

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

IN THE MATTER OF THE CLAIM OF

OCTAVIO ALVAREZ

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-2381

Decision No. CU-1507

Counsel for claimant:

J. L. Brensic, Esq.

AMENDED PROPOSED DECISION

By Proposed Decision issued April 10, 1968, this claim was denied for failure of proof. Additional evidence having been received and the matter reconsidered, the decision is hereby amended.

The claim is based on an interest in a house known as No. 5 in Arroyo Apolo, Havana, Cuba, and certain personalty therein. The record establishes that the real property was owned in equal parts by Dolores Gruart y Mestre and her sister Maria Mercedes Gruart y Mestre. Upon the death in 1934 of Dolores Gruart y Mestre, her one-half went in equal parts to Maria Mercedes Gruart y Mestre (who then owned 3/4 of the whole) and to Mario Gruart y Lopez. Upon the death of Maria Mercedes Gruart y Mestre in 1957, her 3/4 interest in the property went in equal parts to Emelina Alvarez Mestre, Matilde Alvarez Gomez and OCTAVIO ALVAREZ, claimant herein. By document of April 4, 1960, Mario Gruart y Lopez ceded his 1/4 interest to OCTAVIO ALVAREZ, for 1,175 pesos.

Accordingly, the Commission finds that claimant owned a one-half interest in the property in question. Although Emelina Alvarez Mestre died in 1968, it is not shown that claimant had any interest in her 1/4 part, and moreover, as she was a Cuban national, such interest would not be within the scope of the Act.

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). Following Chapter VI of the law appears a section entitled "Temporary Provisions" and the third paragraph thereof provides 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, the Commission finds that the real property in question 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.)

The Commission further finds that certain personalty in the nature of furnishings was taken at the same time. The Commission finds it not established, however, that any jewelry was taken at that time and claim based thereon remains denied.

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 record includes a sketch of the house, showing that it consisted of a living room, three bedrooms, bath, kitchen and porch on a plot of 5.5 by 20 meters; and that a one-fourth part was valued at 1,175 pesos in April, 1960. (The Commission has held that the Cuban peso was on a par with the United States dollar. The Commission finds that this property had an aggregate value of \$5,000 on the date of taking.

The record also includes a list of certain art objects in the house, which also had usual furnishings. The Commission finds that the fair value of the personal property was \$2,375, in which claimant had a one-half interest.

Accordingly the Commission concludes that claimant suffered a loss in the amount of \$3,687.50 within the meaning of Title V of the Act, as the result of the taking of his property interest by the Government of Cuba on October 14, 1960.

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.

Accordingly, the following certification of loss will be entered and in all other respects the Proposed Decision is affirmed.

CERTIFICATION OF LOSS

The Commission certifies that OCTAVIO ALVAREZ 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 Three Thousand Six Hundred Eighty-Seven Dollars and Fifty Cents (\$3,687.50) with interest at 6% per annum from October 14, 1960, to the date of settlement.

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

22 JAN 1970

Theodore Jaffe

Theodore Jaffe, Commissioner

Sidney Freidberg

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 are filed within 15 days after service or receipt of notice of this Amended 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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Counsel for claimant:

J. L. Brensic, Esq.

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, in the amount of \$18,000.00 was presented by OCTAVIO ALVAREZ, and is based upon the asserted loss of improved real and personal property located in Cuba. Claimant has been a national of the United States since his naturalization on April 18, 1949.

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) (Supp. 1967).)

Claimant asserts the ownership of certain improved real and personal property located in Cuba and assertedly inherited from a deceased cousin; however, other than two affidavits and a description of the property forming the basis of this claim, claimant has submitted no documentary evidence in support of his claim. By Commission letter of July 12, 1967, counsel was advised as to the type of evidence proper for submission to establish this claim under the Act.

On December 11, 1967, counsel was invited to submit any evidence he might have within 45 days from that date, and he was informed that, absent such evidence it might become necessary to determine the claim on the basis of the present record. Although claimant, through counsel, responded to the Commission's correspondence, no additional evidence has been submitted in support of this claim.

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The Commission finds that claimant has not met the burden of proof in that he has failed to establish ownership of rights and interests in property which was nationalized, expropriated or otherwise taken by the Government of Cuba. Accordingly, this claim is hereby denied. The Commission deems it unnecessary to determine other elements of this claim.

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

APR 10 1968

Leonard v. B. Sutton

Leonard v. B. Sutton, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

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