

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

IN THE MATTER OF THE CLAIM OF

MARIO J. DAVIDSON
and
IRMA HEIM DAVIDSON

Claim No. CU -0879

Decision No. CU - 5732

Under the International Claims Settlement
Act of 1949, as amended

PROPOSED DECISION

This claim against the Government of Cuba, filed under Title V of the International Claims Settlement Act of 1949, as amended, in the amount of \$75,000.00, was presented by MARIO J. DAVIDSON and IRMA HEIM DAVIDSON based upon the asserted loss of certain real and personal property in Cuba. Claimants have been nationals of the United States at all pertinent times.

Under Title V of the International Claims Settlement Act of 1949 [79 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, husband and wife, assert the following losses:

Land at 7214-61st Avenue, Marianao, Havana	\$ 6,000.00
House at same address in Marianao, Havana	14,000.00
Personal property	10,000.00
Arturo Fernandez y Cia, a wholesale jewelry concern	25,000.00
Joyeria Fiance, a retail jewelry concern	10,000.00
Debts	<u>10,000.00</u>
Total	<u>\$75,000.00</u>

House and Lot at Marianao

The record includes a report from abroad and a copy of an official statement from Cuban land authorities which establish that claimants purchased a house and lot at 7214 - 61st Avenue, Marianao, Havana, Cuba, on September 2, 1960. The Commission finds that claimants owned said property in equal shares.

Claimants state that their real property was taken on March 26, 1963 when they left Cuba.

On December 6, 1961, the Cuban Government published Law 989, which confiscated all real property, personal property, rights, shares, stocks, bonds, securities and bank accounts of persons who had left the country. The Commission finds that this law applied to claimants who had left Cuba on March 26, 1963, and that their real property in Marianao was taken by the Government of Cuba on March 26, 1963 pursuant to Law 989. (See Claim of Wallace Tabor and Catherine Tabor, Claim No. CU-0109, 25 FCSC Semiann. Rep. 53 [July-Dec. 1966].)

The official statement shows that the house had one story and contained a terrace, living room, dining room, 3 bedrooms, 2 bathrooms, a kitchen, study, laundry room, basement and garage. The area of the land was 577.47 square meters. Claimants state that they expended \$4,000.00 in improving the property,

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and that they were compelled to satisfy the outstanding mortgage before being permitted to leave Cuba. They were unable to bring any documents with them.

The report from abroad corroborates the foregoing description of the property and indicates that the mortgage in the amount of \$6,000.00 had been repaid on the property as of June 17, 1958.

Upon consideration of the entire record and based on the values of similar properties in the same area of Cuba, the Commission finds that claimants' real property in Marianao, Havana, Cuba had a value of \$15,000.00 on March 26, 1963, the date of loss, and that the mortgage had been fully satisfied. Therefore, each claimant sustained a loss in the amount of \$7,500.00.

Personal Property

Claimants state that they owned certain personal property, having a value of \$10,000.00, situated in their home at Marianao, Havana. However, the record contains no evidence to support claimants' assertions. The Commission suggested on several occasions that claimants submit a detailed list of the various items of personal property indicating the approximate dates of acquisition and approximate costs, together with supporting affidavits from individuals having personal knowledge of the facts. No such evidence has been filed to date.

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., 43 C.F.R. §531.6(d)(1969).)

The Commission finds that claimants have failed to sustain the burden of proof with respect to the portion of the claim based on personal property having an asserted value of \$10,000.00. Accordingly, this portion of the claim is denied.

Arturo Fernandez y Cia. and Joyeria Fiance

Based upon affidavits from individuals having personal knowledge of the facts, the Commission finds that claimants jointly owned a 70% interest in Arturo Fernandez y Cia., a wholesale jewelry concern in Havana; and jointly

owned a 70% interest in Joyeria Fiance, a retail jewelry concern in Havana. The Commission further finds that claimants' interests in these firms were also taken by the Government of Cuba on March 26, 1963 pursuant to Law 989.

The evidence includes affidavits from co-owners of the two firms setting forth the values of the firms on the basis of personal knowledge of the facts. Based upon the foregoing evidence, the Commission finds that claimants' interests in Arturo Fernandez y Cia. and in Joyeria Fiance on March 26, 1963, the date of loss, were \$25,000.00 and \$10,000.00, respectively. Therefore, each claimant sustained losses in the amounts of \$12,500.00 and \$5,000.00, respectively.

Debts

Claimants assert the loss of \$10,000.00 as debts based on three automobiles they state they were required to turn over to the Cuban government before leaving. The record contains no evidence to support this portion of the claim. Accordingly, this portion of the claim is denied.

Claimants' joint losses are summarized as follows:

House and Lot at Marianao	\$15,000.00
Arturo Fernandez y Cia.	25,000.00
Joyeria Fiance	<u>10,000.00</u>
Total	<u>\$50,000.00</u>

Therefore, each claimant sustained a loss in the amount of \$25,000.00.

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.

CERTIFICATION OF LOSS

The Commission certifies that MARIO J. DAVIDSON 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-Five Thousand Dollars (\$25,000.00) with interest at 6% per annum from March 26, 1963 to the date of settlement; and

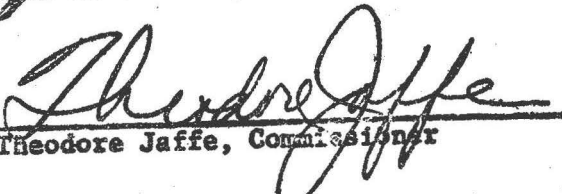
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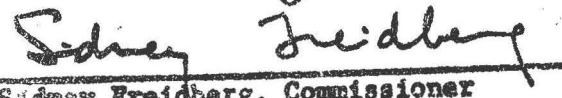
The Commission certifies that IRMA HEIM DAVIDSON suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Twenty-Five Thousand Dollars (\$25,000.00) with interest at 6% per annum from March 26, 1963 to the date of settlement.

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

AUG 19 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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