

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

IN THE MATTER OF THE CLAIM OF

VIOLETA MACHADO

Claim No. CU -3952

Decision No. CU-1803

Under the International Claims Settlement
Act of 1949, as amended

Appeal and objections from a Proposed Decision entered on May 1, 1968. No oral hearing requested.

Hearing on the record held on **AUG 18 1971**

FINAL DECISION

This claim based on the asserted loss of certain real and personal property was denied by the Commission by Proposed Decision issued on May 1, 1968 inasmuch as the evidence of record was insufficient to establish the claim.

The record now establishes that claimant, VIOLETA MACHADO, has been a United States national since birth. Her husband, GERARDO MACHADO, is a Cuban national.

Claimants have subsequently submitted documents, their affidavit, and other evidence in support of their claim.

The record includes an official document dated April 22, 1965 which reflects that claimant and her husband owned the residence subject of this claim but that their minor son, a Cuban national, owned the land on which the residence was built.

RESIDENCE

On the basis of the present record the Commission finds that claimant and her husband, pursuant to the Community Property Law of Cuba, jointly owned the residence in Oriente, Cuba. Since her husband is not a United States national his 1/2 interest therein cannot be considered as it is not within the scope of Section 504(a) of the Act.

Based on the evidence of record the Commission finds, in the absence of evidence to the contrary, that subject residence was taken by the Government of Cuba pursuant to Law 989 on April 28, 1966 when claimant and her family left Cuba.

The Act provides in Section 503(a) that in making determinations with respect to the validity and amount of claims and value or 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 document of April 22, 1965 describes the dwelling as a brick house with cement ceiling and mosaic floors with about 10 rooms and usual facilities, and measuring 274 square meters.

Based on the evidence of record and evidence available to the Commission regarding the value of similar properties in Oriente, the Commission finds that the value of the residence, exclusive of the lot, was \$15,000.00 and concludes that claimant, VIOLETA MACHADO, suffered a loss in the amount of \$7,500.00 for her 1/2 interest therein.

HOUSEHOLD FURNISHINGS

Claimants assert a loss of \$6,000.00 for furniture including television and radios and \$4,000.00 for other personal belongings including clothing and kitchen utensils.

By various Commission letters including February 18, 1969 and November 25, 1969 it was suggested that claimants submit an itemized list of this personalty including value. On January 9, 1970, a reminder was sent and claimant, VIOLETA MACHADO, was informed that absent the suggested evidence within 45 days it might become necessary to determine the claim on the basis of the existing record. Since no reply has been received any determination of value could only be speculative. The Commission is therefore constrained to deny this portion of the claim and it is hereby denied.

MEDICAL PARTNERSHIP

Claimants assert a loss of \$10,000.00 for an interest in a medical partnership including medical equipment and furnishings. The record includes a document dated February 3, 1960 which reflects that claimant's husband invested \$1,000.00 for a 1/10 interest in a medical partnership. By the aforementioned letters it was suggested that claimant submit an itemized list of the personalty and other evidence to support the asserted value of \$10,000.00. No such evidence has been received.

Since the record contains no evidence from which it can be ascertained what the value of a 1/10 interest in this partnership was, the Commission is constrained to also deny this portion of the claim for failure of proof.

It may be noted that if probative evidence is received as to other items of claim in sufficient time to permit consideration thereof before the close of the program on June 30, 1972, the Commission will reopen the claim. Such evidence should be received on or before May 1, 1972 in order to permit adequate consideration thereof.

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 the remainder of the Proposed Decision, as amended herein, is affirmed.


CERTIFICATION OF LOSS

The Commission certifies that VIOLETA MACHADO 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 Seven Thousand Five Hundred Dollars (\$7,500.00) with interest thereon at 6% per annum from April 28, 1966 to the date of settlement.

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

AUG 1971


Lyle S. Carlock, Chairman


Theodore Jaffe, Commissioner

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PROPOSED DECISION

This claim against the Government of Cuba, filed under Title V of the International Claims Settlement Act of 1949, as amended, was opened by the Commission on June 30, 1967 in behalf of VIOLETA MACHADO, based upon possible property losses caused by expropriatory acts of the Government of Cuba.

Claimant asserts that she has been a national of the United States since birth; however, she has failed to submit evidence to establish her United States nationality.

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).)

In response to a Commission letter of August 31, 1967 addressed to a friend of the claimant residing in the United States, the Commission was advised as to the claimant's United States address. Accordingly, on September 22, 1967 the Commission corresponded with the claimant and requested that she indicate any losses which she may have sustained in Cuba. In reply to this letter, the claimant submitted a claim form in which she asserted ownership and loss of improved real property, as well as a one-half interest in items of medical equipment.

Since claimant submitted no evidence other than her own statements, on November 22, 1967 the Commission advised claimant as to the type of evidence proper for submission to establish this claim under the Act. No evidence or correspondence was received in reply to the Commission's suggestions.

Thereafter, by Commission letter of February 21, 1968, claimant was invited to submit any evidence available to her 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; neither has claimant corresponded with the Commission.

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. Accordingly, this claim 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

MAY 1 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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