

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

IN THE MATTER OF THE CLAIM OF

ADA M. PROENZA

Claim No. CIJ-1074

Decision No. CIJ-575

Under the International Claims Settlement
Act of 1949, as amended

Counsel for Claimant:

Rene V. Murai, Esq.

Petition to reopen; Proposed Decision dated and entered November 1, 1967; Final Decision entered September 25, 1968.

AMENDED FINAL DECISION

The Commission issued a Proposed Decision in this claim on November 1, 1967, denying the same for lack of proof. No objections having been filed, the Proposed Decision was entered as the Final Decision in this claim on September 25, 1968.

Subsequently, claimant requested the reopening of the claim and submitted supporting evidence, including her birth certificate which shows that she has been a national of the United States since birth. Upon due consideration, the Commission has granted claimant's request for reopening and now finds the following:

Claimant's mother, Esperanza Matos Camacho, owned a piece of vacant land measuring 457.20 square meters in the town of Cueto, Province of Oriente. On December 24, 1954 claimant's mother authorized her and claimant's husband, Rafael Proenza Morales, to construct a house on the lot. The record shows that in 1955 claimant and her husband constructed on the lot a one-family house for residential purposes, numbered 173 Heredia Street and that they occupied and used the house until August 8, 1960, when it was taken by the Government of Cuba pursuant to the Law on Agrarian Reform.

According to the community property laws of Cuba, the property acquired by one or both spouses during the marriage with money of the marriage partnership or by the industry, salary or work of either or both spouses, and the fruits thereof, belong in equal parts to both spouses (see Claim of Robert L. Cheaney et al, Claim No. CU-0915). Accordingly, the Commission finds that claimant owned a one-half interest in the use and possession of the building, which she and her husband enjoyed without limitation to time and without payment of rents. The other one-half interest was owned by claimant's husband.

The record does not show that claimant's husband was a national of the United States at the time of the loss. Section 504(a) of the Act provides that a claim shall not be considered under Section 503(a) of the Act 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. In the absence of evidence as to the United States nationality of Rafael Proenza Morales, so much of the claim as is based on his one-half interest cannot be considered here.

The value of claimant's interest remains to be determined. 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 house in question contained four bedrooms, one living room, a receiving room, dining room, kitchen and bath. The house was fully furnished and equipped. On the basis of the entire record, the Commission finds that at the time of taking claimant's one-half interest in the use and enjoyment of the house was equivalent to \$4,500.00 and that her interest in the personal property was \$1,500.00. The Commission, therefore, concludes that claimant suffered a loss, as a result of actions of the Government of Cuba in the aggregate amount of \$6,000.00.

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.

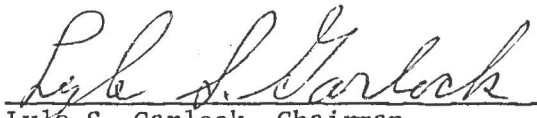
Accordingly, the Final Decision of September 25, 1968 is set aside, the following Certification of Loss will be entered, and in all other respects the Final Decision, as amended herein, is affirmed.

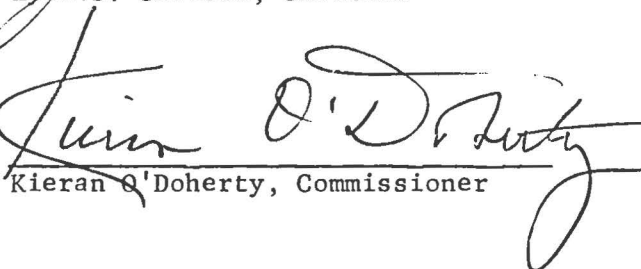
CERTIFICATION OF LOSS

The Commission certifies that ADA M. PROENZA 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 Dollars (\$6,000.00) with interest at 6% per annum from August 8, 1960, the date of loss to the date of settlement.

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

JUN 30 1972


Lyle S. Garlock, Chairman


Kieran O'Doherty, 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.

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IN THE MATTER OF THE CLAIM OF

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Claim No. CU -1074

Decision No. CU

575

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 \$15,000.00, was presented by ADA M. PROENZA and is based upon the asserted loss of improved real property and personalty. Claimant stated that she 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.

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).)

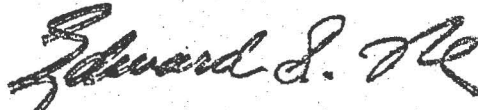
Claimant avers that she is the owner of a one-family, frame residential structure located at Cueto, Oriente, Cuba, and of certain household furnishings contained therein, which are asserted to have been taken on August 14, 1960, pursuant to the "Reforma Urbana". Other than claimant's statements, the record contains no evidence concerning ownership by a United States national of the real and personal property, subject of this claim, or of the loss and value thereof.

By Commission letter of March 2, 1967, claimant was advised as to the type of evidence proper for submission to establish the instant claim under the Act. No evidence in response to this correspondence has been received to date. On September 1, 1967, claimant was invited to submit the suggested evidence within 45 days from that date, and she 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.

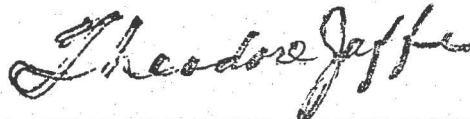
The Commission finds that claimant has not met the burden of proof in that she has failed to establish ownership of rights and interests in property which was nationalized, expropriated or otherwise taken by the Government of Cuba. Thus, the Commission is constrained to deny this claim and it is hereby 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

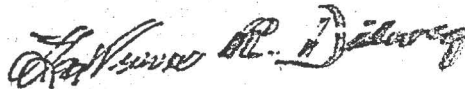
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Edward D. Re, Chairman



Theodore Jaffe, Commissioner



LaVern R. Dilweg, 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).)