest of such property while claimant herein and Camilo B. Panerai, son of the decedent, inherited respective one-sixth interests in the property, with one-half interests in the remainder of the one-sixth interest (life estate) held by their mother.

The Government of Cuba published its law on Urban Reform in the Official Gazette on October 14, 1960. Under this law the renting of urban properties and all other transactions involving transfer or use of urban properties were outlawed (Article 2). The law covered residential,

commercial, industrial and business office properties (Article 15). In the absence of evidence to the contrary, the Commission finds that the real property and mortgage interest was taken by the Government of Cuba on October 14, 1960.

The Commission has carefully considered the evidence of record, including the purported oral gift in September 1958 of the real property and mortgage interest to the claimant and her brother. However, Cuban law controlling the transfer of property does not preclude transfers of property by private instrument, and registration thereof is not necessary for transfer between the parties concerned but is required if the transaction is to be binding on third parties. (Lanzas, A Statement of the Laws of Cuba, pp. 78 and 277; and see Claim No. CU-0109, Claim of Wallace Tabor, et ux, 25 FCSC Semiann. Rep. 53 [July-Dec. 1966].) Those contracts which should be in the form of a public instrument include contracts for the transfer of rights such as issued from a public document, and transfer of inheritance or matrimonial community property. (Lanzas, supra, p. 73)

Without deciding whether the 1964 document entitled "Deed of Conveyance and Affirmance of Gifts" would effectively transfer any claims of the widow against Cuba, the Commission finds that the purported 1958 oral transfer of real property interests including inherited and matrimonial community property interests did not effectuate any transfer under Cuban law which could now serve as a basis for certifying a loss to claimant under Title V of the Act.

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.

The widow and son of Camilo Panerai, namely Elvira Bertini Panerai and Camilo B. Panerai, owners of certain interests in the subject real property, were not nationals of the United States at the time of loss.

In order for the Commission to favorably consider a claim under Title V of the Act, it must be established (1) that the subject property was owned in whole or in part by a national of the United States on the date of nationalization or other taking; and (2) that the claim arising as a result of such nationalization has been continuously owned thereafter in whole or in part by a national or nationals of the United States to the date of filing claim with the Commission. (See Claim of Joseph Dallos Hollo, Claim No. CU-0101, 25 FCSC Semiann. Rep. 46 [July-Dec. 1966].) Thus, the Commission finds that as the mother and brother of claimant CAROLINA PANERAI MANDEL were not nationals of the United States when the property or mortgage interest was taken by the Government of Cuba, their interests are not compensable under the Act.

The personal property, including any currency in a safety deposit box and an interest in a checking account, both maintained at the First National City Bank of New York, Havana Branch, was the separate property of Elvira Bertini Panerai according to the evidence of record, including the "Affirmance of Gifts" executed by her on August 21, 1964. These property interests may have been taken by the Government of Cuba pursuant to an Administration Instruction of February 15, 1961, concerning safe deposit boxes (see Claim of Anna Littner, et al., Claim No. CU-3655), and certain laws enacted in 1961, concerning bank accounts, including Law 963 of August 4, 1961, and Law 964 of August 9, 1961, providing for the conversion of currency and taking of "new" bank accounts (see Claim of Betty G. Boyle, Claim No. CU-3473 and Claim of Dorothy G. O'Kieffe, Claim No. CU-1242 and Law 989 of December 6, 1961 (see Claim of Floyd W. Auld, Claim No. CU-0020, 25 FCSC Semiann. Rep. 55 [July-Dec. 1966])). Accordingly, since the personal property included in this claim was taken from claimant's mother, not a national of the United States at the time of probable loss, the Commission is constrained to deny and does deny these portions of the claim.

In arriving at the value of the real property, consideration was given to all of the evidence of record, including the photographs, statements and reports, such as reports from the Cuban administrators, sales offers concerning the property, correspondence and detailed descriptions of the property in question. Additionally, the Commission has given consideration to the evidence of record available to the Commission in several claims involving the value of real property in Havana, Cuba. The balance due of \$2,704.20, under the mortgage held by the decedent and his successors in interest is established by the monthly statements from the Cuban administrators of the property, as of October 14, 1960.

