

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

IN THE MATTER OF THE CLAIM OF

GERTRUDE B. LOMNITZ

Under the International Claims Settlement  
Act of 1949, as amended

Claim No. CU -0913

Decision No. CU 4808

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 GERTRUDE B. LOMNITZ for \$59,000.00 based upon the asserted ownership and loss of real and personal property 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 describes her loss as follows:

1. Improved realty at 310 Calle 10, Miramar	\$37,500.00
2. Lot of land in Santiago de las Vegas	7,500.00
3. Household effects	6,000.00
4. Personal articles, jewelry, etc.	7,740.00
5. 1952 Ford	<u>1,000.00</u>
	\$59,740.00

Based upon the entire record, including copies of contracts of sale, reports from abroad, an insurance company letter and portion of an insurance policy, as well as clarification by claimant, the Commission finds that claimant owned a one-half interest in the improved realty in Miramar, a lot of land in Santiago de las Vegas and certain personal property all as further described below.

On December 6, 1961, the Cuban Government published its Law 989 which provided for confiscation of all assets, personal property and real estate, of persons who left the country.

The Commission finds, in the absence of evidence to the contrary, that the subject real property and certain personal property was taken by the Government of Cuba on December 6, 1961 pursuant to the provisions of Law 989. (See Claim of Wallace Tabor and Catherine Tabor, Claim No. CU-0109, 25 FCSC Semiann. Rep. 53 [July-Dec. 1966].)

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.

310 Calle 10, Miramar

The record includes a copy of the 1956 contract of purchase of this property; a description of it as a 6-room, one-floor house with garage, on 900 square meters of land; as well as a report from abroad. On the basis of the record, the Commission finds that this property had a value of \$24,500.00 at the time of loss.

Plot of land in Santiago de las Vegas

With respect to this item the record includes a copy of the 1949 contract of purchase; a description of it as consisting of 5,393 square meters, thereafter subjected to some improvement not including building; and a report from abroad. On the basis of this record, the Commission finds that this property had a value of \$15,000.00 at the time of loss.

Personalty

Subsequent to filing the claim claimant has submitted lists of silver, jewelry, paintings and clothing, with asserted values totalling \$3,620.00. Other property of an asserted value of \$4,120.00 had been shipped from Cuba and is not the subject of this claim. However, of the items assertedly valued at \$3,620.00, the claimant has specified those which were left in a private depository in Cuba.

The items so left in a private depository have not been taken by the Government of Cuba and claim based thereon must be and is hereby denied.

The Commission has considered the lists, supplied by claimant and evidence as to the value of property similar to claimant's and concludes that the silver, paintings and clothing taken by the Government of Cuba had a value of \$1,710.00.

With respect to household furniture and furnishings, claimant has submitted a list of these, which she assertedly values at \$12,000.00. She has also submitted a portion of an insurance policy indicating that these items were insured in 1960 for \$6,000.00, although she asserts that the insurance was for 50% of the value. On the basis of the entire record, including the

insurance policy, the number of rooms containing the furniture and furnishings, and values of similar properties, the Commission finds that at the time of loss the household furniture and furnishings had a value of \$6,000.00.

Claimant has informed the Commission that the automobile was insured for \$1,000.00, that it was sold in May 1961 for \$900.00 which sum she could not remove from Cuba.

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) (Supp. 1967).)

Claimant was asked by letter of April 24, 1968, how the loss of the \$900.00 occurred. No reply was received to this or other letters thereafter addressed to claimant. Accordingly, the Commission holds that claimant has not established ownership and taking of this money by the Government of Cuba and this item of claim is denied.

Claimant's losses may be summarized as follows:

<u>Item</u>	<u>Value</u>	<u>Claimant's Interest</u>
Property in Miramar	\$24,500.00	\$12,250.00
Lot in Santiago de las Vegas	15,000.00	7,500.00
Personal property	7,710.00	<u>3,855.00</u>
		\$23,605.00

Accordingly, the Commission concludes that claimant suffered a loss in the amount of \$23,605.00 within the meaning of Title V of the Act, as the result of the taking of her property by the Government of Cuba on December 6, 1961.


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.

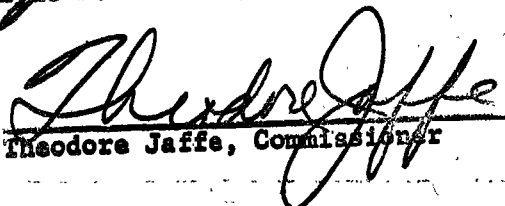
CERTIFICATION OF LOSS

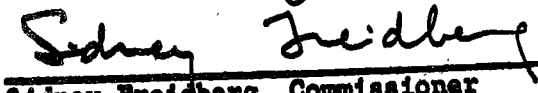
The Commission certifies that GERTRUDE B. LOMNITZ suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Twenty-three Thousand Six Hundred Five Dollars (\$23,605.00) with interest 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

APR 29 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).)