

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

IN THE MATTER OF THE CLAIM OF

FRANK ANTHONY SANDERS

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-0919

Decision No. CU -6123

AMENDED PROPOSED DECISION

The Commission issued its Proposed Decision in this claim on March 24, 1971, certifying that FRANK ANTHONY SANDERS, the claimant herein, 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 \$10,112.04 with interest.

Claimant has submitted additional evidence and the Proposed Decision is hereby amended.

Claimant asserts that the Commission recognized only one purchase in 1959 of \$2,000 4% First Lien and Refunding Mortgage Gold Bonds of the Cuba Railroad Company, due in 1970, whereas he states that, in fact, on December 29, 1959, he purchased a total of \$4,000.00 of these bonds. Claimant further asserts that he purchased prior to nationalization an additional 3,000 pesos 3 1/2% Cumulative Income Debentures of the Consolidated Railroads of Cuba, due 2001, for which he is only now able to submit evidence. He presented this evidence and requested that the certification of losses be increased to include the aforesaid bonds.

Based upon the record and the newly submitted evidence the Commission now finds that on or about December 29, 1959, claimant purchased a total of \$4,000 First Lien and Refunding Mortgage Gold Bonds, Series A, of the Cuba Railroad Company and that he suffered a loss with respect to these bonds in the aggregate amount of \$2,730.24.

The Commission further finds that claimant and his mother, Rose F. Sanders, purchased the following 3% Cumulative Income Debentures, due 2001, of the Consolidated Railroads of Cuba:

| | |
|-------------------------------|--------------------|
| On or prior to August 3, 1959 | 2,000 pesos |
| On December 8, 1959 | 1,000 pesos |
| On June 15, 1960 | <u>2,000 pesos</u> |
| | 5,000 pesos |

As stated previously, claimant's mother, a national of the United States since her naturalization on April 11, 1949, relinquished all interest in these debentures without consideration to the claimant. The Commission, therefore, concludes that claimant suffered a loss with respect to these debentures in the aggregate amount of \$5,945.00

Claimant's total losses, are restated as follows:

| <u>Item</u> | <u>Date of Loss</u> | <u>Amount</u> |
|------------------------------------|---------------------|-----------------|
| Cia. Azucarera Atlantica del Golfo | August 6, 1960 | \$ 1,702.80 |
| | Dec. 1, 1964 | 26.50 |
| Cia. Azucarera Vertientes-Camaguey | August 6, 1960 | 4,639.46 |
| The Cuba Railroad Company | October 13, 1960 | 2,730.24 |
| Consolidated Railroads of Cuba | October 13, 1960 | <u>5,945.40</u> |
| | | \$15,044.40 |

For the reasons stated in the Proposed Decision, the amount of the loss shall be increased by interest thereon at the rate of 6 per cent per annum from the dates below to the date of settlement, as follows:

| <u>FROM</u> | <u>ON</u> |
|------------------|------------|
| August 6, 1960 | \$6,342.26 |
| October 13, 1960 | 8,675.64 |
| December 1, 1964 | 26.50 |

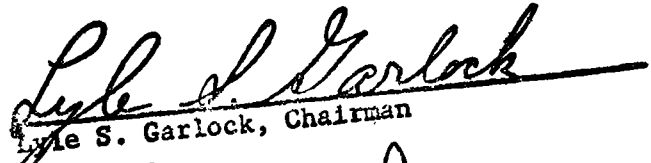
Accordingly, the Certification of Loss in the Proposed Decision is set aside and the following certification of loss will be entered and in all other respects the Proposed Decision is affirmed.

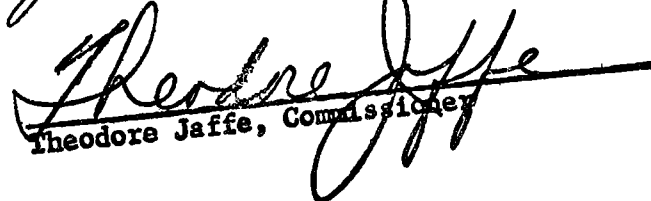
CERTIFICATION OF LOSS

The Commission certifies that FRANK ANTHONY SANDERS 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 Fifteen Thousand Forty-Four Dollars and Forty Cents (\$15,044.40) 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 Proposed
Decision of the Commission

MAY 12 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. 531.5(e) and (g), as amended, (1970).)

