

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

IN THE MATTER OF THE CLAIM OF

RICARDO GONZALO ARAUJO

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU- 2600

Decision No. CU- 6062

AMENDED FINAL DECISION

The Commission issued a Proposed Decision in this claim on February 11, 1971, certifying a loss of \$2,034.17 resulting from the taking by the Government of Cuba of a 1954 Plymouth automobile and claimant's household goods. A portion of the claim based upon a partnership interest in a business enterprise was denied, because the Commission was unable to ascertain the value of the partnership's assets at the time of taking. Another portion of the claim based upon the loss of a house located at No. 813 Virtudes in Havana was denied, because on the date of taking of the house, October 14, 1960, the then owner Francisca Leonor Lima y Andre, claimant's mother, appeared to have been a Cuban national.

No objections were filed to the Proposed Decision and on March 18, 1971 the same was entered as the Final Decision on this claim.

Subsequent documentation, however, revealed that claimant's mother acquired United States nationality through marriage in November 1906 and there is no record of loss of such nationality prior to her death on February 13, 1962.

Francisca Leonor Lima y Andre died intestate. She was survived by seven children, including the claimant herein, and each of her children inherited a one-seventh interest in the claim against the Government of Cuba.

The house consisted of a two-story building made of reinforced concrete, standing on a lot measuring 445 square meters. The property was encumbered with a first mortgage of \$30,000.00 in favor of Romar S.A. and with a second

mortgage of \$8,000.00 in favor of a holder in due course of a promissory note. The record indicates that the mortgages were given for the purpose of modernizing the building which was used for business and residential purposes, and which was appraised in 1956 in the amount of \$100,000.00.

The Commission finds that in 1960, at the time of taking, the property was worth \$100,000.00, less mortgages which must be deducted \$38,000.00, leaving a net value of \$62,000.00; and that claimant's 1/7th interest in the claim for the loss of the house had a value of \$8,857.14 with interest thereon at the rate of 6% from October 14, 1960.

The accrued interest as certified below will be computed as follows:

<u>FROM</u>	<u>ON</u>
October 14, 1960	\$ 8,857.14
December 31, 1966	<u>2,034.17</u>
	\$10,891.31

In view of the foregoing the Certification of Loss in the Final Decision is set aside, the following Certification will be entered, and in all other respects the Final Decision, as amended herein, is affirmed.

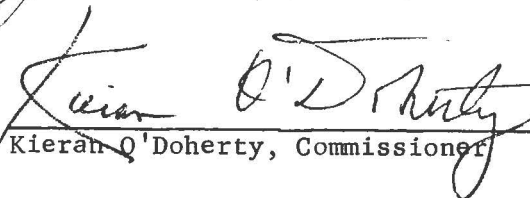
CERTIFICATION OF LOSS

The Commission certifies that RICARDO GONZALO ARAUJO 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 Ten Thousand Eight Hundred Ninety-One Dollars and Thirty-One Cents (\$10,891.31) 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 Amended Final
Decision of the Commission

JUN 30 1972


Lyle S. Garlock, Chairman


Kieran O'Doherty, Commissioner

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

IN THE MATTER OF THE CLAIM OF

RICARDO GONZALO ARAUJO

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -2600

Decision No. CU
6062

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 RICARDO GONZALO ARAUJO in the amount of \$49,000.00 based upon the asserted ownership and loss of 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 initially described his asserted losses as follows:

Land	\$ 3,000.00
Building	11,000.00
Personal property, including furniture, equipment, merchandise, etc.	<u>35,000.00</u>
	\$49,000.00

By letter of October 11, 1967 claimant listed various items of personalty including an automobile with a total estimated cost of \$4,260.00; part of a lot of land at Virtudes 813, asserting his interest as \$3,000.00; and \$11,000.00 for an interest in a building erected in 1956. Further he referred to a business of making coffins, in which he states he was entitled to an estimated amount of \$30,000.00. The total of these figures is \$48,260.00.

IMPROVED REALTY

Evidence of record indicates that claimant's mother, Francisca Leonor Lima y Andre, purchased the real property at Virtudes 813, apparently in Havana, in 1944. She was then a widow, her husband having died the previous year. Document No. 309 of November 27, 1944, indicates the property was already improved with a building at the time of purchase, although additions may have been made thereafter.

