

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

IN THE MATTER OF THE CLAIM OF

CONSUELO ANA ELLA ERNST (BOULLOSA)

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-2693

Decision No. CU- 6126

Counsel for claimant:

Joseph W. Malek, Esq.

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 CONSUELO ANA ELLA ERNST (BOULLOSA) for \$179,678.49 based upon the asserted ownership and loss of certain real and personal property in Cuba. Claimant has been a national 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.

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).)

Claimant describes her loss as follows:

House in Miramar, Marianao	\$ 50,000.00
Plot of Land	30,000.00
Household furnishings, paintings, etc.	<u>99,678.49</u>
	\$179,678.49

Realty

Based upon the entire record, including copies of a deed, a lease and insurance policies covering the improved real property subject of this claim, and other documents and correspondence the Commission finds that claimant owned the improved real property, at Calle 134, No. 2107 Avenue 19 and 20, Miramar.

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). The law covered residential, commercial, industrial and business office properties (Article 15).

Based on the foregoing and the evidence of record, the Commission finds that claimant's real property in Marianao, Havana, Cuba 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 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, in support of the claimed values, a description of the real property as about 2495 square meters, improved by a two-story house built in 1942 of brick and masonry at a cost of \$33,000; the construction having about 13 rooms and usual facilities.

On the basis of the evidence of record, and evidence available to the Commission regarding the value of similar properties in Mariano, the Commission finds that on the date of loss the value of the house was \$33,000.00 and the land had a value of \$20,000.00, on October 14, 1960, the date of loss.

Personalty

Claimant has submitted a detailed list of the personalty subject of this claim. In addition to household furnishings it includes antiques, oil paintings, a Steinway concert piano, 2 harps, and other musical instruments, a crystal chandelier, a Persian rug, and appliances. She values these at \$99,678.49.

By Commission letter of August 18, 1967 it was suggested that claimant submit evidence of the ownership and value of the personalty.

On January 23, 1970 she was asked through counsel when and how she acquired the personal property, to submit an inventory, including value, of those items she loaned to the tenant in her house, and to advise where the remainder of the items was located and the date of loss. Counsel was informed that the suggested evidence should be submitted within 30 days. On March 26, 1970 counsel was informed that absent the evidence suggested in letter of January 23, 1970, it might become necessary to determine the claim on the basis of the existing record.

After several grants of extensions of time counsel on February 17, 1971 wrote that claimant had advised him that she acquired the personal property as a gift from her parents when she was 6 years old and that there were several insurance policies on the personal property and the house but that she knew neither the names of the insurance companies nor the whereabouts of the policies.

In view of the foregoing, the Commission finds that claimant has not met the burden of proof with regard to this portion of her claim in that she has 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.

Accordingly, the Commission concludes, that claimant suffered a loss in the amount of \$53,000.00 within the meaning of Title V of the Act as of October 14, 1960.

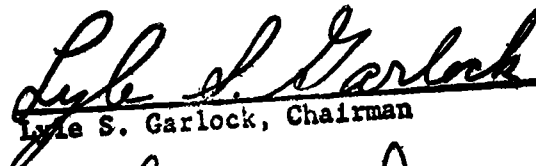
The Commission has decided that in certifications of loss on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be included at the rate of 6% per annum from the date of loss to the date of settlement (see Claim of Lisle Corporation, Claim No. CU-0644), and in the instant case it is so ordered.

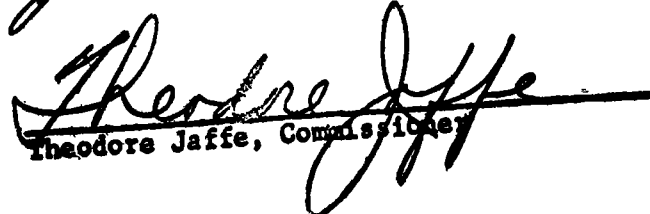
CERTIFICATION OF LOSS

The Commission certifies that CONSUELO ANA ELIA ERNST (BOULLOSA) 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 Fifty-Three Thousand Dollars (\$53,000.00) with interest at 6% per annum from October 14, 1960 to the date of settlement.

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

MAR 24 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).)