

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

IN THE MATTER OF THE CLAIM OF

ARNALDO E. IRIZARRY  
EFRAIN IRIZARRY

Claim No. CU - 1431

Decision No. CU- 6219

Under the International Claims Settlement  
Act of 1949, as amended

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 total amount of \$210,500.00, was presented by ARNALDO E. IRIZARRY and EFRAIN IRIZARRY, and is based upon the asserted loss of real and personal property at or near Florida, Camaguey, Cuba. Claimants have been nationals 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.

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.

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).)

Claimants, EFRAIN IRIZARRY and ARNALDO E. IRIZARRY, father and son, stated that at times pertinent to this claim they were married to Juana Margarita Perez Hernandez and Isabel Evarista Montero, respectively, who are Cuban citizens; and that they resided in Cuba for several years prior to departure from that country in November 1964. Claimant EFRAIN IRIZARRY stated that he jointly acquired a plantation, with improvements on the land and personal property, located in Central Agramonte, Camaguey, Cuba; and claimant ARNALDO E. IRIZARRY stated that he jointly acquired a house and lot, with household furnishings and personal effects, at or near Florida, Camaguey, Cuba, as well as a 30% interest in the aforesaid plantation or farm of his father under a partnership agreement.

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 part to both spouses (see Claim of Robert L. Cheaney, et ux., Claim No. CU-0915). Accordingly, the property discussed below will be deemed as having been owned by the claimants and their respective spouses, listed above, since no evidence has been submitted to establish that such property was acquired by the claimants prior to their marriages, or by gift or inheritance. Inasmuch as there is no evidence that Juana Margarita Perez Hernandez or Isabel Evarista Montero were nationals of the United States at any time pertinent to this claim and no claim has been filed by them or on their behalf, their respective interests in the properties, subject of this claim, will not be considered here.

The evidence of record includes a plan and map, showing improvements on the land and crops, of the "Sugar Cane Farm Margarita No. 1", Florida, Camaguey, Cuba, with the notation "Owner: Efrain Irizarry". The record also includes a report secured by the Commission from sources abroad stating that claimant EFRAIN IRIZARRY purchased a part of the "Bazan Farm" including a parcel known as "Anacaona", comprising 4 caballerias, 159 cordeles; and that EFRAIN IRIZARRY also purchased a parcel of land of 5 caballerias, 50 centesimas, of Lot 10 of the farm "El Principal de las Yeguas". Based upon this evidence of record the Commission finds that EFRAIN IRIZARRY was the owner of a one-half interest in the aforesaid farm or plantation which he and his wife held as community property.

The evidence of record also includes reports from Cuban officials, including the Secretary of the Interior, Department of Public Order, and the Department of Coordination, Execution and Inspection, issued in 1964, at Florida, Camaguey, Cuba. This data discloses that prior to the departure of ARNALDO E. IRIZARRY with his family from Cuba in November 1964, said claimant was the owner of a furnished house located at Avenida Comandante Camilo Cienfuegos, no number, in the City of Florida, Camaguey, Cuba. Accordingly, the Commission also finds that ARNALDO E. IRIZARRY owned a one-half interest

in the real property in question, with furnishings, which he held with his wife as community property.

On December 6, 1961, the Cuban Government published its Law 989 which effectively confiscated all assets, personal property and real estate, shares, stocks, bonds and securities of persons who left the country. As stated, the record reflects that claimants and their families left Cuba in November 1964.

The Commission finds, in the absence of evidence to the contrary, that the subject real and personal property was taken by the Government of Cuba on November 14, 1964, 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.

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.