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).

The Commission finds that the real property in question 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.)

On October 14, 1960, claimant's mother was a Cuban national. She died intestate on February 13, 1962, survived by seven children. However, any interest of the claimant with respect to this property was in a claim which arose in favor of a non-United States national. Since the claim was not owned by a United States national at the time of loss it is not within the scope of Title V of the Act and any claim based thereon must be denied. (See Claim of Sigridur Einarsdottir, Claim No. CU-0728, 25 FCSC Semiann. Rep. 45 [July-Dec. 1966].)

CASA ARAUJO

The record reflects that claimant's father, who died in 1943, was engaged in the business of making coffins, and this enterprise has been known as the Casa Araujo, or Fabrica de Ataudes. His estate was the subject of division and adjudication thereof set out in Document 37 of June 5, 1956. In this document it is provided that the widow should receive an interest of 39.04 per cent and since three children renounced their interests, each of the four remaining children received an interest of 15.24 per cent. At that time the claimant's interest was given an evaluation of \$4,195.68.

It appears that after acquisition of the property at Virtudes 813 by the mother, the business was conducted there.

It would also appear that claimant's interest in this business would be equivalent to the total of 15.24 per cent and one-seventh part of 39.04 per cent.

In evaluating this part of his claim, claimant has relied on a basic figure of \$146,993.07, the origin of which is further discussed below. He seeks the following:

1/7 of 39.04%	- or	\$ 8,198.13	(times 7 =	\$ 57,386.91
15.24%		<u>22,401.74</u>	(times 4 =	<u>89,606.96</u>
Inherited share	-	\$30,599.87		\$146,993.07 (sic)

However, the figure of \$146,993.07 is derived from a Statement of Situation of the Ministerio de Hacienda, Direccion Nacional de Ingresos, of the Republic of Cuba, dated December 31, 1965 and is signed by claimant's brother, as Administrator. It incidentally reflects that at the beginning of the year the capital was \$101,902.14 and at the end of the year it totalled \$155,578.10, including taxes of \$1,057.84 and a checking account of \$7,527.19. It is clear from this document that on December 31, 1965, the enterprise was already part of the government structure and no longer a private enterprise. Claimant, having arrived in the United States on December 29, 1966, was asked to clarify when the Government of Cuba first intervened this enterprise and what its value was at such time. He replied, however, that it was intervened or nationalized by the Government of Cuba on June 3, 1966. This may have been the date of some formal change of title, but clearly, on the face of the record it was not the initial action of the Government of Cuba.

The Commission is constrained to hold that absent evidence of the date of initial intervention in this business, and of the value of it at such time, any finding of value could only be speculative and insupportable. Accordingly, this item of claim is denied.

PERSONALTY

The record includes claimant's affidavit listing personal property lost in Cuba, as well as certain documents in support such as invoices, etc. The list gives estimated costs, and includes a 1954 Plymouth and various household appliances purchased at different dates from 1957 and thereafter.

The Commission finds that claimant owned this personal property and that it was taken by the Government of Cuba on December 3, 1966, subsequent to claimant's departure.

The Commission has examined the list submitted and after application of appropriate depreciation, finds the personalty had a residual value of \$2,034.17.

Accordingly, the Commission holds that claimant suffered a loss of \$2,034.17 within the meaning of Title V of the Act.


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.

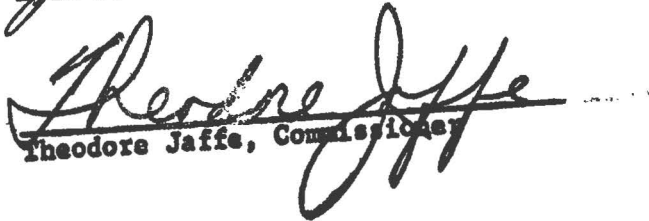
CERTIFICATION OF LOSS

The Commission certifies that RICARDO GONZALO ARAUJO 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 Two Thousand Thirty-four Dollars and Seventeen Cents (\$2,034.17) with interest thereon at 6% per annum from December 31, 1966 to the date of settlement.

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

FEB 11 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. 1.5(e) and (g), as amended (1970).)