The Commission finds that at the time of loss the properties had the following values:

1. Calle 13, No. 205, Vedado, Havana	\$60,000.00
2. Calle 8, No. 255, Vedado, Havana	12,000.00
3. Mortgage loan due from Rogellio Santos Ortega, balance	<u>2,704.20</u>
Total	\$74,704.20

As stated above, one-sixth of the estate was encumbered with a life estate in favor of the mother of the claimant, with claimant having a one-half interest in the remainder, as well as her one-sixth interest in the subject property. According to the evidence of record, the late Elvira Bertini Panerai was 76 years of age at the time of taking of the

property in 1960. The value of this life estate must be determined in order to properly evaluate the value of the interest of claimant in the real property in question.

The Commission has adopted as a basis for valuation of life and remainder interests the Makehamized mortality table, appearing as Table 38 of United States Life Tables and Actuarial Tables 1939-41, and a 3-1/2% interest rate, compounded annually, as prescribed by United States Treasury Department regulations of June 24, 1958, for the collection of gift and estate taxes, respectively. (See 23 F. R. 4547, 26 C.F.R. 2031-7.) According to that method of valuation, a life estate in property so encumbered is valued at .20698 of the estate, and the remainder interest is valued at .79302 of the estate. Therefore, since the value of one-sixth of the estate in question is \$12,450.70 the remainder interest is valued at \$9,873.65, in which the claimant has a one-half interest or \$4,936.83. The Commission concludes that claimant suffered a loss in the amount of \$17,387.53 within the meaning of Title V of the Act.

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.

The certification of loss, as stated below, will be entered and the remainder of the Proposed Decision, as amended herein, is affirmed as the Commission's Final Decision in this matter.

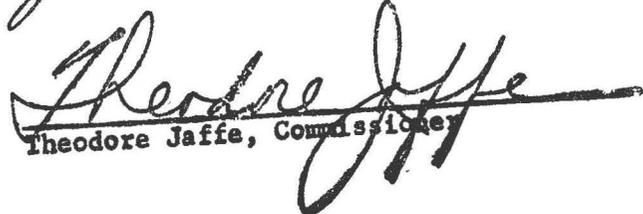
CERTIFICATION OF LOSS

The Commission certifies that CAROLINA PANERAI MANDEL 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 Seventeen Thousand Three Hundred Eighty-seven Dollars and Fifty-three Cents (\$17,387.53) with interest at 6% per annum from October 14, 1960 to the date of settlement.

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

NOV 10 1970


Lyle S. Garlock, Chairman


Theodore Jaffe, Commissioner

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

IN THE MATTER OF THE CLAIM OF

CAROLINA PANERAI MANDEL

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -0186

Decision No. CU 1416

Counsel for claimant:

Hopkins, Sutter, Owen, Mulroy,
Wentz & Davis
By Frank B. Sanders, Esq.

PROPOSED DECISION

The claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, in the amount of \$42,060.90, was presented by CAROLINA PANERAI MANDEL based upon the asserted loss of improved real property and personal property, currency, and a bank account in Cuba. Claimant has been a national of the United States since her naturalization on October 8, 1957.

Under Title V of the International Claims Settlement Act of 1949 [78 Stat. 110 (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 of 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.

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) (Supp. 1967).)

Claimant asserts the ownership of interests in improved real property, personal property, currency and a bank account located in Cuba; however, other than pictures, a statement of account and correspondence, claimant has submitted no documentary evidence in support of this claim. By Commission letters of July 5, 1966, October 13, 1967 and November 21, 1967, claimant was advised, through counsel, as to the type of additional evidence proper for submission to establish this claim under the Act.

On November 21, 1967, counsel were invited to submit the previously suggested evidence within 45 days from that date, and they were informed that, absent such evidence it might become necessary to determine the claim on the basis of the present record. Neither claimant nor counsel have responded to the request of the Commission and no additional evidence has been submitted in support of this claim.

The Commission finds that claimant has not met the burden of proof, in that she has failed to establish ownership of rights and interests in property which was nationalized, expropriated or otherwise taken by the Government of Cuba. Accordingly, this claim is hereby denied. The Commission deems it unnecessary to determine other elements of this claim.

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

FEB 28 1968



Edward S. Re, Chairman



Theodore 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, 32 Fed. Reg. 412-13 (1967).)

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