

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

IN THE MATTER OF THE CLAIM OF

ESTHER A. DAKIN

Claim No. CU -1334

Decision No. CU

2994

Under the International Claims Settlement
Act of 1949, as amended

Counsel for claimant:

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 ESTHER A. DAKIN and is based upon the asserted loss sustained in connection with the ownership of common stock interests in Cia. Azucarera Vertientes-Camaguey de Cuba. Claimant has been a national of the United States since 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.

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.

On the basis of evidence of record, the Commission finds that claimant is, and since prior to August 6, 1960, has been the owner of 200 shares of common stock of Cia. Azucarera Vertientes-Camaguey de Cuba (Vertientes-Camaguey Sugar Company of Cuba). The stock in question is represented by certificate Nos. N70778 and N70779.

The record discloses that Cia. Azucarera Vertientes-Camaguey de Cuba was listed as nationalized in Resolution No. 1 (pursuant to Law 851), published in the Cuban Official Gazette on August 6, 1960. This corporation was organized under the laws of Cuba and 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 per centum or more in natural persons who are citizens of the United States.

In this type of situation, it has been held previously that a stockholder in such a corporation is entitled to file a claim based upon the stock in question which represents an ownership interest in the assets of a nationalized enterprise within the purview of Section 502(3) of the Act. (See Claim of Parke, Davis & Company, Claim No. CU-0180, 1967 FCSC Ann. Rep. 33.)

In determining the value of the interest owned by claimant in Cia. Azucarera Vertientes-Camaguey de Cuba, the Commission has considered the appraisals by Parajon e Hijo, balance sheets for the years 1957, 1958, 1959 and 1960, the annual reports to stockholders for those years, and other evidence of record submitted by the Company. On the basis of the entire record, the Commission concludes that the dollar loss sustained by Cia. Azucarera Vertientes-Camaguey on August 6, 1960, was \$66,990,148.48, and the loss per share for each of the 1,443,921 shares of common stock was \$46.3946.

The Commission further finds that claimant is and since October 29, 1962 has been the owner of an additional 100 shares of common stock of Cia. Azucarera Vertientes-Camaguey which he purchased on said date for \$258.00. The stock is represented by certificate No. M2584.

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. The loss occurred on August 6, 1960. 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 the Executors of the Estate of Julius S. Wikler, Deceased, Claim No. CU-2571.)

The Commission finds that claimant, upon her purchase of the 100 shares on October 29, 1962, succeeded to the loss sustained by the assignor of the claimed securities, and concludes that she succeeded to and suffered an additional loss in the amount of \$280.00 (the price she paid) as a result of the nationalization of the aforementioned enterprise on August 6, 1960.

Accordingly, in the instant claim, the Commission finds that claimant as holder of shares of common stock of Cia. Azucarera Vertientes-Camaguey de Cuba suffered a loss in the amount of \$9,536.92 within the meaning of Title V of the Act, as a result of the nationalization of Cia. Azucarera Vertientes-Camaguey de Cuba by the Government of Cuba on August 6, 1960.

It will be noted that the total amount of loss found herein is in excess of the amount asserted by claimant. However, in determining the amount of loss sustained, the Commission is not bound by any lesser or greater amounts which may be asserted by claimant as the extent thereof.

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.)

However, the Commission concludes that the amount of loss sustained 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	\$9,278.92
October 29, 1962	258.00
	<u>\$9,536.92</u>

CERTIFICATION OF LOSS

The Commission certifies that ESTHER A. DAKIN succeeded to and 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 Nine Thousand Five Hundred Thirty-Six Dollars and Ninety-Two Cents (\$ 9,536.92) with interest at 6% per annum from the aforesaid dates to the date of settlement.

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

SEP 4 1968

Leonard v. B. Sutton

Leonard v. F. Sutton, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

Sidney Freidberg

Sidney Freidberg, Commissioner

NOTICE TO TREASURY: Un-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), as amended, 32 Fed. Reg. 412-13 [1967].)