

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

IN THE MATTER OF THE CLAIM OF

ARCHIE D. SMITH  
and  
IRMA W. SMITH

Claim No. CU-2224

Decision No. CU-5640

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 amount of \$79,350.00, was presented by ARCHIE D. SMITH and IRMA W. SMITH based upon the asserted loss of certain real and personal property in Cuba. Claimants have been nationals of the United States at all times pertinent to this claim.

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.

The record includes reports from abroad evidencing ownership of the real property claimed herein; copies of claimants' tax returns evidencing the assertion of deductions on account of the real and personal properties in question; and claimants' statements concerning this claim.

On the basis of the entire record, the Commission finds that claimants each owned a one-half interest in certain real and personal property in Cuba pursuant to the community property laws of Cuba. (See Claim of Robert L. Cheaney and Marjorie L. Cheaney, Claim No. CU-0915.)

Claimants assert the following losses:

Farm on the Isle of Pines	\$ 54,500.00
Improved real property (residence) on the Isle of Pines	15,000.00
Personal property	5,000.00
Bank deposits	<u>4,850.00</u>
Total	<u>\$ 79,350.00</u>

#### Real Property

The evidence includes copies of two official notices from the agrarian reform authorities of Cuba advising that claimants' real property in the Sierra de Caballos district of the Isle of Pines was intervened by the Government of Cuba on September 28, 1960 pursuant to INRA Resolution 34; and that claimants' real property in the Santa Fe district of the Isle of Pines was intervened on October 14, 1960 pursuant to INRA Resolution 37. The Commission thus finds that claimants thereby sustained losses within the meaning of Title V of the Act.

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 taken 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 record shows that the aggregate cost of the real property in 1957 was \$21,715.00, whereas ARCHIE D. SMITH stated that he had spent \$15,000.00 to rebuild his house in 1955 and that the value of his real property was \$69,500.00. The Commission, therefore, requested that claimants submit evidence to support their assertions. Mr. Smith's reply of March 31, 1970 was that he had no evidence to corroborate his statements. He stated that the real property had cost \$26,500.00 and that improvements amounted to an additional \$43,000.00, all as follows:

Purchase price of the real property	\$21,500.00
Additional land - 110 acres	1,800.00
Transfer taxes and fees	1,150.00
Fees for executing 18 deeds	950.00
Lawyer fees	500.00
Surveyor fees	600.00
Improvements - fencing and clearing land	23,000.00
Farm Buildings	5,000.00
Home rebuilt	<u>15,000.00</u>
Total	<u>\$69,500.00</u>

The record contains no evidence to establish the purchase of additional land at a cost of \$1,800.00; nor is there any proof that claimants expended \$43,000.00 for fencing and clearing the land, and construction of farm buildings and a home. It does appear, however, that the real property was acquired through a number of transactions which would have required the payment of taxes and fees as set forth by Mr. Smith.

Moreover, copies of claimants' tax returns do not establish that claimants were allowed the full amount of their claimed deductions. The record shows that claimants asserted tax deductions in the amount of \$55,143.42 for real property and \$20,000.00 for a home, furnishings, personal effects, a car and boat without including any breakdown or other description of these items of property.

Upon consideration of the entire record, the Commission finds that the valuations most appropriate to the real properties and equitable to the claimants are the purchase prices in 1957, including the fees and expenses incurred in thus acquiring the properties. The record shows that the property in the Sierra de Caballos district cost \$9,170.00 and that the property in the Santa Fe district cost \$12,545.00. It further appears that the aggregate amount for taxes and fees was \$3,200.00. In the absence of evidence showing what part of the \$3,200.00 applied to each of the two groups of properties, the Commission has divided it on the basis of proportionate costs as follows: \$1,351.04 for the Sierra de Caballos property and \$1,848.96 for the Santa Fe property. Accordingly, the Commission finds that the values of the properties on the respective dates of loss were as follows:

<u>Item of Property</u>	<u>Date of Loss</u>	<u>Amount</u>
Sierra de Caballos	September 20, 1960	\$10,521.04
Santa Fe	October 14, 1960	<u>14,393.96</u>
	Total	<u>\$24,915.00</u>

Therefore, each claimant sustained a loss in the amount of \$12,457.50.

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) (1969).)