Aside from the evidence of record discussed above and the general statements of the claimants, the record includes no evidence concerning the value of the agricultural property. Other than the Plan-Map, the record does not disclose a description of the improvements on the land, and the record does not include a list of the equipment and personal property, or other facilities usually attributable and utilized in the operation of an agricultural venture. However, the report secured by the Commission from

abroad shows that claimant EFRAIN IRIZARRY paid \$11,500.00 for the parcel "Anacaona" prior to 1953 and \$13,500.00 for the parcel of "El Principal de las Yeguas" in January 1953. Additionally, the Plan-Map indicates cane and citrus crops were raised on the land, with cattle, and a house with other improvements were also located on the land.

Based on this record, the Commission finds that the most appropriate basis for evaluation of the property, subject of this claim, is the evidence discussed above and evidence available to the Commission concerning the value of similar properties in Cuba. In the absence of additional data concerning the evaluation of this property at the time of loss, the Commission finds that the farm-plantation in question had a total value of \$99,700.00 at the time of loss, as follows:

Land, approximately 298.5 acres, at \$200.00 per acre	\$59,700.00
House, with other improvements on the land	25,000.00
Personal property, including any cattle, household and farming equipment	<u>15,000.00</u>
	\$99,700.00

Thus, the Commission finds that claimant EFRAIN IRIZARRY suffered a loss of \$49,850.00 within the meaning of Title V of the Act.

The reports from the agencies of the Government of Cuba disclose that improved real property in which ARNALDO E. IRIZARRY held a one-half interest, included " . . . a stucco house, with three bedrooms, living room, dining room, kitchen and garage, and backyard or patio and a bath, all furnished". Further, claimant has submitted a detailed description of the house and lot, with photographs, and detailed lists of the personal property, including household furnishings and personal effects.

Based on the entire record, including evidence available to the Commission concerning the value of similar property in Cuba, the Commission finds that the improved real property with furnishings and personal effects had a total value of \$20,000.00 at the time of loss; and that claimant ARNALDO E. IRIZARRY suffered a loss in the amount of \$10,000.00 within the meaning of Title V of the Act.

This claim was based on the loss of 363.3 acres, asserted to be the area of the aforesaid plantation-farm; and claimant ARNALDO E. IRIZARRY asserted that he owned a 30% partnership interest in this property through a "private will agreement" with his father, EFRAIN IRIZARRY. However, the Commission is constrained to find that the only evidence of record in this matter discloses ownership of a total area of 9 caballerias, 159 cordeles and 50 centesimas or approximately 298.5 acres; and that the record contains no evidence to support claimant's allegation of a partnership arrangement between the claimants herein.

The Commission made suggestions in several letters concerning the submission of evidence pertaining to ownership of a partnership in the plantation-farm at or near Florida, Camaguey, Cuba. However, such supporting evidence was not submitted. The Commission appreciates the difficulties encountered by the claimants in establishing their claims against the Government of Cuba. However, the Commission must be guided by the evidence of record pertaining to the ownership, loss and value of the property included in each claim. The Commission is also constrained to find that claimants have failed to establish a partnership arrangement between the parties and that ARNALDO E. IRIZARRY has suffered a loss in this respect. Accordingly, these portions of the claim are hereby denied for the reasons stated. The Commission deems it unnecessary to make determinations with respect to other elements of these claims.

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 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.

CERTIFICATIONS OF LOSS

The Commission certifies that EFRAIN IRIZARRY 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

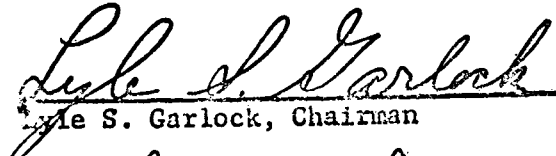
CU-1431


the amount of Forty-Nine Thousand Eight Hundred Fifty Dollars (\$49,850.00) with interest at 6% per annum from November 14, 1964 to the date of settlement; and

The Commission certifies that ARNALDO E. IRIZARRY 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 Ten Thousand Dollars (\$10,000.00) with interest at 6% per annum from November 14, 1964 to the date of settlement.

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

**JUN 9 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).)

CU-1431