

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

IN THE MATTER OF THE CLAIM OF

MIGUEL RAFAEL ROSICH

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-2708

Decision No. CU -1511

AMENDED PROPOSED DECISION

This claim based on the asserted loss of certain real properties in Cuba was denied by the Commission by Proposed Decision issued April 10, 1968, inasmuch as the evidence of record was insufficient to establish the claim.

Claimant has subsequently submitted his affidavit with regard to these properties and the record also now includes reports from abroad pertaining to the properties.

Based on the evidence of record the Commission finds that claimant owned improved and unimproved properties in Cuba. Pursuant to the Community Property Law of Cuba his wife, Ana Maria, owned a 1/2 interest therein. The record does not disclose that she is a United States national and accordingly, her interests will not be considered here.

On December 6, 1961, the Cuban Government published its Law 989 which confiscated all assets, personal property and real estate, rights, shares, stocks, bonds and securities of persons who had left the country.

Claimant states that the Government of Cuba took his properties after he left Cuba on March 21, 1961. The Commission finds, in the absence of evidence, that claimant's properties were taken by the Government of Cuba on December 6, 1961 pursuant to the provisions of Law 989 (see Claim of Wallace Tabor and Catherine Tabor, Claim No. CU-0109, 25 FCSC Seniann. 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.

Based on the entire record the Commission finds that claimant owned a 1/2 interest in an improved real property in Reparto Sinai, Marianao, and in two lots, one in Vedado and the other in Marianao.

Claimant describes the improved realty in Reparto Sinai, Marianao, as a one-story brick house with mahogany gable roof, Spanish red tiles, and about nine rooms and garage. Based on the evidence of record including a report from abroad the Commission finds that the improved realty had a value of \$15,000 on the date of loss and that claimant suffered a loss in the amount of \$7,500 for his 1/2 interest therein.

Claimant states that he purchased the lot in Vedado on April 8, 1954 and that it is located in Ensanche de la Habana development near Marti Monument. Based on the evidence of record including a report from abroad the Commission finds that the lot measured about 400 square meters and had a value of \$4,735.27 on the date of loss.

Based on the entire record including a report from abroad the Commission finds that the lot in Marianao located in the Biltmore development, measured about 1,164 square meters and had a value of \$2,327.60 on the date of loss.

Recapitulation

Claimant's losses for his 1/2 interest in the real properties subject of this claim are summarized as follows:

House in Reparto Sinai, Marianao	\$ 7,500.00
Lot in Vedado	2,367.64
Lot in Marianao	<u>1,163.80</u>
	\$11,031.44

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.


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

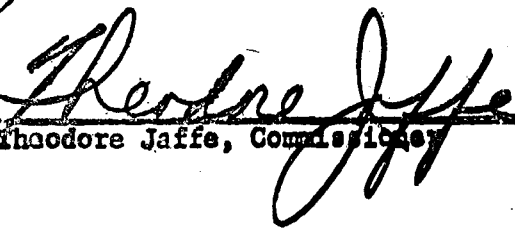
CERTIFICATION OF LOSS

The Commission certifies that MIGUEL RAFAEL ROSICH 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 Eleven Thousand Thirty One Dollars and Forty-Four Cents (\$11,031.44) 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 Amended Proposed Decision of the Commission

JUN 23 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 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. 551.5(e) and (g), as amended (1970).)

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IN THE MATTER OF THE CLAIM OF

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Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-2708

Decision No. CU 1511

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 \$131,000.00, was presented by MIGUEL RAFAEL ROSICH, and is based upon the asserted loss of certain improved real property located in Cuba. Claimant has been a national of the United States since his 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) (Supp. 1967).)

This claim is based upon the asserted loss of real property consisting of various dwelling houses and tracts of land. Other than a brief description of the properties no evidence has been submitted in support of this claim. By Commission letter of July 7, 1967, claimant was advised as to the type of evidence proper for submission to establish this claim under the Act. Thereafter, by letter of August 16, 1967, the Commission invited claimant to submit any evidence available to him 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 existing record. No evidence has since been submitted.

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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 denied. The Commission deems it unnecessary to make determinations with respect to other elements of the 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

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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