

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

IN THE MATTER OF THE CLAIM OF

CUESTA REY & COMPANY

Under the International Claims Settlement  
Act of 1949, as amended

Claim No. CU-0755

Decision No. CU 4838

Counsel for claimant:

William E. Henson, Jr., Esq.

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, in the amount of \$335,000.00, was presented by CUESTA REY & COMPANY, and is based upon the asserted ownership and loss of improved real property situated in Havana, Cuba.

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.

Section 502(1)(B) of the Act defines the term "national of the United States" as a corporation or other legal entity which is organized under the laws of the United States, or of any State, the District of Columbia, or the Commonwealth of Puerto Rico, if natural persons who are citizens of the United States own, directly or indirectly, 50 per centum or more of the outstanding capital stock or other beneficial interest of such corporation or entity.

The record establishes that the claimant was organized in the State of Florida and that at all times pertinent to this claim more than 50% of the outstanding shares of capital stock of the claimant corporation has been owned by nationals of the United States. The evidence of record, including a certification of a corporate officer and birth records of the stockholders, establishes that 100% of the outstanding shares of stock of claimant herein was held by nationals of the United States at all times pertinent to this claim. The Commission finds that claimant is a national of the United States within the meaning of Section 502(1)(B) of the Act.

Claim has been asserted for the loss of improved real property located at No. 852 Padre Varela, Havana, Cuba, near Penalver and San Carlos Streets, formerly known as Belascoain Street, including a four-story structure, situated on 1,443 square meters of land.

The evidence of record includes a 1909 Deed which establishes that the claimant herein purchased the land at the aforesaid address for \$24,531.00. Additionally, claimant has submitted correspondence, affidavits, an appraisal dated February 1, 1966, a photograph and plans of certain improvements and a map of Havana, showing the location of the subject property.

Based upon the entire record the Commission finds that claimant herein owned real property located at No. 852 Padre Varela, Havana, Cuba, which

consisted of land only at time of purchase. The claimant has also submitted evidence which establishes that a four-story reinforced concrete building, with cellar, was constructed on the land in question and this building was completed in 1914. At the time of loss, claimant owned a stock interest in a Cuban corporation known as El Rey del Mundo Cigar Company, which was doing business in the building subject of this claim.

The Commission finds that the firm of El Rey del Mundo Cigar Company and the improved real property, subject of this claim, were intervened by the Government of Cuba pursuant to Resolution 20260 on September 15, 1960.

The record shows that the stock of the El Rey del Mundo Cigar Company held by claimant herein was transferred in 1961 to The Antonio Company, later known as The Antonio Company of Tampa, and is the subject of a separate claim against the Government of Cuba under Claim No. CU-2103. This transfer did not affect claimant's ownership of the improved real property.

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.

The evidence of record, including the appraisal, plans, picture, map and other evidence, reflects that the improvements consisted of a four-story reinforced concrete building, with lavish facades, including cellar, mezzanine and four floors, facing three streets, and was utilized for tobacco leaf storage, cigar manufacturing, office space and a large fourth floor apartment for living quarters; that the building was completed in 1914, with

the entire floor spaces, as described above, comprising a total area of 4,470 square meters; and that these improvements were located on a lot with an area of 1,443 square meters.

Claimant asserts that the total cost of all improvements was \$190,982.00; and that it asserted a tax loss in 1960 in the amount of \$156,539.78, although details concerning such tax loss claim were not submitted to the Commission. The appraisal of claimant, prepared by Serafin Leal on February 1, 1966, indicates that at the time of loss the land had a value of \$129,870.00 and the improvements a value of \$205,130.00, or a total value of \$335,000.00.

This appraisal indicates that the land at this location, with an area of 1,443 square meters, was valued by the appraiser at \$90.00 per square meter at time of loss, or \$129,870.00; that the replacement cost of the improvements, comprising an area of 4,470 square meters, was \$85.00 per square meter, or \$379,950.00; that since the improvements were 46 years old when taken by the Government of Cuba, the depreciation of 46%, amounting to \$174,777.00, reduced the value of the improvements to \$205,173.00; and that at the time of loss the total value of land and improvements was therefore \$335,000.00.

Based upon the entire record, including evidence available to the Commission concerning the value of similar property in this and other areas of Havana, the Commission finds that the total value of the land at the time of loss was \$129,870.00, and that the replacement cost of the improvements was in the total amount of \$379,950.00 but after 50% depreciation, finds the improvements at the time of loss had a value of \$190,000.00.

The Commission concludes that claimant suffered a loss in the total amount of \$319,870.00 within the meaning of Title V of the Act when the claimant's real property was intervened by the Government of Cuba on September 15, 1960.

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 it is so ordered.

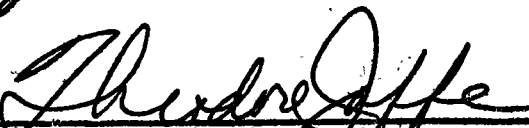
CERTIFICATION OF LOSS

The Commission certifies that CUESTA REY & COMPANY 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 Three Hundred Nineteen Thousand Eight Hundred Seventy Dollars (\$319,870.00), with interest at 6% per annum from September 15, 1960 to the date of settlement.

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

MAY 6 1970

  
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Lyle S. Garlock, Chairman

  
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Theodore Jaffe, Commissioner

  
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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).)