

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

IN THE MATTER OF THE CLAIM OF

CHARLES K. KINSEY
LENA LeVANN KINSEY

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -0700

Decision No. CU 5750

Counsel for claimants:

Bentley, Miller, Sinder & Ellsworth
By Robert T. Miller, 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 CHARLES K. KINSEY in the amended amount of \$1,956,590.00 based upon the asserted ownership and loss of real and personal property in Cuba. Claimant has been a national of the United States since birth.

The record establishes that LENA LeVANN KINSEY, the wife of claimant CHARLES K. KINSEY, has been a national of the United States since birth. Since, pursuant to the community property law of Cuba, she had an interest in property acquired by her husband in Cuba subsequent to their marriage in 1934, she is joined as claimant in this matter.

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.

Claimants have asserted their losses as follows:

Real Property

Land in Camaguey, Cuba - 899 acres	\$1,758,585.00
Residence	40,000.00
3 Warehouses	9,000.00
5 Tenant houses	7,500.00
Maid's house	10,000.00
Swimming pool	3,000.00
	<u>\$1,828,085.00</u>

Personal Property

Farming equipment and 3 Turbine houses	\$ 45,000.00
Packing boxes	2,475.00
Household furnishings & furniture	7,148.00
Clothing and linens	4,000.00
Jewelry	632.00
Chevrolet automobile	2,000.00
Promissory note	15,000.00
Mortgage	52,250.00
	<u>\$ 128,505.00</u>

Total \$1,956,590.00

The record contains a report from abroad evidencing ownership of the real property claimed and some of the farm equipment, affidavits from individuals having personal knowledge of the facts, one referring to former Dun & Bradstreet reports on claimant, and detailed statements and affidavits by claimant CHARLES K. KINSEY concerning the property subject of this claim.

On the basis of the entire record, the Commission finds that claimants owned a farm of about 899 acres and other items of real and personal property, subject of this claim, which are further discussed below.

The record discloses that claimant CHARLES K. KINSEY purchased a farm known as "La Chicha" in 1938 and thereafter in 1946 and 1949 purchased another

farm known as "Finca Catalina"; and that these farms are located in Ruspoli, Camaguey Province. The record further shows that after he purchased "La Chicha" he built a 2-story brick home with about 16 rooms. It appears that he devoted all his energies to improving his farms, reinvesting most of the income in adding improvements, purchasing machinery, expansion, and development of orange groves, and acreage of sugar cane and pasture. Included in the improvements was the construction of the 3 warehouses, 5 tenant houses, maid's house and swimming pool.

The record establishes and the Commission finds that on April 16, 1961 claimant CHARLES K. KINSEY was arrested and sent to a concentration camp and that on that day the Cuban Government confiscated claimants' farms and all the property situated thereon, as a result of which claimants suffered a loss within the meaning of Title V of the Act.

The evidence includes photographs of claimants' residence and swimming pool, various areas of the farms, a pump-house, and one of the tractors. It also includes two tax receipts and a 1960 registration for a 1958 Chevrolet sedan. Claimant CHARLES K. KINSEY states that his real property totaled 899 acres made up of 779 acres of orange groves, 30 acres of sugar cane, 85 acres of pasture and 5 acres for his residence and adjoining lot.

He has furnished a detailed description of most of the farm equipment and the years the items were purchased. He states that his residence was built in 1949 and 1950 and that the warehouses and tenant houses were built between 1941 and 1951. He also furnished a list of the household furnishings, furniture, and other personalty, and their estimated value. His asserted values are substantially supported by affidavits from persons familiar with the farms and the residence. He also states that he was offered \$900,000.00 for the property in early 1961 which he says was far below its value and the offer was declined.

Based upon all the evidence of record including the report from abroad and the affidavits from individuals with personal knowledge of the facts,

the Commission finds that the asserted values are fair and reasonable and concludes that on April 16, 1961, the date of loss, the items of real and personal property subject of this claim, except for the promissory note and mortgage, had an aggregate value of \$1,889,340.00. Since the evidence establishes that the realty was encumbered by an unpaid mortgage of \$20,000.00 this must be deducted to arrive at the over-all equity of \$1,869,340.00.

With regard to the portion of this claim based on the loss of a promissory note in the sum of \$15,000.00 and a mortgage of \$52,250.00, claimants state the promissory note was also secured by a mortgage. However, claimants have submitted no documents or other objective evidence to support this portion of the claim. The Commission is constrained to hold that claimants have not established this portion of their claim, and therefore it is denied for failure of proof.

In view of the above, the Commission concludes that claimants suffered a loss in the aggregate amount of \$1,869,340.00 within the meaning of Title V of the Act, as the result of the taking of their property by the Government of Cuba.

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 the instant case it is so ordered.

CERTIFICATIONS OF LOSS

The Commission certifies that CHARLES K. KINSEY 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 Nine Hundred Thirty-four Thousand Six Hundred Seventy Dollars (\$934,670.00) with interest at 6% per annum from April 16, 1961 to the date of settlement; and

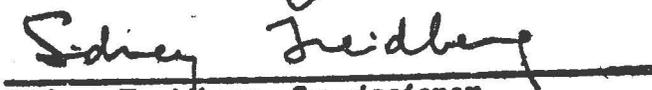
The Commission certifies that LENA LeVANN KINSEY suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Nine Hundred Thirty-four Thousand Six Hundred Seventy Dollars (\$934,670.00) with interest at 6% per annum from April 16, 1961 to the date of settlement.

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

AUG 19 1970


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).) CU-0700