

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

IN THE MATTER OF THE CLAIM OF

GLORIA TEXTILE CORP.

Under the International Claims Settlement  
Act of 1949, as amended

Claim No. CU -0594

Decision No. CU -6089

Counsel for claimant:

Rufus King, Esq.

Appeal and objections from a Proposed Decision entered March 3, 1971.  
Oral hearing requested.

Oral argument June 16, 1971 by Rufus King, Esq.

FINAL DECISION

The Commission issued its Proposed Decision on this claim on March 3, 1971, denying the same for the reason that the claimant GLORIA TEXTILE CORP. (GLORIA), parent of a Cuban corporate enterprise failed to establish that 50 percent or more of the outstanding capital of GLORIA was owned by nationals of the United States on the date of the loss (October 13, 1960) and continuously thereafter until the date of filing with the Commission, as required by Sections 502(1)(B) and 504(a) of the Act.

Claimant through counsel filed objections to the Proposed Decision, submitted additional documentary evidence and requested a hearing which was held on June 16, 1971. At the hearing counsel for claimant introduced the testimony of two witnesses: Isaac Behar, Secretary of GLORIA, and Candido F. Rodriguez, presently majority stockholder of GLORIA.

The documentation before the Commission and the testimony of the witnesses show that on November 20, 1959, Isaac Behar's wife transferred all 3,000 outstanding shares of stock of GLORIA to Joseph Gabay, a national of the United States. Gabay, on the other hand, gave Isaac Behar, a non-United States

national, an option to purchase the stock within ten years. On August 15, 1960 Behar assigned an interest (as to 1,800 shares) in the option to Candido F. Rodriguez, an American national. The Commission finds that this transaction did not transfer any stock interest to Rodriguez as Behar had not exercised the option and did not own any stock in GLORIA on that date.

The record and testimony of witnesses further show that GLORIA's property in Cuba was nationalized by the Cuban Government on October 13, 1960. At that time GLORIA's stock was owned by Gabay, a United States national, as previously stated. On October 25, 1961 Behar, not a United States national, exercised his option and received from Gabay a certificate endorsed in blank for the total number of shares. Behar now owned the 3,000 shares of GLORIA and the Commission finds that the claim against the Government of Cuba was therefore not owned at such time by a corporation qualifying as a United States national under the Act.

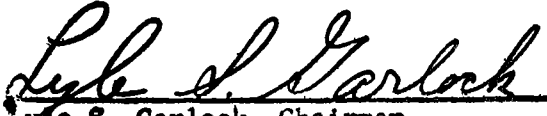
According to the testimony of Isaac Behar, he did not enter the name of Rodriguez on the certificate received from Gabay for about a year. The 3,000 shares of stock therefore remained the property of Isaac Behar for at least a year after he received the endorsed-in-blank certificate. Some time after a year Behar transferred 1,800 shares to Rodriguez. Subsequently in 1965, the mechanical transfer of the 1,800 shares of stock was accomplished by the issuance of new certificates.

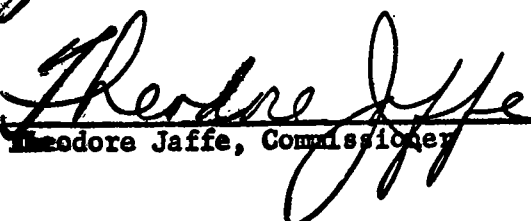
Since the claim for a period of time between October 25, 1961 and the transfer to Rodriguez (approximately October 1962 or later) was not owned by a corporation qualifying as a United States national under the Act, the claim must be denied.

Accordingly, the Proposed Decision of March 3, 1971 denying the claim is affirmed.

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

**JUL 6 1971**

  
Lyle S. Garlock, Chairman

  
Theodore Jaffe, Commissioner

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**IN THE MATTER OF THE CLAIM OF**

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**Claim No. CU-0594**

**Decision No. CU 6089**

Counsel for claimant:

Rufus King, Esquire

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 GLORIA TEXTILE CORP. in the amount of \$3,486,500.00, based upon the loss of claimant's stockholder interest in an affiliated corporation 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 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.

The record shows that claimant corporation was organized on January 8, 1952 under the laws of the State of New York as a corporation bearing the name Behar Textile Corp; that the capital stock consisted originally of \$100,000.00 divided into 1,000 shares of \$100.00 par value each; that on January 15, 1953 the name of the corporation was changed to GLORIA TEXTILE CORP; that on November 20, 1959 the corporation had outstanding 3,000 shares of \$100.00 par value each, which were then held by one person; and that on the date of the presentation of the claim the outstanding capital stock was held by two persons, to which reference is made below.