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

IN THE MATTER OF THE CLAIM OF

FRANK ANTHONY SANDERS

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-0919

Decision No. CU 6123

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 \$43,371.75 was presented by FRANK ANTHONY SANDERS, based upon the loss of certain securities. Claimant has been a national of the United States since his naturalization on January 20, 1947.

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.

Claimant submitted to the Commission certificates for the following securities upon which his claim is predicated:

- (1) 100 shares of Compania Azucarera Atlantica del Golfo (Atlantica del Golfo Sugar Company);
- (2) 900 shares of Compania Azucarera Vertientes-Camaguey de Cuba (Vertientes-Camaguey Sugar Company of Cuba);
- (3) \$17,000 bonds of The Cuban Railroad Company;
- (4) \$10,000 debentures of the Consolidated Railroads of Cuba;
- (5) \$5,000 debentures of the Compania Azucarera Vicana (Vicana Sugar Company).

Each portion of the claim is discussed separately below.

(1) Compania Azucarera Atlantica del Golfo

Claimant presented certificate No. 39369 for 100 shares in the capital stock of Compania Azucarera Atlantica del Golfo, issued to FRANK A. SANDERS on April 17, 1967. An affidavit executed by an officer of Merrill Lynch, Pierce, Fenner & Smith, Inc., stockbrokers, discloses that claimant bought from the stockbrokers 50 shares of the aforesaid company prior to March 1958, and 50 shares on December 1, 1964.

In our decision entitled the Claim of Helen M. Drye (Claim No. CU-0807, incorporated here by reference), we held that the properties owned by Compania Azucarera Atlantica del Golfo were nationalized or otherwise taken by the Government of Cuba on August 6, 1960, and that this type of claim is compensable to an American national under the facts and conditions set forth therein. We need not again detail here the reasons and methods used in determining the value per share of \$34.056.

On the basis of evidence of record in the instant claim, the Commission finds that this claimant comes within the terms of the Drye decision with respect to the 50 shares of stock acquired prior to March 1958, and that he suffered a loss with respect to these shares in the amount of \$1,702.80.

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.

Under the provisions of Section 504(a) of the Act, a claimant is required to establish that the claim for any loss has been continuously owned by a national or nationals of the United States from the date of loss to the date of filing with the Commission. In similar cases, claimants have been unable to obtain information or evidence to establish the nationality of the owner of the securities on the date of loss, and to establish continuous United States ownership of the securities until the date on which claimant acquired them.

Evidence of record before the Commission discloses that securities of the type subject of this claim were almost entirely owned and traded by persons or firms having addresses in the United States. The Commission has considered whether an inference may be justified that the claimed securities were continuously owned by a national or nationals of the United States from the date of loss to the date on which purchased by the claimant, and, in the absence of evidence to the contrary, has concluded that the securities were continuously so owned. (See Claim of Samuel J. Wikler, et al., Claim No. CU-2571, 1968 FCSC Ann. Rep. 47.)

Section 507 of the Act provides, as to assignment of claims, that

(b) The amount determined to be due on any claim of an assignee who acquires the same by purchase shall not exceed (or, in the case of any such acquisition subsequent to the date of the determination, shall not be deemed to have exceeded) the amount of the actual consideration paid by such assignee, or in case of successive assignments of a claim by any assignee.

The Commission finds that claimant, as an assignee by purchase, acquired the claim for the loss sustained by the assignor of the claimed securities,

but under the limitations provided in Section 507 of the Act (supra), is limited to \$26.50, the actual consideration paid for the 50 shares purchased on December 1, 1964.

(2) Compania Azucarera Vertientes-Camaguey de Cuba

Claimant submitted certificates Nos. M-2573 and M-2574 for 200 shares in the capital stock of Compania Azucarera Vertientes-Camaguey de Cuba, issued to Merrill Lynch, Pierce, Fenner & Smith, Inc. on October 26, 1965; certificates for 200 shares Nos. M-4686 and M-4687 issued to FRANK A. SANDERS on April 26, 1967, and certificates for 500 shares Nos. M-4711 through M-4715 issued to FRANK A. SANDERS on May 1, 1967.

