

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

IN THE MATTER OF THE CLAIM OF

THE COLONIAL BANK & TRUST COMPANY,
PASQUALE H. DE NICOLA, and ROSE M. DE NICOLA,
Trustees U/Is OF PASQUALE H. DE NICOLA
F/B/O MARGARET DE NICOLA and
PAULA DE NICOLA

Claim No. CU-7305

Claim No. CU-7306

Decision No. CU 5092

**Under the International Claims Settlement
Act of 1949, as amended**

presented by Cia. Azucarera Atlantica del Golfo

on behalf of Cia. Azucarera Atlantica del Golfo:

Dewey, Ballantine, Bushby, Palmer & Wood - By William C. Bush, Esq.

PROPOSED DECISION

These claims against the Government of Cuba, filed under Title V of the International Claims Settlement Act of 1949, as amended, were presented by Cia. Azucarera Atlantica del Golfo, as of March 15, 1967, on behalf of PASQUALE H. DE NICOLA and ROSE M. DE NICOLA, Trustees for MARGARET DE NICOLA and PAULA DE NICOLA. The claims are based on the asserted loss of stock interests. The beneficiaries have been nationals of the United States since 1959.

The record shows that THE COLONIAL BANK & TRUST COMPANY (of Waterbury, Connecticut) was appointed on May 4, 1967 to serve as Co-Trustee and accordingly has been added as claimant.

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 of 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).)

Claimants asserted the loss based on ownership interests of 600 shares of Atlantica del Golfo Sugar Company.

THE COLONIAL BANK & TRUST COMPANY, by letter of November 28, 1969, advised the Commission that they sold the 600 shares of stock on January 10, 1968.

Ownership of stock interest in a foreign corporation on the date of nationalization vests in the owners two items of property, namely, an interest in the net worth of the corporation and an interest in any claim for the nationalization. The sale of the shares in the nationalized corporation may effect transfer of either or both interests, depending upon the intention of the parties to the transaction. The burden of proving the nature of the transaction rests with the claimants.

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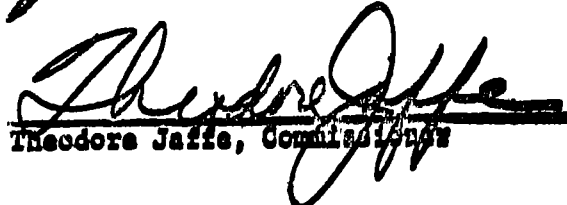
In the instant claims claimants have not alleged that they retained any interest in a claim for the nationalization of the corporation in question nor does the record establish that any such interest was retained. Therefore, in the absence of evidence to the contrary, the Commission concludes that when the Co-Trustee sold the stock, it transferred all rights incident thereto. (See Claim of Harry Mitgang, Claim No. CU-2649.)


Accordingly, and for the foregoing reasons, these claims are denied. The Commission deems it unnecessary to determine other elements of these claims.

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

JUN 30 1970


Carl S. Garlock, Chairman


Theodore Jaffe, Commissioner


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., C.F.R. 531.5(e) and (g) as amended, 32 Fed. Reg. 412-13 (1967).)

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