

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

IN THE MATTER OF THE CLAIM OF

HAVANA ELECTRIC RAILWAY CO.

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-3681

Decision No. CU 1266

Counsel for claimant:

Wikler, Gottlieb, Taylor
& Stewart

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, by HAVANA ELECTRIC RAILWAY CO. was timely filed by Carl Marks & Co., Inc., on behalf of the HAVANA ELECTRIC RAILWAY CO., for it and its stockholders and bondholders, and is based upon the loss of shareholder and bondholder interests in the assets of HAVANA ELECTRIC RAILWAY CO., said to have been taken by the Government of 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 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).)

The HAVANA ELECTRIC RAILWAY COMPANY was incorporated in the State of Maine. It further appears that HAVANA ELECTRIC RAILWAY COMPANY may have been foreclosed in or about 1952. By letter of August 8, 1967 claimant, through counsel, was apprised of the above and claimant's comments concerning the stated aspects of the claim were requested within 30 days of the date of the letter.

On October 24, 1967, claimant was invited to submit any evidence it might have within 45 days from that date, and it was informed that, absent such evidence, it might become necessary to determine the claim on the basis of the present record. Claimant has not responded to the correspondence of the Commission and no evidence has been submitted in support of this claim.

The Commission finds that claimant has not met the burden of proof, in that it has failed to establish ownership of rights and interests in property which was nationalized, expropriated or otherwise taken by the

Government of Cuba. Accordingly, this claim is hereby denied. The Commission deems it unnecessary to determine other elements of this claim.

However, the timely filing of this claim will protect the rights of holders of bonds issued by the HAVANA ELECTRIC RAILWAY CO. to the extent that any such holders who have filed or who may file claims based upon such bonds will have their claims considered by the Commission as timely filed, provided filing is not later than March 1, 1970, to permit orderly disposition thereof before the termination of the claims program on May 1, 1970. This is not a determination as to the status of the HAVANA ELECTRIC RAILWAY CO., or its bonds.

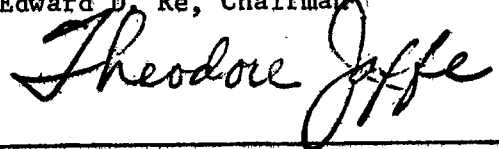
The individual claim of Carl Marks Co., Inc., FCSC Claim No. CU-2545, will be considered by the Commission in due course.

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

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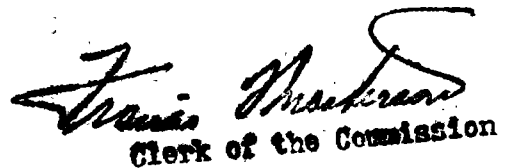


Edward D. Re, Chairman



Theodore Jaffe, Commissioner

This is a true and correct copy of the decision
of the Commission which was entered as the final
decision on ---MAR 18 1968---



Clerk of the Commission

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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