

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

IN THE MATTER OF THE CLAIM OF

M. LOWENSTEIN & SONS, INC.

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-0532

Decision No. CU 2719

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, in the amount of \$90,569.47, was presented by M. LOWENSTEIN & SONS, INC., and is based upon the asserted loss of a bank account and payment for merchandise shipped to 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 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.

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.

An officer of the claimant corporation has certified that the claimant was organized in the State of New York in 1918, and that at all times between that date and the presentation of this claim on October 29, 1965, more than 50% of the outstanding capital stock of the claimant has been owned by United States nationals. The Commission holds that claimant is a national of the United States within the meaning of Section 502(1)(B) of the Act.

Claimant states that 5,705 of its 5,767 stockholders were residents of the United States and were assumed to be nationals of the United States, that such persons held 3,165,708 shares; and that 62 stockholders, holding 30,926 shares, were residents of foreign countries and were assumed to be nationals of those countries.

The record contains copies of claimant's bank drafts, invoices and bills of lading which reflect the sale to various Cuban purchasers of merchandise totalling \$87,511.40. Relating to each transaction, there also appears a letter, addressed to claimant from its bank, informing claimant that the draft in question had been paid to the appropriate Cuban collecting bank and that dollar reimbursement releases from the Cuban Government were being awaited.

<u>CUSTOMER</u>	<u>DATE PAYMENT DUE OR ADVICE OF PAYMENT</u>	<u>AMOUNT</u>
Almacenes Klipper S.A.	August 19, 1960	\$ 2,064.04
Almacenes de Pielas "La Orensana"	November 23, 1959	736.55
Aguirre Villar & Cia.	October 26, 1960	6,388.65
" " "	November 29, 1960	1,341.25
Abelis Bakas	May 17, 1960	2,061.41
Bosch Carrio y Cia.	December 8, 1959	1,049.69
Cia. de Tejidos Selectos, S.A.	October 6, 1960	1,017.53
" " " " "	August 30, 1960	3,608.23
" " " " "	February 23, 1960	1,367.98
Confecciones Mascot, S.A.	June 22, 1960	2,221.75
" " "	December 21, 1960	2,927.07
Duran, Alvarez, Vasquez y Cia.	June 7, 1960	2,560.27
" " " "	November 14, 1960	1,229.86
M. Feterman	March 25, 1960	4,650.87
" "	November 24, 1960	1,179.71
G. Ingelmo y Hnos.	January 22, 1960	1,555.74
La Isla de Cuba S.A.	April 25, 1960	853.90
R. Lewis	March 4, 1960	1,553.67
Lopez y Cia. (Maquequin)	November 26, 1959	3,856.51
F. Martin & Cia.	January 18, 1960	2,426.69
Navarro e Hijo	March 29, 1961	848.81
Novigrod e Hijo	March 28, 1960	1,903.28
" "	June 14, 1960	4,005.12
Menendez y Granda	March 31, 1960	873.19
Pernas y Cia.	February 1, 1960	4,039.19
Pielago Irastorza y Cia.	June 13, 1960	914.23
Rex Textile Co.	December 14, 1959	1,363.77
Jose A. Rodriguez	November 4, 1959	3,669.00
Roca y Cia.	March 20, 1961	2,219.59
Rodriguez, Cabrera y Cia.	February 9, 1960	2,440.14
Sampedro y Cia.	October 18, 1960	1,611.88
" "	August 11, 1960	1,297.41

<u>CUSTOMER</u>	<u>DATE PAYMENT DUE OR ADVISE OF PAYMENT</u>	<u>AMOUNT</u>
Tejidos Karioka, S.A.	November 29, 1960	\$ 1,374.84
Tejidos Nina S.A.	March 21, 1960	2,207.89
" " "	November 19, 1959	733.25
Tiendas Los Precios Fijos S.A.	September 21, 1960	3,469.93
" " " " "	January 21, 1960	1,619.98
" " " " "	February 2, 1960	2,518.49
" " " " "	January 20, 1960	1,277.77
Tiendas Los Precios S.A.	November 14, 1960	821.71
Tuchman & Hershman	December 21, 1960	783.98
" "	November 27, 1959	1,828.01
L. Vivanco y Cia.	May 12, 1960	<u>1,038.57</u>
	Total	<u>\$ 87,511.40</u>

The record also contains copies of claimant's invoices and bills of lading which reflect sale and shipment to various Cuban purchasers of goods totalling an additional \$3,058.07. The purchase price of this merchandise was paid direct to claimant's agent in Havana, Mr. Alfred H. Zeledon, who in turn placed the funds in deposit with the Royal Bank of Canada.

