

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

IN THE MATTER OF THE CLAIM OF

MAX J. ZIVIAN

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-1926

Decision No. CU -2906

Counsel for claimant:

Joseph A. Vieson, Esq.

Appeal and objections from a Proposed Decision entered August 21, 1968.
No hearing requested.

Hearing on the record held on August 4, 1971.

FINAL DECISION

Under date of August 21, 1968, the Commission issued its Proposed Decision denying this claim inasmuch as claimant had not sustained the burden of proof in establishing his asserted 50% stockholder interest in the Kingston Mining Corporation, (of Cuba), and the entity's indebtedness to claimant; that the property was taken by the Government of Cuba and the value of the property at the time of the asserted loss.

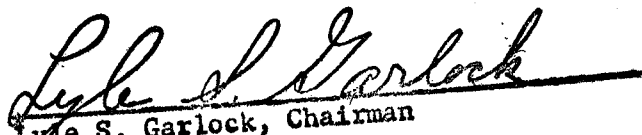
Claimant, through counsel, objected to the Proposed Decision and contended that evidence in support of the instant claim was available in another claim before the Commission. On several occasions counsel was advised that there was no evidence in the referenced claim of assistance to claimant and further recommendations were made to counsel as to the type of evidence that might be submitted.

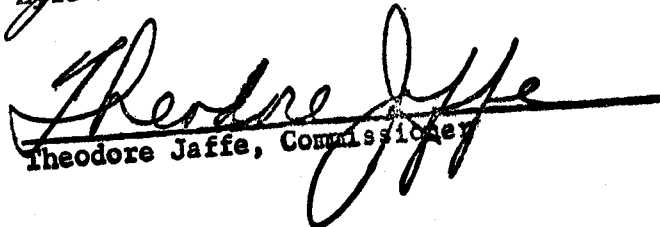
No further evidence has been submitted. No replies have been received to the Commission's letters.

Accordingly, in the absence of evidence to warrant a change in the Proposed Decision, it is affirmed and entered as the Final Decision in this matter.

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

AUG 11 1971


Lyle S. Garlock, Chairman


Theodore Jaffe, Commissioner

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

IN THE MATTER OF THE CLAIM OF

MAX J. ZIVIAN

Under the International Claims Settlement
Act of 1949, as amended

Counsel for claimant:

Claim No. CU - 1926

Decision No. CU 2906

Joseph A. Vieson, Esq.

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 \$1,043,888.89, plus interest, was presented by MAX J. ZIVIAN and is based upon the asserted loss of a 50% stockholder interest in the Kingston Mining Corporation, a legal entity organized under the laws of the Republic of Cuba, and debts assertedly due therefrom. Claimant, MAX J. ZIVIAN, has been a national of the United States since his naturalization on September 19, 1938.

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).)

It is asserted by claimant that he owned a 50% stockholder interest in the Kingston Mining Corporation and was owed \$43,888.89 for loans made to the Corporation which he lost by the nationalization or other taking of such corporation by the Government of Cuba in 1959.

Other than a copy of a document dated December 17, 1956, entitled, Certificado de Autorizacion, authorizing William T. Coles and Francisco Gonzalez Buigas to sign for the Kingston Mining Corporation, claimant has failed to submit evidence in support of this claim. By Commission letter of August 10, 1967, he was advised, through counsel, as to the type of evidence proper for submission to establish this claim under the Act. Thereafter, by letter of September 14, 1967, counsel was reminded of the importance of

submitting evidence and was advised that if the suggested evidence were not submitted within 45 days from that date, 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 he 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

AUG 21 1968

Leonard v. B. Sutton

Leonard v. B. Sutton, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

Sidney Freiberg

Sidney Freiberg, 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).)