

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

IN THE MATTER OF THE CLAIM OF

RUSSELL BALCH McFADDEN

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -1246

Decision No. CU -962

AMENDED PROPOSED DECISION

By decision issued January 17, 1968, the Commission denied this claim for failure of proof. Claimant thereafter submitted additional evidence. Upon consideration of this matter, it is

ORDERED that the Proposed Decision be and it is hereby amended.

In our decision entitled the Claim of Huntley E. Cox (Claim No. CU-2944 which we incorporate herein by reference), we held that the properties of the Central Violeta Sugar Company were nationalized or otherwise taken by the Government of Cuba on October 13, 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 or the method used in determining the value per share of \$30.4318.

On the basis of evidence in the record in the instant case, the Commission finds that this claimant comes within the terms of the Cox decision; that he was an American national at the requisite times; that he has been the owner of 53 shares of stock in the Central Violeta Sugar Company, S.A. since prior to October 13, 1960; and that he suffered a loss in the amount of \$1,612.89 within the meaning of Title V of the Act. Further, the Commission finds that the amount of loss sustained shall be increased by interest thereon at the rate of 6% per annum from October 13, 1960, the date of loss, to the date on which provisions are made for the settlement thereof. (See Cox, supra.)

Accordingly, 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 RUSSELL BALCH McFADDEN 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 One Thousand Six Hundred Twelve Dollars and Eighty-nine Cents (\$1,612.89) with interest at 6% per annum from October 13, 1960 to the date of settlement.

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

DEC 18 1968

Leonard v. E. Sutton

Leonard v. E. Sutton, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

Sidney Freidberg

Sidney Freidberg, 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 for 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 Amended 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).)

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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 \$1,262.49, was presented by RUSSELL BALCH McFADDEN, based upon the asserted loss of stock interests in the Central Violeta Sugar Company of Cuba. Claimant has been a national of the United States since his birth in the United States.

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 of 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).)

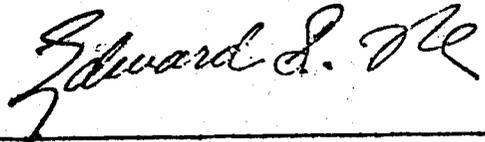
Claimant asserts the ownership of certain stock interests in the Central Violeta Sugar Company of Cuba; however, claimant has submitted no documentary evidence in support of his claim. By Commission letter of April 3, 1967, claimant was advised as to the type of evidence proper for submission to establish his claim under the Act.

On July 17, 1967, claimant was invited to submit any evidence he might have within 45 days from that date, and he was informed, that, absent such evidence it might become necessary to determine the claim on the basis of the present record. By letter of July 20, 1967 claimant responded, advising that he was attempting to obtain the evidence suggested by the Commission. The claimant was again requested to obtain certain evidence in support of this claim by Commission letter of September 25, 1967. Claimant has not responded to this correspondence and no evidence in support of this claim has been submitted.

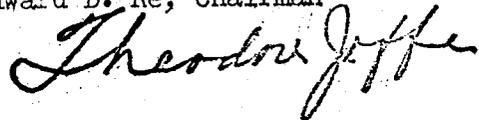
The Commission finds that claimant has not met the burden of proof, in that he has failed to establish ownership of rights and interests in property which was nationalized, expropriated or otherwise taken by the Government of Cuba. Accordingly, this claim is hereby denied. The Commission deems it unnecessary to determine other elements of this claim.

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

JAN 17 1968



Edward D. Re, Chairman



Theodore Jaffe, Commissioner

RECEIVED
COMMUNICATIONS SECTION
This is a true and correct copy of the decision
of the Commission which was entered on the file
on January 17, 1968.

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).)

CU-1246