

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

IN THE MATTER OF THE CLAIM OF

VIVIAN WAUNETA WAECHTER

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -1043

Decision No. CU -927

Appeal and objections with respect to a Proposed Decision entered on January 10, 1968. No oral hearing requested.

Hearing on the record held on June 8, 1972

FINAL DECISION

Under date of January 10, 1968, the Commission issued its Proposed Decision denying this claim inasmuch as the claimant had not sustained the burden of proving that she owned 300 shares of the stock of Vertientes-Camaguey Sugar Company on the date of loss, August 6, 1960, as asserted.

Claimant objected to the decision and offered to attend any oral hearing which could be held in San Diego. She was informed that all such hearings are held at the Commission's offices in Washington, D.C. Claimant has now submitted documentation showing that she sold 200 shares of the said stock on December 29, 1966 and 100 shares on April 27, 1967. This evidence does not establish that she owned the stock on the date of loss, August 6, 1960. However, this point is no longer dispositive of any amount of claim which could be certified to claimant.

The Commission has held in the Claim of Harry Mitgang (Claim No. CU-2649 which we incorporate herein by reference), that ownership of stock interests in a corporation on the date of nationalization of the corporation vests in the owner an interest in the net worth and an interest in any claim for nationalization, and that the sale of the shares may effect transfer of either or both interests, depending upon the intention of the parties.


Moreover, if claimant relies on any loss sustained in the sale of the stock interest, this cannot be the basis of a Certification of Loss. The Commission has held in the Claim of John A. Stiehler (Claim No. CU-2725 which we incorporate herein by reference), that the claim of the stockholder is for his interest in the nationalized company and not for a decrease in the value of his stock shares, and that such a loss is not certifiable under the provisions of the Act.

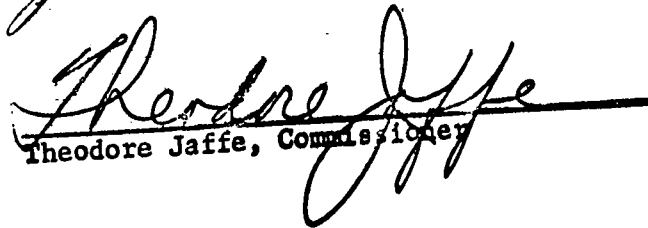
Claimant has not asserted that she retained any interest in a claim for nationalization, and it is concluded that when she sold her stock, she transferred all rights incident thereto, and moreover claim for the decrease in value of the stock will not lie under the Act.

Under these circumstances the Commission is constrained to and does affirm the denial of the claim.

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

JUN 16 1971


Lyle S. Garlock, 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, in the amount of \$2,179.88, was presented by VIVIAN WAUNETA WAECHTER and is based upon the asserted ownership and loss of stock interests in the Vertientes-Camaguey Sugar Company of Cuba. Claimant has been a national of the United States since her birth.

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).)

Claimant asserts the ownership of certain stock interests in the Vertientes-Camaguey Sugar Company. However, claimant has submitted no evidence in support of her claim other than a certified copy of her birth certificate. By Commission letter of February 21, 1967, claimant was advised as to the type of evidence proper for submission to establish this claim under the Act. However, no evidence in response to this correspondence has been received to date.

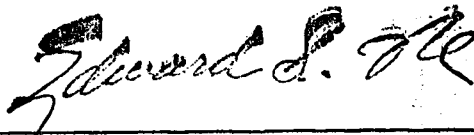
On November 17, 1967, claimant was invited to submit any evidence available to her within 45 days from that date, and she was informed that, absent such evidence, it might become necessary to determine the claim on the basis of the existing record. No evidence has since been submitted.

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

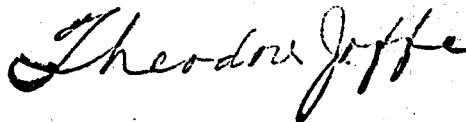
property which was nationalized, expropriated or otherwise taken by the Government of Cuba. Thus, the Commission is constrained to deny this claim and it is hereby denied. The Commission deems it unnecessary to make determinations with respect to other elements of the claim.

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

10 JAN 1968

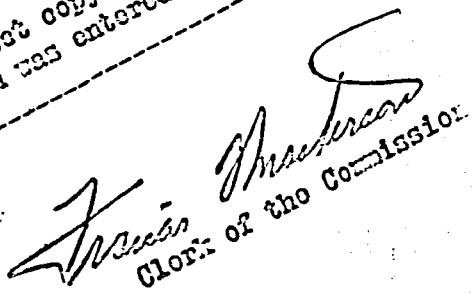


Edward D. Re, Chairman



Theodore Jaffe, Commissioner

CERTIFICATION
This is a true and correct copy of the decision
of the Commission which was entered as the final
decision on _____



Jesús MacLercos
Clerk of the Commission

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).)