

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

IN THE MATTER OF THE CLAIM OF

ENRIQUE L. VALDES
EULALIA RABELL

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU - 1528
CU - 1529

Decision No. CU 1811

PROPOSED DECISION

These claims against the Government of Cuba, filed under Title V of the International Claims Settlement Act of 1949, as amended, each in the amount of \$11,494.85, were presented by ENRIQUE L. VALDES and EULALIA RABELL and are based upon the asserted loss of their ownership interest in improved real property in Cuba and of collected rents therefrom. Claimant, ENRIQUE L. VALDES, has been a national of the United States since his naturalization on November 18, 1946. Claimant, EULALIA RABELL, has been a national of the United States since her naturalization on July 28, 1959.

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 assert that they are the owners of improved real property consisting of a house and lot located at 253 Acosta Street in the city of Havana, Cuba.

The evidence of record includes copies of correspondence between claimants and their Cuban attorneys; an affidavit from one of claimants' Cuban attorneys, Sergio Mendez Penate; and the original of Escritura No. 320 of October 24, 1958. The legal description of the subject realty is Finca 599; it is so recorded in Volume 11, Folio 212 of Property Registry No. 5 of the city of Havana, Cuba.

The record establishes that claimants acquired a 1/2 fee simple estate in the subject realty upon their father's death in 1958, their mother receiving a 1/2 life estate. Upon the death of claimants' mother, prior to 1960, her 1/2 life estate was extinguished. Claimants then became sole owners of the property. Accordingly, the Commission finds that claimants were the owners of the said Finca 599.

On October 14, 1960, the Government of Cuba published in its Official Gazette, Special Edition, its Urban Reform Law. Under this law the renting of urban properties, and all other transactions or contracts involving transfer of the total or partial use of urban properties was outlawed (Article 2). The law covered residential, commercial, industrial and business office properties (Article 15). The law further provided that if a tenant did not occupy the property, or had subleased or transferred its use to another, the property could be sold to the occupant; and further, that an

occupant, whether a tenant or subtenant, or not, could purchase the property in the manner outlined (Article 9). Article 21 of the law provided that present owners of urban buildings sold under the law should receive the assigned price; however, under Article 25 ownership of so-called tenement houses would be transferred to the State without compensation to the erst-while owners. Moreover, Article 30 provided that if urban buildings transferred under the law were mortgaged, execution of the contract of sale should have the effect of canceling the mortgage. Following Chapter VI of the law appears a section entitled "Temporary Provisions" and the third paragraph thereof provides that citizens of foreign countries who do not have the status of legal residents shall be excluded from the rights and benefits conferred by this law.

At the time of promulgation of the above law, claimants were residents in the United States.

Based on the foregoing and the evidence of record, the Commission finds that claimants' real property in Havana, Cuba, was taken by the Government of Cuba pursuant to the provisions of the Urban Reform Law; and in the absence of evidence to the contrary, that the taking occurred on October 14, 1960, the date on which the law was published in the Cuban Official Gazette.

Accordingly, the Commission concludes that claimants suffered a loss of their real property within the meaning of Title V of the Act.

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.

Claimants describe their losses as follows:

Real property	\$15,000.00		
		\$4,000.00	Mortgage
		<u>2,918.30</u>	Paid
Equity	<u>1,081.70</u>		
	\$13,918.30		
Rents assertedly due from October 14, 1960	<u>9,071.40</u>		
	\$22,989.70	or	\$11,494.85 each.

The real property is described as a two-story residence located at 253 Acosta Street in Havana, consisting of 10 varas by 20-1/2 by 7/8 by 8 varas. The building was of bonded rubble-work. The ground floor rented for \$72.00 per month and the upper floor for \$36.30 per month.

On the basis of the entire record, including an affidavit of a former Cuban attorney, who dealt with real estate in Havana, the Commission finds the value of the subject improved real property as \$15,000.00.

The evidence also establishes that the subject realty was subject to a mortgage in favor of Compania Inversionista, S.A. of \$4,000.00 at 8% interest, but that payments of principal and interest totalling \$2,918.30 had been made, reducing the amount of the outstanding indebtedness to \$1,081.70 as of June 30, 1960. No further payments of principal or interest appear to have been made.

Accordingly, the claimants' equity had a value of \$13,918.30 and the Commission finds that claimants suffered a loss in the amount of \$13,918.30 as a result of the taking of their improved real property by the Government of Cuba on October 14, 1960.

Claim is also asserted in the amount of \$9,447.40 for rent due from the property for the period October 14, 1960, the date of loss, to April 14, 1967, the date of presentation of these claims.

The evidence of record establishes that the Cuban law firm of Fernandez y Cuadrado had collected rents from the tenants of the property

and after deductions for mortgage payments and other expenses the following balances were due:

August 1, 1960	\$393.70
August 31, 1960	<u>308.34</u>
	\$702.04

The Government of Cuba, on September 29, 1959, published its Law 568, concerning foreign exchange. Thereafter the Cuban Government effectively precluded not only transfers of funds to creditors abroad, but also payment to creditors within Cuba, by numerous, unreasonable and costly demands upon the debtors, who were thus deterred from complying with the demands of the Cuban Government. The Commission holds that Cuban Law 568 and the Cuban Government's implementation thereof, with respect to the rights of the claimants herein, was not in reality a legitimate exercise of sovereign authority to regulate foreign exchange, but constituted an intervention by the Government of Cuba into the contractual rights of the claimant, which resulted in the taking of American-owned property within the meaning of Section 503(a) of the Act. (See Claim of The Schwarzenbach Huber Company, Claim No. CU-0019, 25 FCSC Semiann. Rep. 58 [July-Dec. 1966]; and Claim of Etna Pozzolana Corporation, Claim No. CU-0049.)

Accordingly, in the instant claim the Commission finds that claimants' collected rentals due as of August 31, 1960 were lost as a result of the intervention of the Cuban Government and that, in absence of evidence to the contrary, the loss occurred on October 14, 1960 as to \$702.04, being the date on which the collected rentals were payable to the claimants.

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With respect to rents assertedly due the claimants after October 14, 1960, it is to be noted that the property no longer belonged to them, but belonged to the Government of Cuba. However, 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).

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 October 14, 1960, to the date on which provisions are made for the settlement thereof.

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CERTIFICATION OF LOSS

The Commission certifies that ENRIQUE L. VALDES suffered a loss, as a result of the 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 Seven Thousand Three Hundred Ten Dollars and Seventeen Cents (\$7,310.17) with interest thereon at 6% per annum from October 14, 1960 to the date of settlement; and

the Commission certifies that EULALIA RABELL suffered a loss, as a result of the 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 Seven Thousand Three Hundred Ten Dollars and Seventeen Cents (\$7,310.17) with interest at 6% per annum from October 14, 1960 to the date of settlement.

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

MAY 1 1968

Leonard v. B. Sutton

Leonard v. P. Sutton, Chairman

Theodore Jaffe

Theodore Jaffe, 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).)