

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

IN THE MATTER OF THE CLAIM OF

EDWARD THAL

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -3650

Decision No. CU
3341

Counsel for claimant:

Rhea Pincus
Attorney at Law

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 \$500,000.00, was presented by EDWARD THAL and is based upon the asserted loss of a 100% interest in Deauville Hotel Casino Corporation, a Cuban entity. 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.

Claimant asserts that he owned all of the outstanding shares of stock of Deauville Hotel Casino Corporation, a Cuban corporation, and that his claim for \$500,000.00 is based on the expropriation of all properties of this Cuban corporation, including Hotel Deauville in Havana, Cuba, "along with the real estate and personal property, furniture, furnishings, and fixtures therein contained". In support thereof, claimant submitted the following documents:

1. Certificate No. 5, representing 100 shares of stock of Deauville Hotel Casino Corporation, issued on December 10, 1958 in the name of claimant.
2. Certificate No. 4, representing 200 shares of the same corporation, issued on the same date in the name of claimant.
3. Certificate No. 2, representing 300 shares of the same corporation, issued on October 22, 1957 in the name of Sidney Thal.

It is noted that Certificates Nos. 4 and 5 are signed on the reverse sides by claimant under date of December 31, 1958 and by two witnesses. However, Certificate No. 2 issued to Sidney Thal is signed by him but is neither dated nor otherwise indicates that it was intended to be assigned to claimant.

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 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.

On October 24, 1960, the Government of Cuba published in its Official Gazette Resolution 3, pursuant to Law 851, which listed as nationalized the Deauville Hotel Casino Corporation. Accordingly, the Commission finds that a claim for an ownership interest in this nationalized corporation arose on October 24, 1960.

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).)

Claimant states that a 50% interest in the nationalized corporation was given to him as a gift by Mr. Sidney Thal on October 22, 1957.

In the absence of evidence to establish that Sidney Thal assigned his 300 shares in the nationalized corporation to claimant and that such assignment occurred prior to October 24, 1960, or if it occurred subsequently, that the assignor was a United States national at all pertinent times, the Commission finds that claimant has failed to sustain the burden of proof with respect to these 300 shares of stock.

Moreover, it is noted that the said certificates representing shares of stock in the nationalized corporation indicate an authorized capital stock of 500,000 pesos and that each share of stock had a par value of 100 pesos. The three certificates, therefore, represented only a par value of 60,000 pesos. There is no evidence to establish that the corporation issued only 600 shares of stock.

In response to suggestions from the Commission concerning evidence to establish the net worth of the nationalized corporation, it was stated that all corporate books and records were in Cuba. However, claimant submitted a copy of a document purporting to be a financial statement of Hotel Deauville Casino, dated September 9, 1957. Apart from the fact that this document represents a date three years prior to the date of loss herein, it is not a statement of assets and liabilities which would permit the Commission to determine the net worth of the nationalized corporation.

Claimant also submitted a copy of an unexecuted lease of the premises in question between the nationalized corporation and another Cuban corporation. It further appears from a copy of an itemized list appended to an affidavit, dated December 5, 1967, from Sidney Thal, that the nationalized corporation did not own the real property which was the subject of the said unexecuted lease, but was itself a lessee of the real property.

These matters were brought to the attention of claimant through his attorney, and on several occasions repeated requests for an explanation and evidence to support the claim were made by the Commission. However, no further evidence has been submitted.

The record also includes four promissory notes, all due December 31, 1959, dated November 3, 1959 in the amount of 10,000 pesos; dated October 19, 1959 in the amount of 5,000 pesos; dated November 18, 1959 in the amount of 10,000 pesos; and dated October 2, 1959 in the amount of 15,000 pesos. The four notes are all drawn by Hotel Casino Deauville, S.A., in favor of Banco Continental Cubano, S.A. It is stated that these four notes constitute the consideration paid by claimant for his stock certificates. However, the notes themselves contain no notations to corroborate that statement.

The Commission finds that the evidence of record is insufficient to permit a determination as to the extent of claimant's interest in the Deauville Hotel Casino Corporation or the value of his interest on October 24, 1960, the date of loss. The Commission therefore concludes that claimant has failed to sustain the burden of proof with respect to his claim. Accordingly, this claim is denied in its entirety.

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

NOV 27 1968

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).)

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