

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

IN THE MATTER OF THE CLAIM OF

MARIA E. GARCIA

Under the International Claims Settlement  
Act of 1949, as amended

Claim No. CU -0309

Decision No. CU 4516

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 MARIA E. GARCIA for \$22,494.26 based upon asserted ownership and loss of property in Cuba. Claimant has been a national of the United States since her birth on January 28, 1891.

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 her losses as follows:

- (1) real property Las Palmas in Reparto El Maranon;
- (2) furniture, equipment;
- (3) two bank accounts;
- (4) pension;
- (5) rental income.

Regarding the portion of the claim based upon the improved real property known as Las Palmas, recorded as Lot No. 23 in Section C, in Reparto El Maranon, Province of Havana, Cuba, the evidence establishes and the Commission finds that pursuant to the community property laws of Cuba the claimant and her late husband, Raoul Garcia, each owned a one-half interest in the above-mentioned real property. (See Claim of Robert L. Cheaney and Marjorie L. Cheaney, Claim No. CU-0915.)

The Government of Cuba published its Urban Reform Law, in the Cuban Official Gazette on October 14, 1960. In the absence of evidence to the contrary, the Commission finds that this real property was taken by the Government of Cuba on October 14, 1960. (See Claim of Henry Lewis Slade, Claim No. CU-0183, 1967 FGSC Ann. Rep. 39.)

Claimant's husband, Raoul Garcia, the owner of the other one-half interest in the real property, died on December 7, 1960, a date following the taking of his one-half interest in the real property by the Government of Cuba. Inasmuch as Raoul Garcia died as a nonnational of the United States, his one-half interest in the real property was not owned by a national of the United States, as required for the certification of a loss under the Act. Therefore, any interest the claimant may have inherited in her late husband's claim for compensation does not come within the purview of Title V of the Act and no loss based upon such inherited interest may be certified.

The Commission also finds that claimant owned the furniture and furnishings of the real property Las Palmas, and a checking account with the Banco Continental Cubano with a balance of 255.25 pesos.

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On December 6, 1961, the Government of Cuba published Law 989 in its Official Gazette, which effected a confiscation of all goods and chattels, property rights, shares, stocks, bonds, bank accounts and other securities of persons who left Cuba. The claimant left Cuba before that date and the Commission finds that claimant's personal property was taken by the Government of Cuba on December 6, 1961. (See Claim of Wallace Tabor and Catherine Tabor, Claim No. CU-0109, 25 FCSC Semiann. Rep. 53 [July-Dec. 1966].)

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.

Upon consideration of the entire record, the Commission finds that the valuations most appropriate to the properties and equitable to the claimant are those set forth hereafter, the Cuban peso being on a par with the United States dollar.

The real property Las Palmas consisted of a parcel of land of 3,642 square varas, improved by a one story dwelling house of five rooms. The claimant states that the property in question was purchased for 6,828.75 pesos and improved by a total of 5,318.92 pesos for the construction of the house and landscaping the property, amounting to a grand total of 12,147.67 pesos.

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On the basis of all evidence of record, including a copy of the original purchase contract and a photograph of the improvements, the Commission finds that the improved real property Las Palmas had a value of \$12,000.00 on October 14, 1960, the date of loss. The evidence further shows, and the Commission finds that claimant and her late husband, the owners of the real property in question, owed the seller 46 times 61.48 or a total of 2,828.08 pesos. Having deducted that amount from the value of the property, the Commission concludes that the loss sustained in connection with that property amounted to \$9,171.92, and the claimant's one-half interest therein was \$4,585.96.

A portion of the personal property consisted of the furnishings and furniture of the real property Las Palmas. The record includes descriptions and detailed listings of said items of property consisting of household items of the five room house. The values, indicated by claimant, are corroborated by persons who were residing in Cuba and had personal knowledge of the pertinent facts on the basis of their association with the claimant and her late husband.

On the basis of the foregoing, the Commission finds that claimant's personal property consisting of furniture and furnishings had a total value of \$2,000.00.

The Commission also finds that claimant sustained a loss in connection with the taking of her checking account with the Banco Continental Cubano in the amount of \$255.26. (See Claim of Floyd W. Auld, Claim No. CU-0020, 25 FGSC Semiann. Rep. 55 [July-Dec. 1966].)

A further portion of the claim is based upon the asserted loss of a second checking account with the Banco Continental Cubano in the name of claimant's late husband, Raoul Garcia, with an approximate balance of 1,400.00 pesos. The Commission finds that the submitted eight deposit slips and three cancelled checks, dated at various times during the period from November 6, 1957, to October 11, 1960, are insufficient to establish

that the second checking account now in question, had a balance of 1,400.00 pesos on December 6, 1961, as asserted. Accordingly, that portion of the claim must be and it is hereby denied.

