

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

IN THE MATTER OF THE CLAIM OF

KENNETH D. CAMPBELL
MARY ROSE CAMPBELL
and
CONSTANCE GERTRUDE CAMPBELL

Claim No. CU - 2267

Decision No. CU 5733

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 \$625,000.00, was presented by KENNETH D. CAMPBELL based upon the asserted loss of certain real and personal property in Cuba. Inasmuch as MARY ROSE CAMPBELL and CONSTANCE GERTRUDE CAMPBELL have interests in certain properties subject of this claim, they have been joined as claimants herein. Claimants have been nationals of the United States since birth.

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 the following losses:

House and lot at Marianao, Havana	\$ 65,000.00
Personal property in the house at Marianao	10,000.00
Real property in Cabanas, Pinar del Rio Province	250,000.00
Stock interest in Publicidad Inter-Americana, S.A.	<u>300,000.00</u>
Total	<u>\$625,000.00</u>

Real Property at Marianao

The record includes a copy of a deed, dated September 14, 1951, evidencing the acquisition of certain land in Marianao; a copy of an official declaration before Cuban authorities, dated May 13, 1959, concerning the construction of a two-story residence on the land in Marianao; a photograph of the property; copies of tax returns evidencing that tax deductions were claimed for the loss of said improved real property; and claimants' statements. On the basis of the foregoing evidence, the Commission finds that KENNETH D. CAMPBELL and his wife, MARY ROSE CAMPBELL, each acquired a one-half interest in certain improved real property in Marianao, Havana, Cuba.

In an affidavit, dated April 14, 1967, Mr. CAMPBELL stated that he had left Cuba on or about October 28, 1960, and in a letter of October 10, 1967, it was stated by his former attorneys that his properties in Cuba were taken on December 6, 1961 pursuant to Law 989.

On December 6, 1961, the Cuban Government published Law 989, which effected confiscation of 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 Mr. and Mrs. CAMPBELL who had left Cuba prior to that date, and that their improved real property in Marianao was taken by the Government of Cuba on December 6, 1961 pursuant to Law 989. The Commission further finds that as a result of said action these claimants sustained losses of property within the meaning of Title V of the Act. (See Claim of Wallace Tabor and Catherine Tabor, Claim No. CU-0109, 25 FCSC Semiann. Rep. 53 [July-Dec. 1966].)

The record shows that the land in Marianao was acquired in 1951 at a cost of 9,087.00 pesos, equivalent to \$9,087.00. The official declaration of May 13, 1959 contains the statements that the house was constructed in 1952 and that the value of the improved real property on the date of declaration was \$60,000.00, the equivalent of 60,000 pesos. Copies of claimants' tax returns indicate that they claimed as deductions the fair market value of the property, set forth therein as \$60,000.00. It further appears that the mortgage on the property has been fully satisfied.

On the basis of the entire record, the Commission finds that the improved real property at Marianao, Havana had a value of \$60,000.00 on December 6, 1961, the date of loss. Therefore, KENNETH D. CAMPBELL and MARY ROSE CAMPBELL each sustained a loss in the amount of \$30,000.00.

Personal Property at Marianao

The record establishes and the Commission finds that Mr. and Mrs. CAMPBELL used their house in Marianao as their residence, and that they furnished the house with furniture, silver, appliances, clothing and other items of property normally found in a home. The Commission finds that said personal property was taken by the Government of Cuba on December 6, 1961 when the real property was taken.

The evidence includes a list of the various items of property indicating the approximate purchase prices and in some instances the approximate dates of acquisition. An examination of that list shows the following:

Silver items	\$ 605.00
Linens	330.00
Drapes	225.00
Books (Encyclopedia and reference)	500.00
Television set - 1951	450.00
Radio-phonograph - 1955	375.00
3 radios	100.00
China and glassware	330.00
Freezer - 1959	600.00
Washing machine - 1958	250.00
Electric range - 1956	400.00
Sewing machine - 1954	200.00
Refrigerator - 1957	500.00
Miscellaneous equipment	91.00
Furniture - various dates	2,590.00
Camera and equipment	675.00
Clothing	<u>2,000.00</u>
Total	<u>\$10,221.00</u>

