

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

IN THE MATTER OF THE CLAIM OF

RAFAEL AMENGUAL

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-0747

Decision No. CU - 4972

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 \$395,953.00, was presented by RAFAEL AMENGUAL based upon the asserted loss of real and personal property, and stock interests, in Cuba. Claimant has been a national 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.

Claimant has described his losses as follows:

1) Two-story house, Almendares, Marianao	\$ 20,000.00
2) Apartment 451 in "Riomar" on First Avenue, Marianao, less the mortgage of \$8,319.58	17,030.42
3) Farm, "La Favorita", composed of 25.4463 hectares, with structures, in Bauta, Marianao	140,000.00
4) Furnishings in the apartment	9,225.00
5) Furnishings at the farm	5,400.00
6) Livestock	11,330.00
7) 1958 Chevrolet	1,600.00
8) Interest in "R. Amengual y Cia. Soc. Lta."	60,000.00
9) Interest in "Refrigeracion Comercial Empadrado, S.A."	40,000.00
10) Interest in "Refrigeracion Rafael Amengual, S.A."	
	<u>82,657.65</u>
	\$387,243.07

The record includes copy of claimant's sworn statement of December 28, 1965, as well as reports received by the Commission from abroad. On the basis of the record, the Commission finds that claimant had a one-half interest in certain real and personal property in Cuba, further described below. The Commission also finds that claimant's property interests were taken on December 28, 1965. Pursuant to the Community Property Law of Cuba, claimant's spouse had a one-half interest in the properties. Inasmuch as she is not shown to have been a national of the United States on the date of loss, her interest is not within the scope of Title V of the Act. Accordingly, so much of the claim as is based on her one-half interest is denied.

Real and Personal Property

The record establishes that claimant had a one-half interest in the two-story house in Almendares, and in the apartment 451 in the building "Riomar" in Marianao, and personalty in the apartment.

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 were outlawed (Article 2). The law covered residential, commercial, industrial and business office properties (Article 15). Following Chapter VI of the law appears a section entitled "Temporary Provisions"

and the third paragraph thereof provides that citizens of foreign countries who did not have the status of legal residents were excluded from the rights and benefits conferred by this law.

Based on the foregoing and the evidence of record, the Commission finds that claimant's interests in the Almendares property, and in the apartment, were taken by the Government of Cuba on December 28, 1965, pursuant to the provisions of the Urban Reform Law. (See Claim of Henry Lewis Slade, Claim No. CU-0183, 1967 FCSC Ann. Rep. 39.) The Commission further finds that the personal property in the apartment was taken at the same time.

The record also establishes that claimant had a one-half interest in the farm "La Favorita" at Bauta, with structures, livestock and certain personalty.

The Cuban Agrarian Reform Law of May 17, 1959, was published in the Cuban Official Gazette on June 3, 1959. It established the National Agrarian Reform Institute and provided for expropriation of rural properties and distribution among peasants and agricultural workers. The regulations for carrying out the expropriation of such rural property were contained in Law 588, published in the Official Gazette on October 7, 1959.

The Commission finds that claimant's interest in the farm, structures, livestock and other personalty at that location was taken by the Government of Cuba on December 28, 1965, pursuant to the provisions of the Agrarian Reform Law (see Claim of Council Bluffs Savings Bank, Trustee, Estate of Grenville M. Dodge, Deceased, Claim No. CU-1290), as was the automobile.

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,

On the basis of the entire record, including claimant's descriptions, information received from abroad, and evidence available as to the value of similar properties in Cuba, the Commission finds that the real and personal properties had the values set out below. It is noted that a mortgage on the Almendares property was paid off and that the mortgage on the apartment had been reduced to \$8,319.58. The personal property values submitted by claimant seem excessive not being supported by specific evidence and have therefore been revalued. Similarly, the asserted value of the farm, land and structures, has not been supported by specific evidence, and is valued according to the report from abroad. Claimant's interests and values found follow:

1) Two-story house - 1/2 interest	\$12,500.00
2) Apartment at Marianao - \$25,350.00	
less mortgage	8,319.58
Equity	\$17,030.42 - 1/2 -
3) Farm and structures - 1/2 interest -	8,515.21
4) Personalty at the apartment - 1/2 interest	21,250.00
5) Personalty at farm - 1/2 interest	1,387.50
6) Livestock - 1/2 interest	600.00
7) Automobile - 1/2 interest	995.00
	193.75
	<u>\$45,441.46</u>

Asserted Stock Interests

Claim has been asserted for interests in three entities discussed below:

8) "R. Amengual y Cia. Soc. Lta." described as a limited responsibility mercantile partnership, engaged in the carpentry business in Havana. It is said to have been organized in 1951 with a capital of \$6,000 in cash of which claimant and his spouse contributed \$5,000 and the capital having been raised thereafter, it is said claimant and his spouse contributed machinery worth \$20,000. The records of the Commission indicate that this entity was nationalized by the Government of Cuba, by publication in the Official Gazette on August 8, 1961.

9) "Refrigeracion Comercial Empedrado, S.A." This is said to have been organized in 1955, as a stock company, engaged in the purchase and sale of refrigeration equipment and electrical supplies, in Havana.

Claimant further states that the capital stock paid up and outstanding consists of 25 shares of par value of \$1,000, or \$25,000 and that the interest of claimant and his spouse amounts to \$40,000.

10) "Refrigeracion Rafael Amengual, S.A." described as engaged in the purchase and sale of refrigeration equipment and electrical supplies. A report from abroad confirms that it was organized in 1953 by claimant and his spouse, with an authorized capital of \$100,000 represented by 100 shares of \$1,000, each of them having subscribed 10 shares. Thus \$20,000 was paid in as stated by claimant.

Claimant further states that according to a balance sheet prepared by an accountant the total surplus and capital of the company amounts to \$165,315.31 and the interest of claimant and his spouse amounted to \$82,657.65.

It is to be noted that claimant has not established that he held an ownership interest in any of these entities on August 8, 1961, or any other date of loss. With respect to items (8) and (9), moreover, apart from his ownership not being established, it appears that he claims his interest in the investment. However, Title V requires a finding of value as of the date of loss.

With respect to item 10, noting again that claimant has not established his ownership interest, he has not submitted any documentation in support of the asserted value.

Information on the points of ownership, taking and value was suggested by Commission's letters of August 3, 1966, October 25, 1966, November 28, 1967 and June 16, 1969. A further reminder was sent to claimant under date of April 17, 1970.

In the absence of specific evidence of ownership and value on the dates of loss of these entities, the Commission is constrained to hold that claimant has not established the extent of his loss with respect to items (8), (9) and (10). Accordingly, these parts of the claim are denied.

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.

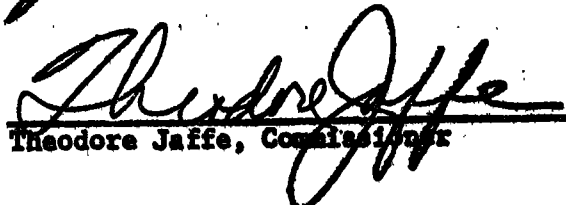
CERTIFICATION OF LOSS

The Commission certifies that RAFAEL AMENGUAL 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 Forty-Five Thousand Four Hundred Forty-One Dollars and Forty-Six Cents (\$45,441.46) with interest at 6% per annum from December 28, 1965 to the date of settlement.

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

JUN 10 1970


Lytle 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).)