The record contains the agent's affidavit stating that the \$3,058.07 was held by him for claimant's benefit. The record contains a letter from the Royal Bank of Canada, addressed to Mr. Zeledon, informing him that the balance of his account, \$3,058.07, had been frozen. The record also contains a photographic copy of a monthly account statement, sent by the Royal Bank of Canada to Mr. Alfred H. Zeledon, showing a balance of \$3,058.07 as of May 18, 1960. Claimant states it has never received the proceeds from either the drafts or the bank account.

The Government of Cuba, on September 29, 1959, published its Law 568, concerning foreign exchange. Thereafter the Cuban Government effectively precluded transfers of funds, in this and similar cases, by numerous, unreasonable and costly demands upon the consignees, who were thus deterred from complying with the demands of the Cuban Government.

The Commission holds that Cuban Law 568 and the Cuban Government's implementation thereof, with respect to the rights of the claimant herein, was not in reality a legitimate exercise of sovereign authority to regulate foreign exchange, but constituted an intervention by the Government of Cuba into the contractual rights of the claimant, which resulted in the taking of American-owned property within the meaning of Section 503(a) of the Act. (See Claim of The Schwarzenbach Huber Company, Claim No. CU-0019, 25 FCSC Semiann. Rep. 58 [July-Dec. 1966].)

With respect to the bank account held by the Havana agent for claimant's benefit, the Commission has found that the claimant was the owner of the account and Law 989, published in the Official Gazette on December 6, 1961, by its terms nationalized by confiscation all goods and chattels, rights, shares, stocks and bonds, and other securities of persons and entities who had left Cuba, including bank accounts. (See Claim of Floyd W. Auld, Claim No. CU-0020, 25 FCSC Semiann. Rep. 55 [July-Dec. 1966].)

Accordingly, in the instant claim the Commission finds that claimant's bank account was taken on December 6, 1961; that the remainder of claimant's property was lost as a result of intervention by the Government of Cuba; and that, in the absence of evidence to the contrary, the loss occurred on

<u>Date of Loss</u>	<u>Amount</u>
November 4, 1959	\$ 3,669.00
November 19, 1959	733.25
November 23, 1959	736.55
November 26, 1959	3,856.51
November 27, 1959	1,828.01
December 8, 1959	1,049.69
December 14, 1959	1,363.77
January 18, 1960	2,426.69
January 20, 1960	1,277.77
January 21, 1960	1,619.98
January 22, 1960	1,555.74
February 1, 1960	4,039.19
February 2, 1960	2,518.49
February 9, 1960	2,440.14
February 23, 1960	1,367.98

<u>Date of Loss</u>	<u>Amount</u>
March 4, 1960	\$ 1,553.67
March 21, 1960	2,207.89
March 25, 1960	4,650.87
March 28, 1960	1,903.28
March 31, 1960	873.19
April 25, 1960	853.90
May 12, 1960	1,038.57
May 17, 1960	2,061.41
June 7, 1960	2,560.27
June 13, 1960	914.23
June 14, 1960	4,005.12
June 22, 1960	2,221.75
August 11, 1960	1,297.41
August 19, 1960	2,064.04
August 30, 1960	3,608.23
September 21, 1960	3,469.93
October 6, 1960	1,017.53
October 18, 1960	1,611.88
October 26, 1960	6,388.65
November 14, 1960	2,051.57
November 24, 1960	1,179.71
November 29, 1960	2,716.09
December 21, 1960	3,711.05
March 20, 1961	2,219.59
March 29, 1961	848.81
December 6, 1961	<u>3,058.07</u>

Total \$ 90,569.47

In each case the date of loss is either the date upon which payment became due, of advice of payment, or, in the case of the bank account, the date upon which Law 989 was published.

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.)

Accordingly, the Commission concludes that the amount of the loss sustained by claimant shall be increased by interest thereon at the rate of 6% per annum from the dates on which the losses occurred, to the date on which provisions are made for the settlement thereof.

CERTIFICATION OF LOSS

The Commission certifies that M. LOWENSTEIN & SONS, INC. 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 Ninety Thousand Five Hundred Sixty-Nine Dollars and Forty-Seven Cents (\$90,569.47) 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

AUG 14 1968

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).)