

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

IN THE MATTER OF THE CLAIM OF

SIDNEY FREY

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU - 1882

Decision No. CU -

3803

Counsel for claimant:

Abraham Pindek, Esq.

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 SIDNEY FREY for \$3,113.60 based upon an asserted debt due from a Cuban national for goods shipped to him. Claimant, SIDNEY FREY, has been a national of the United States since his naturalization in 1943.

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.

Claimant states that on March 25, 1957 he shipped certain goods on open account to one Abraham Silber, a Cuban national; that this consignee had always paid for previous shipment promptly; that claimant or counsel wrote to consignee on November 18, 1957, February 4, 1958, and February 28, 1958; that as these contacts were unsuccessful telephone calls were made which were also unproductive.

Claimant has submitted copy of a letter of August 27, 1960 from a collection agency in Cuba asking the minimum amount for which claimant would be willing to settle. Inquiry of claimant as to whether any settlement was reached has not been responded to by claimant.

Claimant asserts that failure of the consignee to pay was due to conditions at the time of the transaction, and immediately subsequent thereto, and prior to expiration of the time in which claim could have been asserted.

Claimant has also asserted that Cuban Law 568 is applicable. The Government of Cuba, on September 29, 1959, published its Law 568, concerning foreign exchange. Thereafter the Cuban Government effectively precluded not only transfers of funds to creditors abroad, but also payment to creditors within Cuba, by numerous, unreasonable and costly demands upon the consignees, who were thus deterred from complying with the demands of the Cuban Government. The Commission has held that Cuban Law 568 and the Cuban Government's implementation thereof, with respect to the rights of claimants within the scope of Title V, was not in reality a legitimate exercise of sovereign authority to regulate foreign exchange, but constituted an intervention by the Government of Cuba in the contractual

rights of the claimants, which resulted in the taking of American-owned property within the meaning of Section 503(a) of the Act. (See Claim of The Schwarzenbach Huber Company, Claim No. CU-0019, 25 FCSC Semiann. Rep. 58 [July-Dec. 1966]; and Claim of Etna Pozzolana Corporation, Claim No. CU-0049, 1967 FCSC Ann. Rep. 46.)

Under the provisions of Sections 502(3), 503(a) and 504(a) of the Act, supra, claimant must establish that some measure depriving him of his property interest was applied by the Government of Cuba after January 1, 1959. This he has not done. On the contrary the record clearly establishes that long prior to January 1, 1959, claimant repeatedly sought payment which was not forthcoming and which cannot be seen to be attributable to the Government of Cuba as it came into being on January 1, 1959.

Therefore, even though claimant may have established that a debt for merchandise was owed to him from a Cuban national, such claim arose prior to January 1, 1959, and was not effected by Cuban Law 568.

Accordingly, for the reasons stated above, the Commission concludes that this claim is not one within the purview of Title V of the Act, supra, and it is denied.

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

AUG 20 1969

Leonard v. B. Sutton

Leonard v. B. Sutton, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

Sidney Freidberg

Sidney Freidberg, Commissioner

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-1882