

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

IN THE MATTER OF THE CLAIM OF

ANNA KIEPER

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -2946

Decision No. CU 5763

Counsel for claimant:

J. Rusling Cutler, 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 ANNA KIEPER for \$13,238.29 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 her naturalization on October 20, 1959.

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.

Claimant describes her loss as follows:

Land and building in Marianao, Havana	\$10,000.00
Paid-up insurance	2,000.00
Bank account	<u>1,238.29</u>
	\$13,238.29

Based upon the entire record, including a copy of the deed to the realty, a copy of the probate proceedings following the death of claimant's husband in 1936, a copy of a paid-up life insurance policy, and a copy of a statement of claimant's bank account in Havana, the Commission finds that claimant owned the personal property subject of this claim and a one-fourth interest in the real property.

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.

The Commission finds, in the absence of evidence to the contrary, that the subject real property and the above-described bank account, totalling 1,238.29 pesos (which were on a par with United States dollars) as well as the cash surrender value of the life insurance policy 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 Semiann. Rep. 53 [July-Dec. 1966]; and Claim of Floyd W. Auld, Claim No. CU-0020, 25 FCSC Semiann. Rep. 55 [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.

The record includes, in support of the claimed values, a description of the improved realty as a wooden house with tiles having about 6 rooms; measuring about 500 square meters and located in the "Buena Vista" neighborhood. The record establishes that it was purchased in 1920. Based on the entire record and evidence available to the Commission regarding the value of similar properties in Marianao, Havana, the Commission finds that the residence had a value of \$10,000.00 on the date of loss and that claimant's 25% interest therein had a value of \$2,250.00.

With regard to the paid-up life insurance policy, the record includes a copy of a statement from the insurer, Banco del Caribe, S.A., dated April 10, 1962 stating that the total to be settled was \$1,983.32. The Commission in this type of case has held that the value or proceeds of a life insurance policy were subject under Cuban laws to confiscation as the property of an American nonresident of Cuba. (See Claim of Zena K. Feldman, et al, Claim No. CU-0091.) The Commission therefore finds that the paid-up insurance policy had a value of \$1,983.32 on the date of loss.

Accordingly, the Commission finds that claimant suffered the following losses within the meaning of Title V of the Act as the result of the taking of her real and personal property by the Government of Cuba on December 6, 1961:

One-fourth interest in residence in Marianao	\$2,500.00
Paid-up life insurance	1,983.32
Bank account	<u>1,238.29</u>
	\$5,721.61

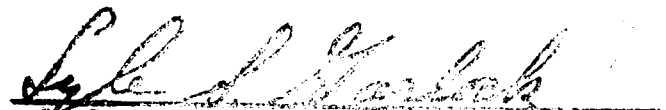
The Commission has decided that in certifications of loss on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be included at the rate of 6% per annum from the date of loss to the date of settlement (see Claim of Lisle Corporation, Claim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


CERTIFICATION OF LOSS

The Commission certifies that ANNA KIEPER 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 Five Thousand Seven Hundred Twenty-one Dollars and Sixty-one Cents (\$5,721.61) 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

9 SEP 1970


Wyle 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, 32 Fed. Reg. 412-13 (1967).)