The record shows that claimant purchased 100 shares of the company's stock on March 25, 1959; at the time of filing this claim he asserted that he owned 300 shares of this company; subsequently claimant submitted certificates for 900 shares. The Commission, however, received no information concerning the time of acquisition, the prior owners and the price paid for 800 out of the 900 shares.

In our decision entitled the Claim of Ruth Anna Haskew (Claim No. CU-0849, incorporated here by reference), we held that the properties owned by Compania Azucarera Vertientes-Camaguey de Cuba were nationalized or otherwise taken by the Government of Cuba on August 6, 1960, and that this type of claim is compensable to an American national, if all the other requisites are met. The value of one share was determined in the amount of \$46.3946.

Accordingly, claimant suffered a loss with respect to the 100 shares purchased in 1959 in the aggregate amount of \$4,639.46.

With respect to the 800 additional shares of stock, claimant was repeatedly advised to submit data concerning the time of acquisition and price paid for the stock, but no such information was presented to 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) (1970).)

The Commission finds that claimant has failed to meet his burden of proof with respect to the above-mentioned 800 shares of stock of the Compania Azucarera Vertientes-Camaguey de Cuba, and the portion of the claim based upon this stock is therefore denied.

(3) The Cuba Railroad Company

Claimant submitted certificates Nos. TRM 189 through TRM 198 for \$10,000 Temporary 7-1/2% First Lien and Refunding Mortgage Gold Bonds, Series A, of The Cuba Railroad Company, due in 1936 (reduced to 4% and extended to June 30, 1970), issued in 1956 to Merrill Lynch, Pierce, Fenner & Smith, Inc.; certificates Nos. TRM 1043 and TRM 1044 for \$2,000 of the same bonds issued in 1958 to FRANK A. SANDERS; and certificates Nos. 12997, 12998, 13501, 13652 and 13761 for \$5,000 First Mortgage 5% Gold Bonds of The Cuba Railroad Company, due 1952 (reduced to 4% and extended to June 30, 1970), issued to bearer.

The record shows that in December 1959 claimant purchased the \$2,000 First Lien and Refunding Mortgage Gold Bonds; the Commission, however, received no information concerning the time of acquisition, prior owners, and price paid for the additional bonds in the aggregate amount of \$15,000.00.

In our decision entitled Claim of Albert I. Harris (Claim No. CU-2398, incorporated here by reference), we held that the properties of The Cuba Railroad Company were nationalized or otherwise taken by Government of Cuba on October 13, 1960, and that this type of claim is compensable to American nationals, if all other requisites are met. The value of a \$1,000 First Lien and Refunding Mortgage Gold Bond Series A was determined in the amount of \$682.56 including interest to October 13, 1960.

Accordingly, claimant suffered a loss with respect to the bonds in the face amount of \$2,000 which he acquired in 1959, in the amount of \$1,365.12.

With respect to the additional bonds of The Cuba Railroad Company, in the face amount of \$15,000 the Commission finds that claimant has failed to meet his burden of proof concerning the date of acquisition, prior owners and price paid for the bonds. Accordingly, this portion of the claim is denied.

(4) Consolidated Railroads of Cuba

Claimant submitted certificates Nos. RM 7116, RM 7642, RM 18131 and RM 18132 for 4,000 Pesos 3% Cumulative Income Debentures, due October 1, 2001, issued by the Consolidated Railroads of Cuba to various payees; certificates Nos. RV 6814, RV 6815 and RV 6816 for 15,000 Pesos of the same debentures; and certificate No. RM 19744 for 1,000 Pesos of the same debentures issued to Rose Sanders and FRANK SANDERS.

The record shows that claimant purchased 2,000 Pesos of the aforesaid debentures on or prior to August 3, 1959. The record further shows Rose Sanders relinquished all her rights and interests to these debentures without consideration to her son FRANK A. SANDERS, the claimant herein. It is noted that Rose Sanders has been a national of the United States since her naturalization on April 11, 1949.

