

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

IN THE MATTER OF THE CLAIM OF

CASIMIRO VELO

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -0986

Decision No. CU 4940

Counsel for claimant:

Feuer and Bryer
By Stanley Bryer, Esq.

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 CASIMIRO VELO for \$435,000.00 based upon the asserted ownership and loss of real and personal property in Cuba. Claimant has been a national of the United States since his naturalization on November 11, 1954.

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 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.

Claimant described his loss as comprised of land valued by him at \$120,000.00, buildings valued by him at \$275,000.00 and personalty located within the improvements on the land, \$40,000.00. In support of his claim he submitted a copy of Resolution No. 103/60 of the Superior Council of Urban Reform, issued on February 1, 1966. This document refers to the interests of various members of claimant's family in properties in Cuba, which it appeared originally belonged to Casimiro Lama Fernandez who died in 1924. The document in itself does not give sufficient detail to permit certification of loss to claimant. It does state that all rents and transactions concerning CASIMIRO VELO LAMA will be halted due to his absence.

By letter of February 9, 1967, the Commission made suggestions to claimant as to substantiating his claim, for realty and personalty; and offered to attempt to obtain evidence as to the realty. In requesting this assistance, claimant submitted a list of fourteen properties in Havana, Vibora and Vedado, saying his interest is one-sixth of half of the estimated total value of \$585,000.00. He stated this figure was an approximate appraisal on his part, at the time all the properties were confiscated in 1960.

The fourteen properties were listed by claimant as follows:

| | | |
|---|--------------|------------------|
| (1) Obrapia No. 211, Havana | Two floors | \$ 90,000.00 |
| (2) Animas No. 411, Havana | Two floors | 35,000.00 |
| (3) Animas No. 409, Havana | Two floors | 35,000.00 |
| (4) San Jose No. 356, Havana | Two floors | 35,000.00 |
| (5) Lealtad No. 107, Havana | Two floors | 35,000.00 |
| (6) Amargura No. 363, Havana | Three floors | 100,000.00 |
| (7) Concordia No. 481, Havana | | 35,000.00 |
| (8) Concordia No. 366, Havana | | 35,000.00 |
| (9) Perseverancia No. 117, Havana | | 30,000.00 |
| (10) San Isidro No. 167, Havana | | 25,000.00 |
| (11) Buenaventura No. 625, Vibora, Havana | | 35,000.00 |
| (12) Milagros No. 266, Vibora, Havana | | 35,000.00 |
| (13) San Benigno No. 458, Vibora, Havana | | 30,000.00 |
| (14) 5ta. No. 409, Vedado, Havana | | <u>30,000.00</u> |
| | | \$585,000.00 |

The Commission has received a report from abroad concerning these properties. The information in this report, and in the Urban Reform Resolution 103/60 permitted the reconstruction of a family tree. This record discloses that claimant's grandfather, Casimiro Lama Fernandez, owned the properties. He died testate on October 16, 1924, devising the properties as follows: Except for Item 10, above, each of the decedent's two daughters had a life estate in one-fourth of the properties, and the children of each had bare legal title in the remaining two-fourths. Thus, claimant's mother, Maria de la Merced Lama y Orue, had a life estate in one-fourth of the properties, with remainder to her five children and the issue of a sixth. Further, a one-fourth interest vested in her five children and the issue of the sixth. The other one-half of the properties are not involved in this claim.

As to Item 10 above, this was devised differently: One-eighth was devised outright to claimant's mother, one-eighth to her sister, and the remaining three-fourths to the three daughters of the sister of Maria de la Merced Lama y Orue.

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 provision 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 the real property in Cuba subject of this claim was taken by the Government of Cuba pursuant to the provisions of the Urban Reform Law; and, in the absence of evidence to the contrary, that the taking occurred on October 14, 1960, the date on which the law was published in the Cuban Gazette. (See Claim of Henry Lewis Slade, Claim No. CU-0183, 1967 FCSC Ann. Rep. 39.)

Accordingly, the Commission finds, except as to Item 10 above, that claimant suffered a loss of his interest of one-sixth of one-fourth of the properties, and one-sixth of a remainder interest in another one-fourth of the properties, within the meaning of Title V of the Act.

In order for the Commission to favorably consider claims under Section 503(a) of Title V of the Act, it must be established (1) that the subject property was owned in whole or in part by a national of the United States on the date of nationalization or other taking; and (2) that the claim arising as a result of such nationalization or other taking has been continuously owned thereafter in whole or in part by a national or nationals of the United States to the date of filing with the Commission.

