

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

IN THE MATTER OF THE CLAIM OF

BAIGELMAN & COMPANY, INC.

Claim No. CU-2226

Decision No. CU 1814

Under the International Claims Settlement
Act of 1949, as amended

Counsel for claimant:

Booth, Lipton & Lipton

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 BAIGELMAN & COMPANY, INC. in the amount of \$7,734.15 based upon the asserted loss of payment for merchandise shipped to Cuba.

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 502(1) of the Act defines the term "national of the United States" as "(B) a corporation or other legal entity which is organized under the laws of the United States, or of any State, the District of Columbia, or the Commonwealth of Puerto Rico, if natural persons who are citizens of the United States own, directly or indirectly, 50 per centum or more of the outstanding capital stock or other beneficial interest of such corporation or entity."

An officer of the claimant corporation has certified that the claimant was organized in the State of New York and that at all times between June 27, 1957 and presentation of this claim on April 25, 1967, 100% of the outstanding capital stock of the claimant has been owned by one person, whose United States nationality is of record. The Commission holds that claimant is a national of the United States within the meaning of Section 502(1)(B) of the Act.

The record contains copies of bank advices and copies of claimant's correspondence with the collecting banks, reflecting that claimant had shipped merchandise to various Cuban consignees, and that drafts were drawn to cover payments for such shipments. This evidence also reflects that some of the drafts were paid in local currency to Cuban banks, but that dollar reimbursement releases were not issued by Cuban government officials. Other drafts were never paid by the consignees.

There follows hereafter data concerning the shipments made to the Cuban consignees, with dates of payment and dates of shipment:

Paid drafts:

<u>CONSIGNEE</u>	<u>DATE PAID</u>	<u>AMOUNT</u>
Senor Pedro Montero (Casa Montero Sports)	October 14, 1960	\$2,404.69
Compania de Importadores y Representaciones "Hansa" A/G	February 2, 1960	1,346.42
Senores Anibal J. Sierra y Hermanos	March 7, 1961	700.89

Unpaid drafts: Consignee - Compania de Importadores y Representaciones
"Hansa" A/G

<u>INVOICE NO.</u>	<u>DUE DATE</u>	<u>AMOUNT</u>
517	December 4, 1958	\$ 11.74
537	December 18, 1958	1,348.09
538	December 18, 1958	500.68
543	December 28, 1958	599.23
545	December 28, 1958	165.13
554	January 2, 1959	47.46
559	January 4, 1959	695.47
581	February 5, 1959	7.14
607	February 16, 1959	<u>115.21</u>
TOTAL		\$3,482.15

Claimant states that it has not received any of the funds due for such shipments.

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 holds that Cuban Law 568 and the Cuban Government's implementation thereof, with respect to the rights of the claimant herein, was not in reality a legitimate exercise of sovereign authority to regulate foreign exchange, but constituted an intervention by the Government of Cuba into the contractual rights of the claimant, 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.)

Accordingly, in the instant claim the Commission finds that claimant's property was lost as a result of intervention by the Government of Cuba and

that, in the absence of evidence to the contrary, the loss occurred on September 29, 1959 as to \$3,482.15, on February 3, 1960 as to \$1,346.42, on October 15, 1960 as to \$2,204.69, and on March 8, 1961 as to \$700.89; being the date of Law 568 as to the unpaid amount of \$3,482.15 and the dates after the days on which payment was acknowledged as to the paid amounts.

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).

Accordingly, the Commission concludes that the amount of the loss sustained by claimant shall be increased by interest thereon at the rate of 6% per annum from the date on which the loss occurred, to the date on which provisions are made for the settlement thereof, as follows:

<u>ON</u>	<u>AS TO</u>
September 29, 1959	\$3,482.15
February 3, 1960	1,346.42
October 15, 1960	2,204.69
March 8, 1961	<u>700.89</u>
	\$7,734.15

CERTIFICATION OF LOSS

The Commission certifies that BAIGELMAN & COMPANY, INC. 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 Seven Thousand Seven Hundred Thirty-Four Dollars and Fifteen Cents (\$7,734.15) with interest thereon at 6% per annum from the respective dates of loss to the date of settlement.

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

MAY 1 1968

Leonard v. B. Sutton

Leonard v. B. Sutton, Chairman

Theodore Jaffe

Theodore Jaffe, 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).)