

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

IN THE MATTER OF THE CLAIM OF

CARL J. WERTALKA
DANUTE NORUTA WERTALKA

Claim No. CU--3688

Decision No. CU **783**

Under the International Claims Settlement
Act of 1949, as amended

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 CARL J. WERTALKA and DANUTE NORUTA WERTALKA for \$5,366.00 based upon the asserted ownership and loss of interests in land. Claimant, CARL J. WERTALKA, has been a national of the United States since his birth in the United States. Claimant, DANUTE NORUTA WERTALKA, has been a national of the United States since her naturalization on June 15, 1956.

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. 938 (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 504 of the Act provides, as to ownership of claims, that

(a) A claim shall not be considered under section 503(a) of this title unless the property on which the claim was based was owned wholly or partially, directly or indirectly by a national of the United States on the date of the loss and if considered shall be considered only to the extent the claim has been held by one or more nationals of the United States continuously thereafter until the date of filing with the Commission.

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 contend they have lost investments in real property in Cuba valued at \$5,366.00. They have submitted a copy of a deed, dated August 1, 1957, between Isle of Pines Land Sales Company, as grantor, and claimants herein, as grantees. Pursuant to said deed, the grantor conveyed to the grantees the SE 1/4 of Lot 6, Section 54 (Parcel 647), Santa Barbara Subdivision, Isle of Pines, Cuba, for a total purchase price of \$1,900.00.

Claimants have also submitted a copy of a "purchase request," dated March 7, 1958, between Parceladora Los Egidios, S.A., as seller, and claimants herein, as buyers. Pursuant to said contract, the seller agreed to convey to the buyers Lots 7 and 8, Block 8, "Alturas de Nueva Gerona" Subdivision, Isle of Pines, Cuba, for a total purchase price of \$4,032.00. Claimants assert and the Commission finds, based upon the evidence of record, that payments in the total amount of \$2,366.00 were made under this contract.

On December 6, 1961 the Cuban Government published its Law 989 (Official Gazette, XXIII, No. 237, p. 23705) which confiscated all assets, personal property and real estate, rights, shares, stocks, bonds and securities of persons who had left the country.

As the record shows, in 1961 claimants were residing in Florida. The Commission finds, in the absence of evidence to the contrary, that the subject real property was taken by the Government of Cuba on December 6, 1961 pursuant to the provisions of Law 989.

Based on the entire record, the Commission finds that the total value of the claimants' investment in the subject real property was \$4,266.00. Accordingly, the Commission concludes that each claimant suffered a loss in the amount of \$2,133.00 within the meaning of Title V of the Act on December 6, 1961.

The Commission has decided that in the 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 the Claim of Lisle Corporation, FCSC 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 December 6, 1961, the date on which the loss occurred, to the date on which provisions are made for the settlement thereof.

A portion of this claim, in the amount of \$600.00, is based upon an asserted broker's commission and a portion of this claim, in the amount of \$500.00, is based upon asserted "trip and surveying expenses." No specific provision is made in the Act for the inclusion in the certification of loss of such expenses. After consideration of the Act and its legislative history, the Commission finds that such expenses were not intended by Congress to constitute a loss of "property" within the meaning of Section 502(3) of the Act. (See the Claim of Mary Pauline Seal, FCSC Claim No. CU-0059). Accordingly, these portions of the claim are denied.

CERTIFICATION OF LOSS

The Commission certifies that CARL J. WERTALKA 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 Two Thousand One Hundred Thirty-Three Dollars (\$2,133.00) with interest thereon at 6% per annum from December 6, 1961 to the date of settlement; and

the Commission certifies that DANUTE NORUTA WERTALKA 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 Two Thousand One Hundred Thirty-Three Dollars (\$2,133.00) 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

6 DEC 1967

Edward D. Re
Edward D. Re, Chairman

This is a true and correct copy of the Proposed Decision of the Commission which was entered on the Commission on ----- JAN 9 1968

Decision
The final
Theodore Jaffe, Commissioner

LaVern R. Dilweg
LaVern R. Dilweg, 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).)