The Commission concludes that except for the items of silver, the personal property was subject to depreciation as follows:

Linens, drapes, television set, 3 radios, china and glassware, freezer, washing machine, camera and miscellaneous equipment -	10% per year
Furniture, refrigerator, sewing machine, radio-phonograph, and electric range -	5% per year
Clothing and books -	20% per year

Upon consideration of the entire record, the Commission finds that the values of the various items of personal property on December 6, 1961, the date of loss, were as follows: (In instances where dates of acquisition were not shown, the Commission has applied, in the absence of evidence to the contrary, the applicable rate of depreciation for 5 years on the basis that the house was constructed in 1952 and that the items were acquired between that date and December 6, 1961, the date of loss. Fully depreciated items were given residual values.)

Linens and drapes	\$ 277.50
Silver items	605.00
Books - residual value	100.00
Television set - residual value	90.00
Radio-phonograph	262.50
3 radios	50.00
China and glassware	165.00
Freezer	480.00
Washing machine	175.00
Electric range	300.00
Sewing machine	130.00
Refrigerator	400.00
Miscellaneous equipment	45.50
Furniture	1,942.50
Camera and equipment	337.50
Clothing - residual value	<u>400.00</u>
Total	<u><u>\$5,760.50</u></u>

Therefore, KENNETH D. CAMPBELL and MARY ROSE CAMPBELL each sustained a loss in the amount of \$2,880.25.

Real Property in Cabanas, Pinar del Rio Province

The evidence includes reports received by the Commission from abroad; statements of KENNETH D. CAMPBELL to the Department of State in 1960; affidavits from KENNETH D. CAMPBELL, and other evidence of record. On the basis thereof, the Commission finds that Mr. CAMPBELL's father, a nonnational of the United States who died on April 25, 1960, owned certain real property in Cabanas, Pinar del Rio Province, Cuba.

The Commission finds that the deceased and his wife, (mother of KENNETH D. CAMPBELL and CONSTANCE GERTRUDE CAMPBELL), who is a nonnational of the United States, each owned a 1/2 interest in said real property pursuant to the community property laws of Cuba. (See Claim of Robert L. Cheaney and Marjorie L. Cheaney, Claim No. CU-0915.) The deceased was survived by his widow, Emily Campbell, and his three children: KENNETH D. CAMPBELL, Virginia Hollick, a nonnational of the United States, and CONSTANCE GERTRUDE CAMPBELL. Upon his death on April 25, 1960, prior to the date of loss, his 1/2 interest in the property was inherited by his three children subject to a life estate in favor of his widow in a 1/3 interest of his property. Being inherited property, it was not subject to the community property laws of Cuba, so that MARY ROSE CAMPBELL acquired no interest therein.

Accordingly, the Commission finds that KENNETH D. CAMPBELL and CONSTANCE GERTRUDE CAMPBELL each owned a 1/6 interest in the real property subject to a life estate in favor of their mother in a 1/3 share of their respective interests.

Claimants state that the inherited real property was taken by the Government of Cuba on December 6, 1961 pursuant to Law 989. In the absence of evidence to the contrary, the Commission so finds.

The reports from abroad show that the deceased had acquired three pieces of real property in Pinar del Rio Province; namely, 2 items in 1951 measuring 1/4 caballeria each (a caballeria being equivalent to 33.162 acres) at a cost

of \$1,750.00 each, and certain farms in 1955 measuring 37.746157 hectares (a hectare being equivalent to 2.471 acres) at a cost of \$300,000.00. None of the properties was encumbered by a mortgage or other lien. It further appears that the deceased had improved the property by building roads, installing a water-supply system and subdividing it into lots. Some of the lots were sold. The record includes an affidavit from one purchaser attesting to the fact that he paid the deceased \$3,000.00 for a lot of 1/2 acre in 1957 or 1958; and that only about 10 acres of the property had been sold by the deceased. Statements of KENNETH D. CAMPBELL and CONSTANCE GERTRUDE CAMPBELL corroborate the foregoing.