However, the Commission received no information concerning the date of acquisition, prior owners, and price paid for the remaining bonds in the aggregate amount of 18,000 Pesos.

In our decision entitled Claim of Edward R. Smith (Claim No. CU-5001, incorporated here by reference), we held that the properties of the Consolidated Railroads of Cuba were nationalized or taken by the Government of Cuba on October 13, 1960, and that this type of claim is compensable to an American national under facts and conditions set forth therein. We need not again detail the reasons and method used in determining the value of a 1,000 Peso debenture in the amount of \$1,189.08 including interest to October 13, 1960.

The Commission finds that with respect to the 2,000 Pesos debentures acquired prior to August 3, 1959, claimant suffered a loss with respect to these debentures in the amount of \$2,378.16, the peso being at par with the dollar.

With respect to the additional debentures of the Consolidated Railroads of Cuba in the amount of 18,000 Pesos, the Commission holds that claimant has failed to meet his burden of proof concerning the date of acquisition, prior owners and price paid for the securities, and the portion of the claim based upon these additional debentures is therefore denied.

(5) Compania Azucarera Vicana

Claimant submitted certificates Nos. M-445, M-750, M-1775, M-1881 and M-2116 for \$5,000 20 year Convertible 6% Non-cumulative Income Debentures, due July 1, 1953 issued by Compania Azucarera Vicana.

Claimant was advised to submit evidence concerning the date of purchase and price paid for these securities, but he has failed to do so. For the reasons stated above, the Commission finds that claimant has not met his burden of proof with respect to this portion of the claim, and the same is therefore denied.

SUMMARY

Claimant's losses certifiable within the meaning of Title V of the Act are:

| <u>Item</u> | <u>Date of Loss</u> | <u>Amount</u> |
|--|---------------------|-----------------|
| Compania Azucarera Atlantica del Golfo | August 6, 1960 | \$ 1,702.80 |
| | December 1, 1964 | 26.50 |
| Compania Azucarera Vertientes-Camaguey | | |
| de Cuba | August 6, 1960 | 4,639.46 |
| The Cuba Railroad Company | October 13, 1960 | 1,365.12 |
| Consolidated Railroads of Cuba | October 13, 1960 | <u>2,378.16</u> |
| | Total | \$10,112.04 |

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.)

The Commission concludes, however, that the amount of loss sustained by claimant herein shall be increased by interest thereon at the rate of 6% per annum from the dates below to the date on which provisions are made for the settlement thereof:

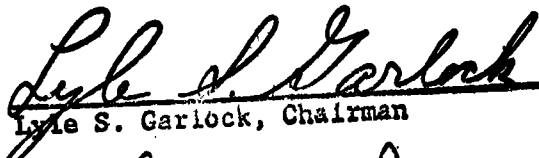
| <u>FROM</u> | <u>ON</u> |
|------------------|--------------|
| August 6, 1960 | \$ 6,342.26 |
| October 13, 1960 | 3,743.28 |
| December 1, 1964 | <u>26.50</u> |
| | \$10,112.04 |

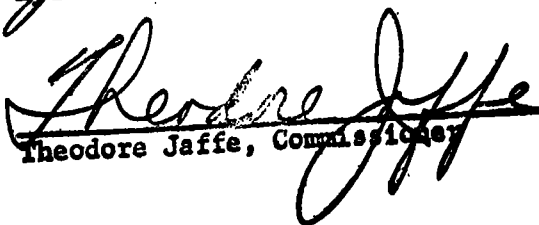
CERTIFICATION OF LOSS

The Commission certifies that FRANK ANTHONY SANDERS 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 One Hundred Twelve Dollars and Four Cents (\$10,112.04) 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

MAR 24 1971


Lyle S. Garlock, Chairman


Theodore Jaffe, Commissioner

NOTICE TO TREASURY: The above-referenced securities may not have been submitted to the Commission or if submitted, may have been returned; accordingly, no payment should be made until claimant establishes retention of the securities or the loss here certified.

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) (1970).)