

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

IN THE MATTER OF THE CLAIM OF

BARBARA G. ASQUINO, Administratrix c.t.a.
of the ESTATE of
LOOMIS D. GRISWOLD, Deceased,
and
JOHN SILVA

Claim No. CU -2864

Decision No. CU 5752

Under the International Claims Settlement
Act of 1949, as amended

Counsel for claimants:

Sarkis Tatarian, Esq.

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 \$1,783,074.00, was presented in the name of Compania Urbanizadora Vista del Mar, S.A., a Cuban corporation, on behalf of its United States national stockholders, who thereafter were substituted as claimants herein. The claim is based on the asserted loss of stock interests in that corporation. Claimants, the deceased, and all beneficiaries of his estate have been nationals of the United States at all times pertinent to this claim.

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.

The record establishes and the Commission finds that LOOMIS D. GRISWOLD, the deceased, and JOHN SILVA owned 98 shares of stock and 2 shares of stock, respectively, in a corporation known as Cia. Urbanizadora Vista del Mar, S.A., which constituted all of the outstanding stock of that corporation.

Since Cia. Urbanizadora Vista del Mar, S.A. was organized under the laws of Cuba, it does not qualify as a corporate "national of the United States" defined under Section 502(1)(B) of the Act as a corporation or other legal entity organized under the laws of the United States, or any State, the District of Columbia, or the Commonwealth of Puerto Rico, whose ownership is vested to the extent of 50 per centum or more in natural persons who are citizens of the United States. In this type of situation, it has been held that an American stockholder is entitled to file a claim for the value of his ownership interest. (See Claim of Parke, Davis & Company, Claim No. CU-0180, 1967 FCSC Ann. Rep. 33.)

The record shows that the Cuban corporation was engaged in the business of buying large areas of real property in Pinar del Rio, Cuba, developing and subdividing the real property into building lots, and selling them at the retail level. In an affidavit, dated April 28, 1967, JOHN SILVA, formerly Vice President of the Cuban corporation, stated that prior to the date of loss he and the deceased had left Cuba, but he was advised by his staff in Cuba by telephone not to return because of the imminence of taking of the corporation's assets by the Government of Cuba. He states that he never returned to Cuba and that the corporation's assets were taken by the Government of Cuba at a later date.

LOOMIS D. GRISWOLD died testate in Florida on October 12, 1962, and his interests were inherited by his wife and 3 children, nationals of the United States, in equal shares.

Law 969, published in the Official Gazette on December 6, 1961, by its terms effectively confiscated goods and chattels, rights, shares, stocks, bonds and other securities of persons who left Cuba. In the absence of evidence to the contrary, the Commission finds that claimants' stock interests in the Cuban corporation, Cia. Urbanizadora Vista del Mar, S.A., were 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].)

Claimants assert the following losses, representing the assets of the Cuban corporation:

Developed lots	\$1,103,074.00
Developed land with pavillion and 3 model houses	60,000.00
Undeveloped land	271,000.00
200 acres of land at a cost of \$300.00 per acre	60,000.00
Accounts receivable, estimated	<u>289,000.00</u>
Total	<u>\$1,783,074.00</u>

JOHN SILVA states that all records relating to the corporation were left in Cuba and are unavailable. Claimants have, however, submitted a copy of a deed, dated May 13, 1954, evidencing the acquisition by the Cuban corporation of 16.292189 caballerias (a caballeria being equivalent to 33.162 acres) of land in Mariel, Pinar del Rio Province, Cuba, at a cost of \$200,000.00. The record also includes a plat of the property and a report from abroad corroborating the fact of ownership of said real property by the corporation.

The Commission therefore finds that the Cuban corporation owned 16.292189 caballerias of land in Pinar del Rio Province, Cuba, equivalent to 540.28 acres.

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.

Claimants state that after acquiring the said real property in Pinar del Rio Province, the Cuban corporation subdivided the land into building lots and improved them by the construction of paved boulevards and streets with sidewalks, electricity and water facilities. During the course of operations, some of the lots were sold.

Claimants have submitted a detailed list of the unsold lots which is the only part of the Cuban corporation's records they were able to bring back from Cuba (Exhibit B). That list identifies each developed lot and sets forth its price as well as details concerning down payment and monthly payments to be made by the purchaser. Mr. SILVA stated in his affidavit of April 28, 1967 that "none of said lots were sold by the corporation, and the value assigned to each of said lots was the prevailing market value based upon lots previously sold by the corporation."

Mr. SILVA stated that the corporation also owned other land, improved real property, and accounts receivable representing debts due from purchasers of the lots. On several occasions the Commission suggested the submission of

balance sheets or other appropriate evidence to establish the assets and liabilities of the Cuban corporation so that the value of stock interests therein could be determined. To date, no such evidence has been filed.

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 claimants have failed to sustain the burden of proof with respect to the portions of the claim based upon the following assets assertedly owned by the Cuban corporation:

(a) developed land with pavillion and 3 model houses, having a value of \$60,000.00; (b) undeveloped land, having a value of \$271,000.00; (c) 200 acres of land, having a value of \$60,000.00; and (d) accounts receivable, having a value of \$289,000.00. The evidence does not establish that the Cuban corporation owned any of the properties under items (a) through (d) above. Accordingly, these portions of the claim are denied.

Upon consideration of the entire record, the Commission finds that claimants are entitled to certifications of loss under Title V of the Act based on the value of the unsold developed lots owned on the date of loss by the Cuban corporation in which claimants owned stock interests. The Commission further finds that the valuations most appropriate to said lots and equitable to the claimants are those set forth in the list thereof (Exhibit B) which constituted part of the records of the Cuban corporation. Accordingly, the

Commission finds that the aggregate value of this corporate asset on December 6, 1961, the date of loss, was \$1,108,144.91. The record does not show that the corporation had any liabilities. Since the Cuban corporation had 100 shares of outstanding capital stock on the date of loss, the value of each share of stock was \$11,081.45. Therefore, the value of the 98 shares of stock owned by the deceased was \$1,085,892.01, and the value of the 2 shares owned by JOHN SILVA was \$22,162.90.

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 shall 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 claim, it is so ordered.

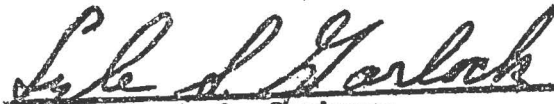
CERTIFICATION OF LOSS


The Commission certifies that BARBARA G. ASQUINO, Administratrix c.t.a. of the Estate of LCOMIS D. GRISWOLD, Deceased, 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 One Million Eighty-five Thousand Nine Hundred Eighty-two Dollars and One Cent (\$1,085,982.01) with interest thereon at 6% per annum from December 6, 1961 to the date of settlement; and

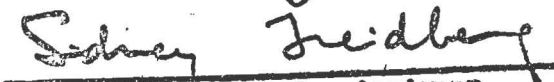
The Commission certifies that JOHN SILVA suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Twenty-two Thousand One Hundred Sixty-two Dollars and Ninety Cents (\$22,162.90) with interest thereon 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


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 those 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).)