Upon consideration of the entire record, the Commission finds that claimants' valuation of the deceased's unsold real property is fair and reasonable. Accordingly, the Commission finds that the total value of the real property in the Pinar del Rio Province on December 6, 1961, the date of loss, was \$250,000.00. Therefore, a 1/6 interest therein had a value of \$41,666.67. The record shows that the widow of the deceased, who owned a life estate in a 1/3 share of the deceased's interest, was 74 years of age on the date of loss.

With respect to the values of life estates and remainder interests, the Commission has adopted the Makehamized mortality table used by the United States Treasury Department in connection with the collection of gift and estate taxes. (See Claim of Richard Franchi Alfaro and Anna Alfaro, Claim No. CU-0048, 1967 FCSC Ann. Rep. 71.) Pursuant to that method of valuation, a life estate in property of a person 74 years of age is valued at 22.831% of the estate. Since the encumbered properties had values of \$41,666.67 each (1/6 each inherited by KENNETH D. CAMPBELL and CONSTANCE GERTRUDE CAMPBELL) the values of the remainder interests (77.169% each) were \$32,153.75 each.

Stock Interest

KENNETH D. CAMPBELL and MARY ROSE CAMPBELL assert a loss of \$300,000.00 based upon 262 shares of stock in Publicidad Inter-Americana, S.A., a Cuban corporation. On the basis of copies of stock certificates filed by these claimants and upon consideration of the community property laws of Cuba, the Commission finds that KENNETH D. CAMPBELL and MARY ROSE CAMPBELL each owned a 1/2 interest in 262 shares of stock in said Cuban corporation evidenced by certificates issued in 1945, 1946 and 1947, of a par value of \$50 a share. The Commission further finds that claimants' stock interests were taken by the Government of Cuba on December 6, 1961 pursuant to Law 989. The sole remaining issue to be resolved is the value of the stock on the date of loss.

It appears that the Cuban corporation was a service organization engaged in the advertising business. According to Mr. CAMPBELL's letter of July 12, 1960 to the Department of State the corporation had 300 shares of outstanding stock with a par value of \$50.00 per share; and the corporation had no assets other than furniture and fixtures, and accounts receivable, the amounts of which are not therein indicated.

Mr. CAMPBELL asserts that the Cuban corporation had average annual earnings in excess of \$50,000.00 during the period 1952 to 1960; and that he has computed the value of the stock interest by using a factor of 5 times the annual earnings plus the net worth to arrive at \$300,000.00. However, he states that he has no records to corroborate his assertions because all such records remained in Cuba.

Claimants have submitted affidavits from individuals in support of their valuation of the said stock interest. One affidavit states that his firm had engaged in considerable business with the Cuban corporation, approximating between \$300,000.00 and \$350,000.00 per year; that the income of the Cuban corporation was in his opinion in excess of \$50,000.00; and that its value

was between \$250,000.00 and \$300,000.00. An affidavit from the former Vice-President of the Cuban corporation contains the statement that the net worth of the corporation in 1960 was \$50,000.00. However, there is no evidence of record to support the statements of either affiant.

The record includes a copy of a letter, dated March 30, 1970, from the First National Bank of Boston and a copy of a report, dated March 12, 1958, from Dunn & Bradstreet International containing almost identical information concerning the Cuban corporation. Those documents indicate that on April 1, 1944 the Cuban corporation had an authorized capital of \$100,000.00 divided into 1,000 shares of \$100.00 par value each, of which \$25,000.00 had been subscribed and paid. The Dunn & Bradstreet report recites the following:

All financial details were refused at this time, however, independent circles consulted say that assets total over \$80,000.00, represented by the value of the equipment, furniture & fixtures, accounts receivable, etc., while liabilities are reasonable, therefore tangible net worth is estimated at over \$45,000.00. Development and future of the business appears to be satisfactory.

Similar information was contained in the bank letter of March 30, 1970. However, the bank enclosed with its letter copies of balance sheets of the Cuban corporation as of December 31, 1944, December 31, 1945 and December 31, 1946, which the bank found among its files.

