

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

IN THE MATTER OF THE CLAIM OF

E. PARCES

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-1175

Decision No. CU 6202

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 amended amount of \$46,081.22, was presented by E. PARCES based on the asserted loss of certain real and personal property in Cuba. Claimant has been a national of the United States since his naturalization on May 1, 1939.

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 asserts the following losses:

	<u>Value</u>
1) Improved real property (residence)	\$21,210.00
2) Personal property of residence	8,695.25
3) Electric fixtures business	15,550.00
4) Debts of nationalized enterprises	335.50
5) Savings account	<u>290.47</u>
Total	\$46,081.22

The evidence of record includes a copy of notarial document No. 283 of May 25, 1964, and translation; claimant's descriptive affidavit of October 21, 1967.

(1) Improved Real Property

The Commission finds that claimant's father was the owner of improved real property known as plot 19, block 62, Reparto Los Pinos, Havana, Cuba. Upon the testate death in 1950 in Cuba of said father claimant inherited a 1/6 interest in the property.

On December 6, 1961, the Cuban Government published its Law 989 which effectively confiscated all assets, personal property and real estate, rights, shares, stocks, bonds and securities of persons who had left the country. The record reflects that claimant left Cuba on December 29, 1966.

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 29, 1966 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.

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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 property consisted of 526 square meters of land improved with a building of masonry with flat roof, three or four rooms, kitchen, with usual facilities as well as terrace and garage. It was valued at \$14,000.00 for purposes of the said decedent's estate.

Based on evidence available to the Commission as to the value of similar properties in Cuba, the Commission finds that at the time of loss the property had a value of \$18,000.00 and that claimant sustained a loss in the amount of \$3,000 for his 1/6 interest therein.

By Commission letter of September 17, 1970 two of claimant's sisters who were assertedly nationals of the United States at the time of loss were invited to join in the claim. No reply was received from said sisters.

(2) Personal Property of Residence

With respect to the personalty in the property, claimant has submitted an affidavit listing the furniture and fixtures with values representing his apparent estimated replacement value, totaling \$8,965.25. The Commission however has held that replacement values refer to replacement in kind. It appears from the record that at the time of loss this personalty had an average age of 10 years. The Commission has determined that apart from antiques not subject to depreciation, furniture and appliances must be depreciated at a rate of 5 per cent per annum; and furnishings including drapes, lamps, clothing, must be depreciated at 10 per cent per year. Accordingly, the Commission finds that the personalty including scrap value for the 1951 automobile, had a value of \$3,500.00 on the date of loss.

The record shows that claimant was married to Virginia Lopez Parces, a national of the Republic of Cuba.

According to the community property laws of Cuba, the properties acquired by one or both spouses during the marriage with money of the marriage partnership or by the industry, salary or work of either or both spouses, and the fruits thereof, belong in equal parts to both spouses (see Claim of Robert L. Cheaney et al., Claim No. CU-0915). Accordingly, this subject personal property is deemed as having been owned by the claimant and his wife. Inasmuch as there is evidence that claimant's wife was not a national of the United States at any time pertinent to this claim, her interests in the properties will not be considered here. The Commission finds that claimant sustained a loss in the amount of \$1,750.00 for his 1/2 interest in the personal property.

Items 3, 4 and 5

As to all other parts of this claim the claimant had asserted that he had additional documents in support thereof including bills of sale, a 1959 balance sheet for the business, and a deed for the business property.

On several occasions the Commission granted extensions of time to the claimant to submit translation of these documents. These have not been submitted. The record includes a copy of a balance sheet for a business enterprise, but ownership of the enterprise is not established thereby.

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) (1970).)

The Commission finds that the evidence of record is not persuasive and that claimant has not met the burden of proof in that he has failed, in reference to items 3, 4 and 5 above, to establish ownership of rights and interests in property which was nationalized, expropriated or otherwise taken by the Government of Cuba. Thus, the Commission is constrained to deny these parts of the claim and they are hereby denied.

The Commission has decided that in certifications of loss 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

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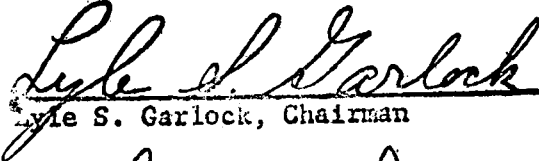
annum from the date of loss to the date of settlement (see Glaim of Lisle Corporation, Claim No. CU-0644) and in the instant case it is so ordered.

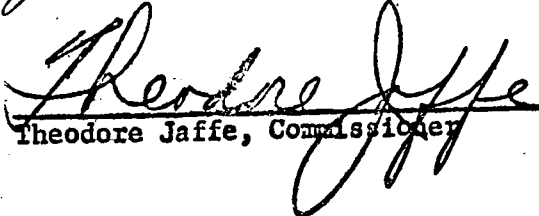
CERTIFICATION OF LOSS

The Commission certifies that E. PARCES 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 Four Thousand Seven Hundred Fifty Dollars (\$4,750.00) with interest thereon at 6% per annum from December 29, 1966 to the date of settlement.

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

MAY 19 1971


Lyle S. Garlock, Chairman


Theodore Jaffe, 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 (1970).)

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