

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

IN THE MATTER OF THE CLAIM OF

CARIBE BEAUTY SALONS, INC.

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-0503

Decision No. CU - 3503

Counsel for claimant: Proskauer Rose Goetz & Mendelsohn

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 CARIBE BEAUTY SALONS, INC., in the amount of \$156,644.57, based upon the asserted loss of certain personal property in Cuba.

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 502(1)(B) of the Act defines the term "national of the United States" as a corporation or other legal entity which is organized under the laws of the United States, or of any State, the District of Columbia, or the Commonwealth of Puerto Rico, if natural persons who are citizens of the United States own, directly or indirectly, 50 per centum or more of the outstanding capital stock or other beneficial interest of such corporation or entity.

The record shows that claimant was organized under the laws of the State of New York. An officer of claimant has certified that at all pertinent times more than 50% of the outstanding stock of claimant was owned by nationals of the United States. It has also been certified that 66-2/3% of the outstanding capital stock of claimant was owned by nationals of the United States at all pertinent times. The Commission holds that claimant is a national of the United States within the meaning of Section 502(1)(B) of the Act.

Claimant asserts the following losses as a result of action by the Government of Cuba in nationalizing the El Encanto department store, located in Havana, Cuba, in which claimant operated a beauty salon pursuant to a lease with the owner of the store, a Cuban Corporation:

Fixtures and Equipment	\$12,000.00
Less Depreciation	<u>1,974.24</u>
Net Fixtures and Equipment	\$ 10,025.76
Inventory of Supplies	1,674.48
Bank Account	243.95
Debt Due From Lessor	5,834.68
Leasehold	<u>138,865.70</u>
	<u>\$156,644.57</u>

The record shows that under date of August 15, 1959 claimant purchased the said fixtures and equipment located in the beauty salon of the El Encanto department store for the sum of \$12,000.00. The evidence includes photographs of the interior of the beauty salon showing said fixtures and equipment.

It further appears from the record that on August 17, 1959, claimant entered into an agreement with the owner of the department store, pursuant to which claimant was granted the right to use its equipment and operate the said beauty salon on the premises of the lessor. Apart from other provisions which will be discussed below, the lease provided for a payment to the lessor of 15% of the gross earnings of claimant, the use of the lessor's credit system in dealing with customers and the lessor's facilities and procedures for collections from customers to whom credit was extended. The beauty salon, in effect, was to be operated as if it were owned by the lessor. Claimant and the lessor were required to render monthly statements to each other so that appropriate adjustments could be made.

This arrangement continued until October 14, 1960 when the department store as well as the beauty salon were nationalized by the Government of Cuba. The record contains an affidavit from the manager of claimant's beauty salon who was present on October 14, 1960 when she received notice of said nationalization by the Government of Cuba.

On October 13, 1960, the Cuban government published in its Official Gazette Law 890, which listed as nationalized Solis, Entrialgo y Cia, S.A., the Cuban corporation that owned the department store in which claimant operated its beauty salon. The Commission therefore finds that claimant's property located in its beauty salon was nationalized by the Government of Cuba on October 13, 1960, and that claimant thereby sustained a loss within the meaning of Title V of the Act.

On the basis of the evidence of record, the Commission finds that claimant's fixtures and equipment, inventory of supplies, bank account

and debt due from the lessor, had an aggregate value of \$17,778.87 on the date of loss.

Claimant also asserts the loss of its leasehold which it states had a value of \$138,865.70. Claimant has computed this amount on the basis of its asserted earnings of \$2,680.38 for the 2-1/2 month period from August 15, 1959 to October 31, 1959, and projecting these earnings over a ten-year period. Accordingly, claimant computed that the leasehold had a value of \$125,977.86. To this sum, claimant added "excessive" administrative costs in organizing its business in Cuba in the amount of \$32,550.00, and an item called "Depreciation in excess of original cost" in the amount of \$19,587.84. From the sum thus obtained, \$178,115.70, claimant deducted estimated United States and Cuban income taxes in the amount of \$39,250.00, leaving a net value of \$138,865.70. It appears from claimant's statement in which these computations well made, attached to its official claim form, that the "excessive" administrative costs and "excess" depreciation were computed by likewise projecting costs and depreciation during the 2-1/2 month basic period.

An examination of the lease for claimant's beauty salon discloses the following:

1. The agreement was to terminate on August 17, 1960, but was to be deemed automatically renewed for one-year periods, with the right of either party to rescind by written notification.
2. Pursuant to Clause Z-3 of the "FIFTH" paragraph, voluntary or involuntary liquidation proceedings by either party automatically terminated the agreement.
3. Pursuant to the "EIGHTH" paragraph, both parties waived any rights or benefits under present or future laws or regulations, whether retroactive or not, which tended to change the agreement and/or obligations under the agreement, or occasioned by civil legislation applicable to the agreement.

These circumstances were brought to the attention of claimant, and it was suggested that claimant support its claim for the leasehold in

view of the nationalization of claimant and its lessor and the foregoing provisions of the lease. Counsel for claimant responded by stating that the claimant is unable to submit additional evidence. This reply also applied to other suggestions of the Commission concerning the "excess" depreciation and "excessive" administration costs.

Upon careful consideration of the entire record relating to the portion of the claim for the leasehold in the amount of \$125,977.86 the Commission finds that the nationalization of the lessor and claimant on October 13, 1960 terminated the lease pursuant to the terms of the lease. Accordingly, the Commission concludes that claimant's leasehold had no value on the date of loss. The claim for "excessive administrative costs" in the amount of \$32,550.00 is, according to claimant's statement, "due largely to organizational expenses required at inception," and as indicated above this amount was also a projection based upon a 2-1/2 month base period. It does not appear to have been an item that enhanced the value of the beauty salon and the short duration of the business, approximately one year, can hardly be the basis for concluding that the beauty salon was a going concern. Moreover, the amount of \$32,550.00 was estimated on a projected basis of only a 2-1/2 month period. Accordingly, this amount cannot be considered as an asset of claimant on the date of loss. The claim for depreciation in the amount of \$19,587.84 is based upon claimant's fixtures and equipment which it had purchased in 1959 for \$12,000.00 and had depreciated it to \$10,025.76 as of the date of loss. Here again claimant used the amount of depreciation of a 2-1/2 month period and projected it over a ten-year period to arrive at a value of \$31,587.84, almost three times the cost of said property. From this amount claimant subtracted its cost of \$12,000.00 and arrived at a figure of \$19,587.84, which it designated as "Depreciation in excess of original cost." Clearly there can be no depreciation in an amount in excess of the original cost of the property.

For all of the foregoing reasons the portion of the claim for \$138,865.70 is denied in its entirety.

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 the Claim of Lisle Corporation, FCSC Claim No. CU-0644), and in the instant case it is so ordered.

CERTIFICATION OF LOSS

The Commission certifies that CARIBE BEAUTY SALONS, INC. suffered a loss, as a result of action 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 Seventeen Thousand Seven Hundred Seventy-Eight Dollars and Eighty-Seven Cents (\$17,778.87) with interest thereon at 6% per annum from October 13, 1960 to the date of settlement.

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

FEB 12 1969

Leonard v. B. Sutton

Leonard v. B. Sutton, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

Sidney Freidberg

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).)