It is noted that the two said reports indicate that the Cuban corporation had shares of stock with a par value of \$100.00 per share whereas claimants' stock certificates and the affidavit of the former Vice-President of the corporation speak of shares with a par value of \$50.00 each. These certificates were said by claimant KENNETH D. CAMPBELL's former counsel to have been issued to him as founder of the company in 1943 in return for his initial investment. Moreover, an examination of the three balance sheets that accompanied the bank's letter indicate anything but a profitable operation. The balance sheets show assets in the amounts of \$23,640.00, \$35,251.63 and \$53,150.32,

respectively, for the years 1944, 1945 and 1946. The liabilities appear as \$15,150.00, \$22,405.64 and \$39,040.00, respectively, indicating respective net worths of \$8,490.00, \$12,845.99 and \$14,110.32. The capital stock appears as \$7,500.00, \$10,000.00 and \$12,000.00, respectively. It further appears from those balance sheets that the corporation earned \$161.00 in 1944, \$571.51 in 1945, and had a loss of \$5,077.62 in 1946.

There is no evidence of record to establish that the Cuban corporation had assets in excess of \$80,000.00, or that its net worth was \$50,000.00, or that its average annual earnings were \$50,000.00. The Commission finds the the affidavits from a former business associate and from the former Vice-President of the Cuban corporation provide an insufficient basis on which to determine the value of the Cuban corporation or claimants' stock interest therein on the date of loss.

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) (1969).)

The Commission finds that KENNETH D. CAMPBELL and MARY ROSE CAMPBELL have failed to sustain the burden of proof with respect to the portion of their claim based on 262 shares of stock in Publicidad Inter-Americana, S.A. The record does not support their assertions that their stock interest in that corporation had a value of \$300,000.00 on the date of loss. Moreover, the evidence is insufficient to provide a valid basis for determining the value of their stock interest on the date of loss. Accordingly, this portion of the claim is denied.

Recapitulation

Claimants' losses are summarized as follows:

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Item of Property

Amount

KENNETH D. CAMPBELL

House and lot at Marianao	\$30,000.00
Personal property at Marianao	2,880.25
Inherited real property	<u>32,153.75</u>
Total	<u>\$65,034.00</u>

MARY ROSE CAMPBELL

House and lot at Marianao	\$30,000.00
Personal property at Marianao	<u>2,880.25</u>
Total	<u>\$32,880.25</u>

CONSTANCE GERTRUDE CAMPBELL

Inherited real property	<u>\$32,153.75</u>
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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

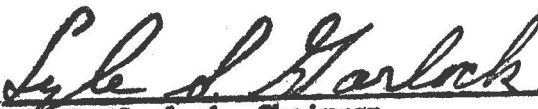
The Commission certifies that KENNETH D. CAMPBELL suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Sixty-five Thousand Thirty-four Dollars (\$65,034.00) with interest at 6% per annum from December 6, 1961 to the date of settlement; and

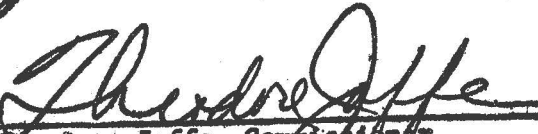
The Commission certifies that MARY ROSE CAMPBELL suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Thirty-two Thousand Eight Hundred Eighty Dollars and Twenty-five Cents (\$32,880.25) with interest at 6% per annum from December 6, 1961 to the date of settlement; and

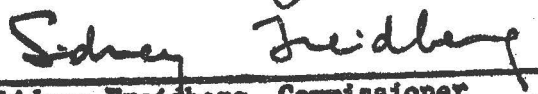
The Commission certifies that CONSTANCE GERTRUDE CAMPBELL suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Thirty-two Thousand One Hundred Fifty-three Dollars and Seventy-five Cents (2,153.75) with interest at 6% per annum from December 6, 1961 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

NOTICE TO TREASURY: The above-referenced securities may not have been submitted to the Commission or if submitted, may have been returned; accordingly, no payment should be made until claimant establishes retention of the securities or the loss here certified.

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 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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