

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

IN THE MATTER OF THE CLAIM OF

ERNEST R. BINDER

Under the International Claims Settlement
Act of 1949, as amended

Claim No CU -3676

Decision No. CU-1101

Counsel for claimant:

Kirlin, Campbell & Keating
By Robert Henri Binder, Esq.

Appeal and objections from a Proposed Decision entered on January 31, 1968.
Oral hearing requested and cancelled.

Hearing on the record held on October 14, 1971.

FINAL DECISION

This claim is based upon a stock interest in Intra-Mar Shipping (Cuba) S.A. By its Proposed Decision of January 31, 1968 the Commission denied the claim for failure of proof.

Claimant, through counsel, objected to the Proposed Decision and submitted evidence including stock certificates, a 1959 Balance Sheet of the subject corporation, a Sale of Stock Agreement and correspondence.

The entire record has been reviewed and the Commission now amends its Proposed Decision.

The record discloses that Intra-Mar Shipping (Cuba), S.A., hereinafter referred to as Intra-Mar-Cuba, was organized in Cuba and does not qualify as a corporate "national of the United States", within the meaning of 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 that an American stockholder is entitled to file a claim for the value of his ownership interest. (See Claim of Parke, Davis & Company, Claim No. CU-0180, 1967 FCSC Ann. Rep. 33.)

The Commission finds that in the absence of specific evidence to the contrary, Intra-Mar-Cuba was nationalized by the Government of Cuba pursuant to Law 851, effective July 7, 1960. At that time claimant was the owner of 50 of the outstanding 100 shares of the said Cuban corporation.

Claimant has asserted that he was the owner of all the outstanding shares of stock on December 1, 1960, a date after the date of loss, when the second stockholder, Mr. Seiler, sold his 50 shares to the Corporation. Evidence of the United States nationality of Mr. Seiler has not been submitted. Consideration will be given herein to the 50% interest originally owned by this claimant since prior to July 7, 1960.

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 interests 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". This phraseology does not differ from the international legal standard that would normally prevail in the evaluation of nationalized property. It is designed to strengthen that standard by giving specific bases of valuation that the Commission shall consider.

In support of the element of value claimant has submitted evidence including a December 31, 1959 Balance Sheet, a Profit and Loss Statement for the year ending December 31, 1959 and a Sale of Stock Agreement. The Profit and Loss statement shows a net loss of \$3,355.10. The Sales Agreement is dated December 1, 1960, a date subsequent to the date of loss. The exact

selling price and consideration received by the seller is not shown. The Commission finds that the most equitable and appropriate basis of value is the 1959 Balance Sheet.

It is noted that among the listed assets is an item of \$31,821.19, an account receivable from Intra-Mar Shipping Corporation, a national of the United States with offices in New York City. (See the Claim of Intra-Mar Shipping Corporation, Claim No. CU-3675.) It is clear that this account was not taken by the Government of Cuba. Accordingly, the assets are reduced to \$18,822.13. Deducting the total liabilities therefrom results in a net worth of \$9,891.45. Claimant's 50 shares therefore had a value of \$,945.73.

The Commission concludes that claimant suffered a loss in the amount of \$4,945.73 within the meaning of Title V of the Act.

The Commission has decided that in certifications of loss 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.

The following Certification of Loss will be entered and in all other respects the Proposed Decision, as amended herein, is affirmed.


CU-3676

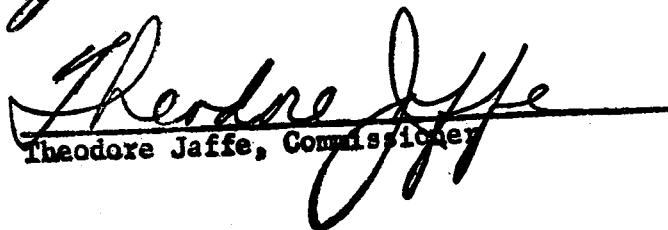
CERTIFICATION OF LOSS

The Commission certifies that ERNEST R. BINDER 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 Four Thousand Nine Hundred Forty-Five Dollars and Seventy-Three Cents (\$4,945.73) with interest at 6% per annum from July 7, 1960 to the date of settlement.

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

OCT 14 1971


Lyle S. Garlock, Chairman


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.

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

IN THE MATTER OF THE CLAIM OF

ERNEST R. BINDER

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-3676

Decision No. CU

1101

Counsel for claimant:

Kirlin, Campbell & Keating
by Robert Henri Binder, 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 \$26,581.00 was presented by ERNEST R. BINDER and is based upon the asserted ownership of a stock interest in Intra-Mar Shipping (Cuba), S. A. Claimant has been a national of the United States since his naturalization on February 15, 1940.

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.

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. 8531.6(d) (Supp. 1967).)

This claim is based upon claimant's asserted ownership of stock in Intra-Mar Shipping (Cuba), S. A., said to have been nationalized by the Government of Cuba during the period 1959-1960. However, except for information pertaining to his naturalization, an unverified, unauthenticated photocopy of a balance sheet, and his own letters, claimant has submitted no documentary evidence to establish his claim.

By Commission letter of July 24, 1967, claimant was advised, through counsel, as to the type of evidence proper for submission to establish this claim under the Act.

On August 9, 1967, counsel were invited to submit any evidence available to them within 45 days from that date, and they were informed, that, absent such evidence, it might become necessary to determine the claim on the basis of the existing record.

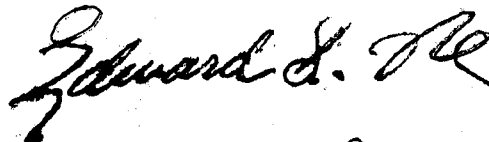
Finally by Commission letter of October 24, 1967, counsel were invited to submit any evidence available to them within 30 days from that date, and they were informed, that, absent such evidence, it might become necessary to determine the claim on the basis of the existing record.

However, except as mentioned hereinabove, the suggested evidence has not been submitted.

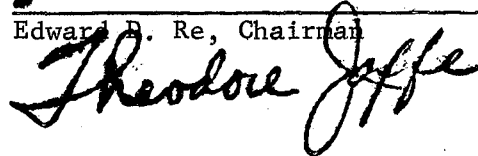
The Commission finds that claimant has not met the burden of proof in that he has failed to establish ownership of rights and interests in property which was nationalized, expropriated or otherwise taken by the Government of Cuba. Thus, the Commission is constrained to deny this claim and it is hereby 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

JAN 31 1968



Edward B. Re, Chairman



Theodore Jaffe, 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- 3676