The claim is based upon claimant's ownership of 6,973 shares of 7,511 outstanding shares of stock of Compania de Cintas de Telas de Cuba S.A. (Ribbon Fabrics Company of Cuba), a Cuban corporation, which had an authorized capital stock of 4,000,000 pesos divided into 8,000 shares of 500 pesos each, but as stated above, only 7,511 shares were issued and outstanding.

Since Compania de Cintas de Tela de Cuba S.A. was organized under the laws of Cuba, it does not qualify as a corporate "national of the United States"

defined under Section 502(1)(B) of the Act as a corporation or other legal entity organized under the laws of the United States, or any State, the District of Columbia, or the Commonwealth of Puerto Rico, whose ownership is vested to the extent of 50 percent or more in natural persons who are citizens of the United States. In this type of situation, it has been held that an American stockholder is entitled to file a claim for the value of his ownership interest (see Claim of Parke, Davis & Company, Claim No. CU-0180, 1967 FCSC Ann. Rep. 33).

The record shows that Compania de Cintas de Tela de Cuba S.A. was listed as nationalized in Cuban Law 890, when first published on October 13, 1960.

Isaac Behar, Secretary of claimant corporation, stated at the time of filing this claim that all 3,000 outstanding shares of GLORIA TEXTILE CORP. were owned from November 20, 1959 to August 14, 1965 by Joseph Gabay, assertedly a United States citizen, and thereafter 1,800 shares were owned by Candido F. Rodriguez, a United States citizen, and 1,200 shares by Isaac Behar himself, a Cuban citizen.

Counsel for claimant was repeatedly invited to submit evidence of the United States nationality of Joseph Gabay, but no such evidence was furnished. Documentation was presented, however, showing that Candido F. Rodriguez was a national of the United States since March 4, 1946, the date of his naturalization.

Subsequently, Isaac Behar, in statements dated January 7, 1969, and December 10, 1970, asserted that the shares of stock of claimant corporation were held until March 1959 by himself; from March 1959 to November 20, 1959, by Sara Bejar (his wife), and from November 20, 1959 to August 15, 1960 by Joseph Gabay. He further asserted that on August 15, 1960 a sale was consummated between him as seller and Candido F. Rodriguez as buyer of 1,800 shares of claimant corporation, on the basis of an option granted him by Joseph Gabay. In support of these assertions Isaac Behar submitted a copy of an agreement of May 10, 1960 between Joseph Gabay and Isaac Behar in which Gabay grants Behar an option to purchase the 3,000 shares of GLORIA TEXTILE

CORP., a copy of an instrument dated August 15, 1960 which purports to transfer the aforesaid 1,800 shares to Rodriguez; and a copy of an agreement of October 15, 1961 showing that on that date Behar exercised his option.

The record indicates that Gabay delivered the stock certificates to Isaac Behar on October 15, 1961, and that Behar executed the transfer of the certificates to Candido F. Rodriguez on August 15, 1965.

Based upon this evidence and the entire record, the Commission finds that on October 13, 1960, the date of nationalization of Compania de Cintas de Tela de Cuba S.A. title to 6,973 shares of stock of this company was held by GLORIA TEXTILE CORP., the claimant herein, and that title to all outstanding shares of stock of GLORIA TEXTILE CORP. was held by Joseph Gabay; that such title passed to Isaac Behar on October 15, 1961; and that Candido F. Rodriguez did not obtain possession and control of the 1,800 shares to which reference is made above, until August 15, 1965.


In the absence of evidence to show that Joseph Gabay was a national of the United States on October 13, 1960, and in view of the fact that Isaac Behar was not a national on that date and thereafter until April 12, 1968, the Commission finds that claimant has failed to establish that 50 percent

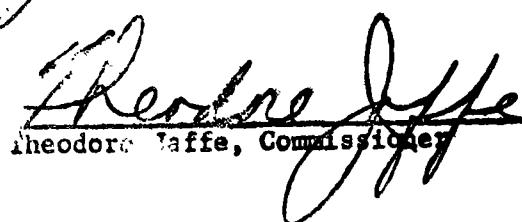
or more of the outstanding capital stock of GLORIA TEXTILE CORP. was owned by nationals of the United States on the date of the loss and continuously thereafter until the date of filing with the Commission, as required by Sections 502(1)(B) and 504(a) of the Act. Accordingly, the claim is denied.

The Commission deems it unnecessary to consider other elements of the claim.

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

MAR 3 1971

  
Lyle S. Garlock, Chairman

  
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 (1970))