

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

IN THE MATTER OF THE CLAIM OF

MICHAEL LEON

Claim No. **CU**-1465

Decision No. **CU**-3518

Under the International Claims Settlement
Act of 1949, as amended

Counsel for claimant:

Beckerman and Franzblau
By S. M. Chris Franzblau, Esq.

Appeal and objections from a Proposed Decision entered on February 19, 1969; oral hearing requested.

Oral hearing held April 10, 1969.

FINAL DECISION

Under date of February 19, 1969, the Commission issued its Proposed Decision certifying a loss to claimant based on a debt due him from Compania de Hoteles La Riviera de Cuba, S.A.; denying the portion of his claim based upon a stock interest in that company, finding it not established that Riviera had any net worth on the date of nationalization, or that the stock thereof had any value at that time; and holding, moreover, that the stock had been pledged as security for a loan. Claimant objected to the Proposed Decision and requested an oral hearing before the Commission, which was held on April 10, 1969.

At that hearing, claimant did not appear, but counsel presented oral argument. No additional documentary evidence was offered at the hearing. Claimant was granted, at the conclusion of the hearing, 60 additional days within which to submit further supporting evidence, and certain suggestions in these respects were made by the Commission.

Full consideration having been given to the objections of the claimant and arguments presented at the hearing, and no further evidence having been received in the time granted, and general notice of the Proposed Decision having been given by posting for twenty days, it is

ORDERED that the Proposed Decision be and the same is hereby entered as the Final Decision on this claim.

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

JUN 25 1969

Leonard v. B. Sutton

Leonard v. B. Sutton, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

Sidney Freidberg

Sidney Freidberg, Commissioner

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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 \$104,000.00, was presented by MICHAEL LEON and is based upon the asserted loss sustained in connection with the ownership of a stock interest in Compania de Hoteles La Riviera de Cuba, S.A., a Cuban corporation, and a debt due from this corporation. Claimant has been a national of the United States since 1920.

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 asserts that he owned a 2% stock interest in the Cuban corporation, Compania de Hoteles La Riviera de Cuba, S.A., hereafter referred to as Riviera, and claims \$60,000.00, stated to represent his original investment in Riviera. In support of this portion of his claim, claimant has submitted copies of cancelled checks drawn to the order of Riviera in 1957, his own affidavits and correspondence in 1957 and 1959 from the Treasurer of Riviera to claimant.

On the basis of all the evidence of record, the Commission finds that claimant owned a 2% stock interest in Riviera, as stated by claimant.

The Government of Cuba published in its Official Gazette on October 24, 1960, Resolution 3 pursuant to Law 851, which listed Riviera as nationalized.

Riviera 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.)

The Act provides in Section 503(a) that in making determinations with respect to the validity and amount of claims and value of properties, rights, or interest taken, the Commission shall take into account the basis of

valuation most appropriate to the property and equitable to the claimant, including but not limited to fair market value, book value, going concern value, or cost of replacement.

The question, in all cases, will be to determine the basis of valuation which, under the particular circumstances, is "most appropriate to the property and equitable to the claimant". The Commission has concluded that this phraseology does not differ from the international legal standard that would normally prevail in the evaluation of nationalized property and that it is designed to strengthen that standard by giving specific bases of valuation that the Commission shall consider; i.e., fair market value, book value, going concern value, or cost of replacement.

The record contains neither a balance sheet nor any other financial statement with respect to Riviera. Claimant has stated that he never received any such statement and doubts that any were ever prepared.

Included in the correspondence submitted are letters from the Treasurer of Riviera to claimant, dated July 10, 1959 and July 23, 1959 which indicate clearly that Riviera was "experiencing very difficult times." The earlier letter speaks of a very serious financial position and the fact that Riviera's "indebtedness to the mortgagee, the trade and the unpaid payrolls are mounting daily." The Treasurer added that he was working out an arrangement to borrow \$1,100,000.00 on a long-term basis and needed "acceptable" collateral. Accordingly, he suggested that claimant endorse his stock certificates and certain promissory notes drawn by Riviera in favor of claimant so that the loan could be negotiated. In the second letter, the Treasurer again referred to the long-term loan and the use of claimant's stock and notes as collateral. He stated, moreover, that an extension of the interest and principal due on mortgage debts owed by Riviera was impossible to obtain, and that the "payment which was due on April 30th amounting to \$283,300.00 must be paid very shortly to avoid possible foreclosure proceedings by the mortgagee." On this occasion the Treasurer asked claimant to sign a proxy and letter of authority which would permit Riviera to borrow "up to \$2,500,000.00."

In an affidavit, dated January 10, 1969, claimant stated that he had forwarded his stock certificates to the Treasurer as requested, but had retained the promissory notes. He further stated that the stock was never returned to him. It appears that a loan was made to Riviera, although the amount thereof is not shown in the record, and that the loan was in part secured by pledging claimant's stock.

Apparently, the financial position of Riviera did not improve. Counsel for claimant stated in a letter, dated July 9, 1968, that the hotel, which was being operated by Riviera, continued its business for only one year.

Based upon all the evidence of record, the Commission finds it not established that Riviera had any net worth on the date of nationalization, or that the stock thereof had any value at that time. The Commission therefore concludes that claimant suffered no loss within the meaning of Title V of the Act based upon his asserted stock interest in Riviera.

Moreover, as stated above, the claimant's stock was pledged as security for a loan obtained by Riviera. In similar cases the Commission has held that the real party in interest is the pledgee to the extent of the unpaid indebtedness. (See Claim of Helen Sigman, Trustee, Claim No. PO-5955, FCSC Dec. & Ann. 497 (1968).)

Accordingly, the portion of the claim based upon a stock interest in Riviera is denied.

The Commission has held, however, that debts of nationalized Cuban corporations are within the purview of Title V of the Act. (See Claim of Kramer, Marx, Greenlee and Backus, Claim No. CU-0105, 25 FCSC Semiann. Rep. 62 [July-Dec. 1966].) The Commission has adhered to this ruling

despite the fact that the debtor Cuban corporation was insolvent, as in this case. (See Claim of The Goodyear Tire & Rubber Company, Claim No. CU-0887; Claim of Honeywell, Inc., Claim No. CU-2678.)

The record shows that Riviera was indebted to claimant on the basis of four promissory notes executed on July 3, 1957, in the principal amount of \$46,000.00, plus interest at the rate of 7% per annum with respect to \$26,000.00, and interest at 6% per annum with respect to \$20,000.00. Claimant has stated that he has never received any payment of interest or principal on account of these obligations of Riviera.

Based upon the evidence of record, the Commission finds that Riviera owed claimant the aggregate amount of \$55,999.77 on the date of loss, representing \$46,000.00 in principal and \$9,990.77 in interest. The Commission further finds that claimant sustained a loss in that aggregate amount within the meaning of Title V of the Act.

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), and in the instant case it is so ordered.

CERTIFICATION OF LOSS

The Commission certifies that MICHAEL LEON 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 Fifty-five Thousand Nine Hundred Ninety-nine Dollars and Seventy-seven Cents (\$55,999.77) with interest at 6% per annum from October 24, 1960 to the date of settlement.

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

FEB 19 1969

Leonard v. B. Sutton

Leonard v. B. Sutton, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

Sidney Freidberg

Sidney Freidberg, 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, 32 Fed. Reg. 412-13 (1967).)