

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

IN THE MATTER OF THE CLAIM OF

PHILIP KEATING

Claim No. CU-5653

Decision No. CU-4621

Under the International Claims Settlement
Act of 1949, as amended

Represented by Cia. Azucarera Vertientes-Camaguey de Cuba

Counsel for Cia. Azucarera Vertientes-Camaguey de Cuba:

Shapiro, Fried and Weil

By Herbert S. Shapiro, Esq.

AMENDED PROPOSED DECISION

Under date of March 11, 1970, the Commission issued its Proposed Decision denying this claim for lack of proof. The claim is based on 200 shares of stock in the Vertientes-Camaguey sugar Company, a Cuban corporation. Initially claimant failed to submit evidence to establish ownership of the 200 shares of stock. Moreover, claimant stated that he had acquired the stock subsequent to August 6, 1960, the date of loss when the Company's properties were taken by the Government of Cuba. Pursuant to the provisions of Section 507(b) of the Act, a claim acquired by purchase after the date of loss could not be allowed in any amount in excess of the actual consideration paid for the claim. Claimant failed to establish the date he acquired the stock and the consideration paid thereof.

Subsequent to the denial of the claim for the foregoing reasons, counsel for claimant submitted copies of three stock certificates indicating that claimant owned 150 shares of stock in the said Company. Counsel stated that claimant had sold an additional 50 shares of the same stock in 1970 or 1971 in order to take a tax loss. An examination of the 3 stock certificates, each for 50 shares, discloses that one of them, No. N019948, had been acquired prior to the date of loss, while the other two, Nos. N039493 and N039494, had been acquired in 1963. On several occasions, the Commission suggested the

submission of evidence to establish the amount claimant paid for the 100 shares acquired in 1963. However, no response has been received either from counsel or claimant.

Upon consideration of the new evidence in light of the entire record, the Proposed Decision is amended as follows.

In our decision entitled the Claim of Ruth Anna Haskew (Claim No. CU-0849 which we incorporate herein by reference), we held that the properties owned by the Company were nationalized or otherwise taken by the Government of Cuba on August 6, 1960, and that this type of claim is allowable to an American national under the facts and conditions set forth therein. We need not again detail here the reasons or the method used in determining the value per share of \$46.3946.

On the basis of evidence in the record in the instant case, the Commission finds that this claimant comes within the terms of the Haskew decision; that he was an American national at the requisite times; that he has been the owner of 50 shares of stock in the Cia. Azucarera Vertientes-Camaguey de Cuba since prior to August 6, 1960; and that he suffered a loss in the amount of \$2,319.73 within the meaning of Title V of the Act. Further, the Commission finds that the amount of loss sustained shall be increased by interest thereon at the rate of 6% per annum from August 6, 1960, the date of loss, to the date on which provisions are made for the settlement thereof. (See Haskew, supra.)

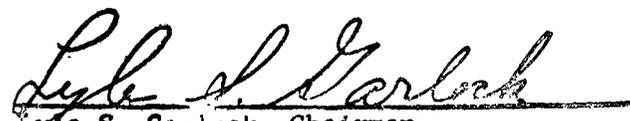
Accordingly, the following Certification of Loss will be entered, and in all other respects the Proposed Decision as amended herein is affirmed.

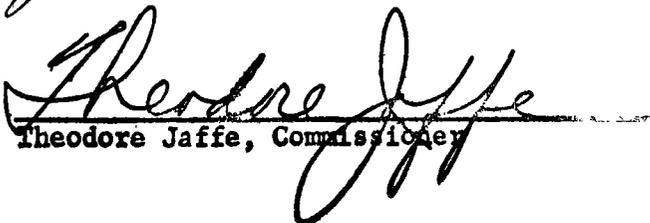
CERTIFICATION OF LOSS

The Commission certifies that PHILIP KEATING 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 Two Thousand Three Hundred Nineteen Dollars and Seventy-Three Cents (\$2,319.73) with interest at 6% per annum from August 6, 1960 to the date of settlement.

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

AUG 18 1971


Lyle S. Garlock, Chairman


Theodore Jaffe, Commissioner

NOTICE TO TREASURY: The above-referenced securities may not have been submitted to the Commission or if submitted, may have been returned; accordingly, no payment should be made until claimant establishes retention of the securities or the loss here certified.

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 Amended 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 (1970).)

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Counsel for Cia. Azucarera Vertientes-Camaguey de Cuba:
Shapiro, Fried and Weil
By Herbert S. Shapiro, Esq.

PROPOSED DECISION

This claim against the Government of Cuba, filed under Title V of the International Claims Settlement Act of 1949, as amended, was presented by Vertientes Camaguey Sugar Company on behalf of PHILIP KEATING and is based upon the asserted loss of 200 shares of Vertientes stock. 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.

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).)

PHILIP KEATING through Vertientes Camaguey Sugar Company asserted claim for losses based on 200 shares of Vertientes stock.

By Commission letter of August 8, 1968, claimant was advised, through counsel, as to the type of evidence proper for submission to establish this claim under the Act.

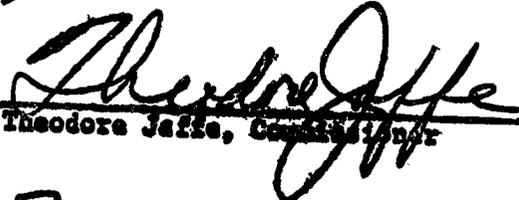
On May 1, 1969, counsel was invited to submit any evidence available to him within 45 days from that date, and he was informed, that, absent such evidence, it might become necessary to determine the claim on the basis of the existing record. No evidence has since been submitted.

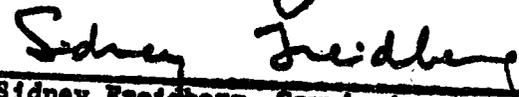
The Commission finds that claimant has not met the burden of proof in that he has failed to establish ownership of rights and interest in property which was nationalized, expropriated or otherwise taken by the Government of Cuba. Thus, the Commission is constrained to deny this claim and it is hereby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

11 MAR 1970


Lyle S. Carlouk, Chairman


Theodore Jaffe, Commissioner


Sidney Freidberg, Commissioner

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CU-5653