The Commission finds that the evidence does not warrant the conclusion that claimant owned an additional 110 acres of land having a value of \$1,800.00, and that they had improvements to the real properties at a cost of \$43,000.00. Accordingly, the portions of the claim based upon these items of property are denied.

Personal Property

As noted above, claimants jointly owned certain personal property situated on the Isle of Pines.

On December 6, 1961, Cuba published Law 989 in its Official Gazette, which effected a confiscation of all goods and chattels, property rights, shares, stocks, bonds, bank accounts and other securities of persons who left Cuba. The Commission finds that this law applied to claimants who had left Cuba before that date. In the absence of evidence to the contrary, the Commission finds that claimants' personal properties were taken by the Government of Cuba on December 6, 1961. (See Claim of Floyd W. Auld, Claim No. CU-0020, 25 FCSC Semiann. Rep. 55 [July-Dec. 1966]; and Claim of Wallace Tabor and Catherine Tabor, Claim No. CU-0109, id. at 53.)

Claimants assert that the aggregate value of their personal properties was \$9,850.00, including \$4,850.00 for bank deposits.

The Commission suggested that claimants submit a detailed list of the items of personal property in Cuba, including approximate dates of purchase and costs, as well as proof that they owned bank deposits in Cuba with a value of \$4,850.00. Mr. Smith's response of March 31, 1970 was that he had no evidence to establish that claimants owned the said bank deposits, and that he was unable to furnish either approximate dates of purchase or costs for the items of personal property. That communication, however, did include a list of the items of personal property with estimated values

at the time of loss.

An examination of that list indicates the need for certain adjustments. Claimants' 1957 America Motors cross country station wagon is listed at \$2,000.00. Records available to the Commission disclose that as of October 1961 such an automobile had a value of \$925.00. The Commission therefore finds that the value of claimants' automobile on December 6, 1961, the date of loss, was \$925.00. In his letter of March 1, 1970, Mr. Smith stated that the boat and motors had been purchased in 1956 for \$800.00. Claimants' list shows these items as aggregating \$800.00 on the date of loss. The Commission concludes that said boat and the two motors were subject to depreciation at the rate of 10% per year. Accordingly, the Commission finds that the value of the boat and motors on December 6, 1961 was \$400.00. The other items on the list, except for the bank deposits, appear reasonable. Since the portion of the claim for bank deposits in the amount of \$4,850.00 is unsupported by any evidence of record, that portion of the claim is denied. The Commission finds that claimants' personal properties had the following values on December 6, 1961, the date of loss:

1957 Station wagon	\$925.00
Boat and 2 motors	400.00
Other items of furniture, etc.	<u>2,200.00</u>
Total	<u>\$3,525.00</u>

Therefore, each claimant sustained a loss in the amount of \$1,762.50.

Each claimant's losses are summarized as follows:

<u>Item of Property</u>	<u>Date of Loss</u>	<u>Amount</u>
Sierra de Caballos	September 28, 1960	\$ 5,260.52
Santa Fe	October 14, 1960	7,196.98
Personal property, including automobile	December 6, 1961	<u>1,762.50</u>
Total		<u>\$14,220.00</u>

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, as follows with respect to each claimant:

<u>From</u>	<u>On</u>
September 28, 1960	\$ 5,260.52
October 14, 1960	7,196.98
December 6, 1961	<u>1,762.50</u>
	<u>\$14,220.00</u>

CERTIFICATION OF LOSS


The Commission certifies that ARCHIE D. SMITH 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 Fourteen Thousand Two Hundred Twenty Dollars (\$14,220.00) with interest thereon at 6% per annum from the respective dates of loss to the date of settlement; and

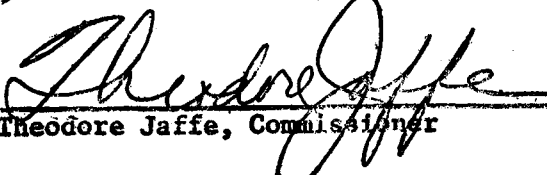
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the Commission certifies that IRMA W. SMITH suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Fourteen Thousand Two Hundred Twenty Dollars (\$14,220.00) with interest thereon at 6% per annum from the respective dates of loss to the date of settlement.

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

AUG 6 - 1970

  
Lyle S. Garlock, Chairman

  
Theodore Jaffe, Commissioner

  
Sidney Freiberg, 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).)

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