

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

IN THE MATTER OF THE CLAIM OF

LUZMILDA MENENDEZ VALDES

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-3795

Decision No. CU 4950

Counsel for claimant:

John C. Bierley, 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 LUZMILDA MENENDEZ VALDES for \$19,919.04 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 Commission's Regulations provide that claims under Title V of the Act (Cuban claims) shall be filed with the Commission on or before May 1, 1967 (FCSC Reg., 45 C.F.R. Sec. 531.1(d) (Supp. 1967)); and further that any initial written indication of an intention to file a claim received within 30 days prior to the expiration of the filing period thereof shall be considered as a timely filing period. (Reg., Sec. 531.1(g))

No claim was filed with this Commission by or on behalf of claimant within the allowable period for timely filing of such claims, nor does the Commission have any record of any communication concerning her asserted loss.

The Commission has held, however, that it will accept for consideration on their merits claims filed after the deadline so long as the consideration thereof does not impede the determination of those claims which were timely filed. (See Claim of John Korenda, Claim No. CU-8255.) This is such a claim.

Claimant describes her loss as follows;

Land at 23 Ave. Guanabacoa, Havana	\$ 2,000.00
House	10,312.24
Household furnishings	4,416.00
1959 Peugeot	675.00
Dental laboratory equipment	<u>2,515.80</u>
	\$19,919.04

Based upon the entire record, including affidavits of claimant with regard to the real and personal property and the original copies of the closing statement and receipt with regard to the improved real property, the Commission finds that claimant and, pursuant to the Community Property Law of Cuba, her

husband, Hector J. L. Valdes, a Cuban national, each owned a 1/2 interest in the real and personal property subject of this claim.

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 was outlawed (Article 2). The law covered residential, commercial, industrial and business office properties (Article 15). Following Chapter VI of the law appears a section entitled "Temporary Provisions" and the third paragraph thereof provides that citizens of foreign countries who do not have the status of legal residents shall be excluded from the rights and benefits conferred by this law.

Based on the evidence of record the Commission finds that claimant's house was within the purview of the Urban Reform Law and was taken by the Government of Cuba on January 18, 1963 when she and her husband left Cuba (see Claim of Henry Lewis Slade, Claim No. CU-0183, 1967 FCSC Ann. Rep. 39). The Commission further finds that the household furnishings therein and the 1959 Peugeot were taken on that date.

The Commission also finds based on the evidence of record that the dental laboratory equipment was taken by the Government of Cuba on November 2, 1962, for transfer to the Medical School of the University of Havana.

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 one-story two-bedroom house, of concrete block located on a lot 75 feet by 125 feet, purchased on January 21, 1961. The record also includes a copy of a photograph of the house, a photograph of some of the interior of the house; a detailed list of the household furnishings and dental laboratory equipment including purchase price, date of acquisition and estimated depreciation; as well as the aforementioned copy of the closing statement and receipt. The latter discloses that the purchase price on the house was \$9,042.66, the down payment was \$2,042.66 and that the mortgage was \$7,000.00. By affidavit, claimant states that this mortgage had been reduced to \$6,418.91.

The record also includes an itemized list of the improvements to the house that were made after its purchase.

On the basis of the evidence of record, the Commission finds that on January 18, 1963, the date of loss, the household furnishings and the automobile, subject of this claim, had an aggregate value of \$5,091.00, and the house and lot, including the improvements, had a value of \$12,312.24. Since at the time of loss a balance of \$6,418.91 was still due and owing on the mortgage secured by the improved realty, the value of the property must be reduced by this amount, leaving an equity of \$5,893.33. The Commission also finds that on November 2, 1962, the date of loss of the dental laboratory equipment, subject of this claim, this equipment after appropriate depreciation had a value of \$2,515.80.

Inasmuch as claimant's husband, a Cuban national, owned a 1/2 interest in the real and personal property, as stated above, so much of this claim as is based on his interest is hereby denied.

Accordingly, the Commission concludes that claimant suffered a loss in the aggregate amount of \$6,750.07 within the meaning of Title V of the Act, as a result of the taking of her property by the Government of Cuba, summarized as follows:

<u>Item</u>	<u>Date of Loss</u>	<u>Value of Claimant's Interest</u>
1. 1/2 interest in improved realty	January 18, 1963	\$2,946.67
2. 1/2 interest in household furnishings and automobile	January 18, 1963	2,545.50
3. 1/2 interest in laboratory equipment	November 2, 1962	<u>1,257.90</u>
		<u>\$6,750.07</u>

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 ordered as follows:


<u>From</u>	<u>On</u>
November 2, 1962	\$1,257.90
January 18, 1963	<u>5,492.17</u>
	<u>\$6,750.07</u>


CERTIFICATION OF LOSS


The Commission certifies that LUZMILDA MENENDEZ VALDES 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 Six Thousand Seven Hundred Fifty Dollars and Seven Cents (\$6,750.07) with interest thereon at 6% per annum from the respective dates of loss to the date of settlement.

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

JUN 10 1970


Lyle S. Garlock, Chairman


Theodore Jaffe, Commissioner


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 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).)