

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

IN THE MATTER OF THE CLAIM OF

JOHN W. TODARO
JANINE Y. TODARO

Claim No. CU -2290

Decision No. CU-784

Under the International Claims Settlement
Act of 1949, as amended

Appeal and objections from a Proposed Decision entered December 6, 1967;
no hearing requested.

Hearing on the record held March 11, 1971

FINAL DECISION

On December 6, 1967 the Commission issued a Proposed Decision on this claim certifying that JANINE Y. TODARO sustained a loss in the amount of \$2,000, and denying the remainder of the claim.


Objections were filed and contentions made that the house had nine rooms, that the evaluation of the house could not include the personalty, that the mortgage was estimated to have been reduced to \$5,500 (rather than the \$8,000 of record), and that affidavits had been submitted as to the business.

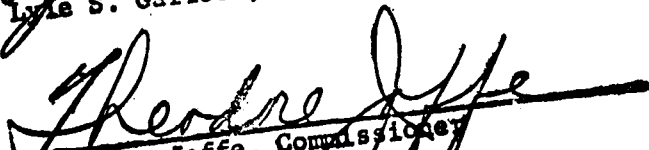
The descriptions of the house vary, indicating it had seven to nine rooms. The evaluation of \$12,000 was for the improved realty and did not purport to include personalty, as to which claimant submitted no evidence. No evidence has been submitted in support of amortization of the mortgage to \$5,500, nor of ownership of interests in a farm and business.

No evidence has been submitted to warrant any other changes in the Proposed Decision. Accordingly, the Proposed Decision is hereby entered as the Final Decision in this claim.

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

MAK 24 1911


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.

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IN THE MATTER OF THE CLAIM OF

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Act of 1949, as amended

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 JOHN W. TODARO and JANINE Y. TODARO in the amount of \$66,367.00 based upon the asserted ownership and loss of certain improved real property and personal property. Claimant, JANINE Y. TODARO, has been a national of the United States since her birth in the United States. Claimant, JOHN W. TODARO, has been a national of the United States since his naturalization on May 19, 1964.

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 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.

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.

Claimants contend that they owned certain improved real property and personal property in Cuba valued at \$66,367.00. The record contains information furnished to the Commission concerning the real property, eight photographs, a sketch, two cancelled checks, three receipts, a letterhead, and claimants' own letters and statements.

On the basis of the entire record, including information available to the Commission, the Commission finds that claimants, JOHN W. TODARO and JANINE Y. TODARO, were the owners in equal parts of certain improved real property located at No. 3311, Calle 234, Marianao, Havana, Cuba.

On December 6, 1961 the Cuban Government published its Law 989 (Official Gazette, XXIII, No. 237. p. 23705) which confiscated all assets, personal property and real estate, rights, shares, stocks, bonds and securities of persons who had left the country. As the record shows, claimants resided outside of Cuba at that time. The Commission finds, in the absence of evidence to the contrary, that the subject improved real property was taken by the Government of Cuba on December 6, 1961 pursuant to the provisions of Law 989.

The lot is described as 1,394.75 square meters improved by a one-story house of seven rooms, several baths and having an outside terrace. Based on the entire record, including information available to the Commission, the Commission finds that the subject improved real property had a total value of \$12,000.00 at the time of loss. The record further discloses that the subject improved real property is encumbered by a mortgage in the amount of \$8,000.00. Accordingly, the Commission concludes that the value of the claimants' interest in the subject improved real property is \$4,000.00.

In order for the Commission to favorably consider claims under Section 503(a) of Title V of the Act, it must be established that the subject property was owned by a national of the United States. As the record discloses, claimant, JOHN W. TODARO, did not acquire United States nationality until his naturalization on May 19, 1964. Therefore, it is clear that his interest in the subject property was not owned by a national of the United States on the date of loss as required by the Act, and it is accordingly denied.

The Commission concludes that claimant, JANINE Y. TODARO, suffered a loss within the meaning of Title V of the Act, in the amount of \$2,000.00 for her compensable interest in the subject property.

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 the Claim of Lisle Corporation, FCSC Claim No. CU-0644).

Accordingly, the Commission concludes that the amount of the loss sustained by claimant, JANINE Y. TODARO, shall be increased by interest thereon at the rate of 6% per annum from December 6, 1961, the date on which the loss occurred, to the date on which provisions are made for the settlement thereof.

The remaining portion of this claim is based upon claimants' asserted ownership and loss of a farm and business. However, except as mentioned hereinabove, claimants have submitted no documentary evidence to establish this portion of the claim.

By Commission letter of June 13, 1967, claimants were advised as to the type of evidence proper for submission to establish this claim under the Act.

On September 13, 1967, claimants were invited to submit any evidence available to them within 45 days from that date, and they were informed, that, absent such evidence, it might become necessary to determine the claim on the basis of the existing record.

Except as hereinabove mentioned, the evidence suggested has not been submitted.

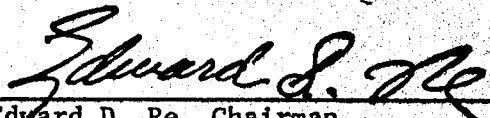
As to this portion of the claim, the Commission finds that claimants have not met the burden of proof in that they have failed to establish ownership of rights and interests in property which was nationalized, expropriated or otherwise taken by the Government of Cuba. Thus, the Commission is constrained to deny this portion of the claim, and it is hereby denied. The Commission deems it unnecessary to make determinations with respect to other elements of this portion of the claim.

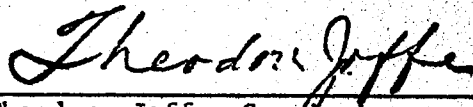
CERTIFICATION OF LOSS

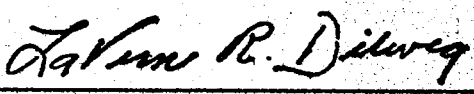
The Commission certifies that JANINE Y. TODARO suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Two Thousand Dollars (\$2,000.00) with interest thereon at 6% per annum from December 6, 1961 to the date of settlement.

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

6 DEC 1967


Edward D. Re, Chairman


Theodore Jaffe, Commissioner


LaVern R. Dilweg, 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).)

CU- 2290