It is asserted by claimant that she was entitled to a widow's pension from the Caja General de Jubilaciones y Pensiones de Empleados de Bancos de la Republica de Cuba (General Retirement and Pension Fund of Bank Employees in the Republic of Cuba), hereafter referred to as the Fund.

On the basis of original documentation submitted by claimant and other evidence of record, the Commission finds as follows:

On January 1, 1961, Raoul Garcia would have been entitled to a pension of 1,052.72 pesos per annum. Since he died on December 7, 1960, his widow, the claimant, was entitled to 50% of that amount, or to a pension of \$526.36 per annum, the United States dollar being on par with the Cuban peso.

The Fund was established by the Law of September 7, 1938, as amended by Law Decrees No. 797 of March 27, 1953, No. 879 of May 27, 1953, and No. 1211 of November 26, 1953; that it was administered by a Board of Directors consisting of seven members, two elected by the General Assembly of Bank Employees, three by the banks contributing to the Pension Fund, one by the General Assembly of Retirees and Pensioners, and a chairman, appointed by the Supreme Court of Cuba.

On May 29, 1959, Law No. 351 was enacted which provided for the establishment of the Banco de Seguros Sociales de Cuba (Social Insurance Bank of Cuba) as an agency of the Government of Cuba to supervise and administer social insurance, as well as to direct the policy concerning all social security matters. The law also provided for the transfer of the assets and liabilities of all pension funds to the Banco de Seguros Sociales de Cuba. Information also shows that retired employees received their monthly retirement benefits (pensions) from the Banco de Seguros Sociales de Cuba up to

the time of their departure from Cuba. After their departure from Cuba the benefits remained unpaid. On the basis of evidence of record the Commission finds that the Government of Cuba refused to transfer any pension benefits to claimant which benefits became due on or after January 1, 1961, because claimant was residing in the United States when such amounts became payable.

In our decision entitled the Claim of A. M. Joy de Pardo (Claim No. CU-1906 which we incorporate herein by reference), we held that the refusal of the Government of Cuba to transfer retirement benefits to claimant constituted a taking of her property within the purview of Section 503(a) of the Act. Therefore, the Commission finds that claimant's claim for the loss based upon such taking in the instant claim arose on January 1, 1961.

The Commission has adopted as a basis for the valuation of annuities the Makehamized mortality table, appearing as Table 38 of the 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, the value of the annuity for a person of the age of 70 amounts to 7.8200 times the yearly sum of the annuity. Since on January 1, 1961, claimant was 70 years of age, the value of her discounted annuity on that date amounted to \$526.36, the yearly sum of claimant's annuity (the peso being on a par with the United States dollar) times 7.8200 or \$4,116.14.

A portion of the claim is asserted for the loss of rentals from the real property Las Palmas from January 1, 1961, to June 1965, at \$20.00 per month, amounting to a total of \$1,080.00.

It is to be noted that after October 14, 1960 the property Las Palmas no longer belonged to claimant in any part but belonged to the Government of Cuba. Accordingly this item of claim is denied. However, the

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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).

Claimant's losses are summarized as follows:

One-half interest in the real property Las Palmas	\$ 4,585.96
Furniture and furnishings	2,000.00
Bank account	255.26
Pension	<u>4,116.14</u>
	\$10,957.36

As stated above, 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 Lisle, supra), and in the instant case, it is so ordered, as follows:

<u>FROM</u>	<u>ON</u>
October 14, 1960	\$ 4,585.96
January 1, 1961	4,116.14
December 6, 1961	<u>2,255.26</u>
	\$10,957.36

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CERTIFICATION OF LOSS

The Commission certifies that MARIA E. GARCIA 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 Ten Thousand Nine Hundred Fifty-Seven Dollars and Thirty-Six Cents (\$10,957.36) with interest at 6% per annum from the respective dates of loss to the date of settlement.

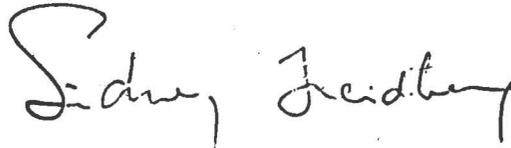
Dated at Washington, D. C.  
and entered as the Proposed  
Decision of the Commission

MAR 4 1970

  
Lyle S. Garlock, Chairman



Theodore Jaffe, Commissioner



Sidney Freidberg, 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).)

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