The properties were taken on October 14, 1960. Claimant's mother died on August 8, 1961. According to the record claimant inherited a one-sixth interest in her claim for a life estate on one-fourth of thirteen properties, and a one-sixth interest in her claim for taking of her one-eighth interest in Item 10 of the properties. Claimant's mother is not shown to have been a national of the United States on October 14, 1960.

The Commission concludes, therefore, that so much of the claim as is based on the aforesaid life estate and one-eighth of Item 10, is not valid under Title V of the Act in that such claim was not owned by a national of

the United States on the date it arose and it is therefore denied. (See Claim of Sigridur Einarsdottir, Claim No. CU-0728, 25 FCSC Semiann. Rep. 45 [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.

Claimant has submitted no evidence in support of his estimated appraisal of the properties as of the date of loss. However, the report from abroad cites values as to some of the properties, and further indicates that the properties have increased in value over the quoted sales figures. On the other hand, the report does not indicate the extent of such increase. After considering this matter, as well as evidence as to the value of similar properties in Cuba, the Commission finds (except for Item 10) that the properties had the following values on the date of loss:

| | |
|----------|------------------|
| Item (1) | \$ 85,000.00 |
| (2) | 27,000.00 |
| (3) | 27,000.00 |
| (4) | 30,000.00 |
| (5) | 27,000.00 |
| (6) | 80,000.00 |
| (7) | 27,000.00 |
| (8) | 27,000.00 |
| (9) | 22,250.00 |
| (11) | 25,500.00 |
| (12) | 25,500.00 |
| (13) | 20,500.00 |
| (14) | <u>24,000.00</u> |
| | \$447,750.00 |

Each one-fourth interest, therefore, had a value of \$111,937.50, and claimant's one-sixth interest in one-fourth was equivalent to \$18,656.25.

As stated above one-fourth of thirteen parcels of the property was encumbered with a life estate in favor of claimant's mother, Maria de la Merced Lama y Orue. According to evidence of record she was 81 years old

at the time of taking. The claimant's interest in this one-fourth of the property was, therefore, a remainder interest, and the value of this remainder interest must be determined.

The Commission has adopted as a basis for the valuation of life and remainder interests the Makehamized mortality table, appearing as Table 38 of United States Life Tables and Actuarial Tables 1939-41, and a 3-1/2% interest rate, compounded annually, as prescribed by United States Treasury Department regulations of June 24, 1958, for the collection of gift and estate taxes, respectively. (See 23 F.R. 4547, 26 C.F.R. 2031-7.) According to that method of valuation, a remainder interest in the encumbered property is valued at .84151 thereof. Therefore, since the value of the one-fourth of the property in question is \$111,937.50, the remainder is valued at \$94,196.52 which is .84151 of that amount, and claimant's one-sixth interest therein is \$15,699.42.

Accordingly, the Commission concludes that claimant suffered a loss in the amount of \$34,355.67 within the meaning of Title V of the Act, as the result of the taking of his real property interests by the Government of Cuba on October 14, 1960.

With respect to so much of the claim as is based on personalty, claimant has stated through counsel that each of the apartment houses had the usual personal properties therein such as refrigerators, stoves and some may have had various items of furniture. Claimant was invited through counsel, on February 9, 1967, on May 13, 1968 and on July 8, 1968 to submit evidence in support of the claim, including his affidavit itemizing such property. On April 17, 1970, counsel was invited to submit any additional evidence he might have. No evidence has been submitted in support of the claim for personalty.

The Commission finds that claimant has not met the burden of proof with respect to personal property in that he has failed to establish that he owned such property and that it was taken by the Government of Cuba. Accordingly, the Commission is constrained to deny this item of claim and it is 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.

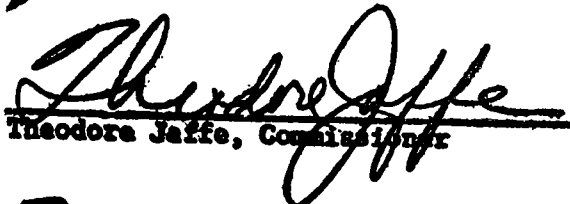
CERTIFICATION OF LOSS

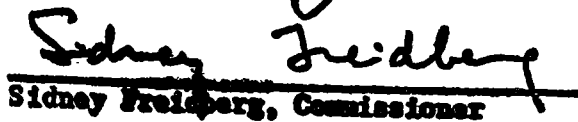
The Commission certifies that CASIMIRO VELO suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Thirty-four Thousand Three Hundred Fifty-five Dollars and Sixty-seven Cents (\$34,355.67) with interest at 6% per annum from October 14, 1960 to the date of settlement.

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

JUN 3 1970


Lyda 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 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).)