

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

IN THE MATTER OF THE CLAIM OF

GILBERT FERNANDEZ

Claim No. CU-7367

Decision No. CU 4824

Under the International Claims Settlement
Act of 1949, as amended

Represented by Cia. Azucarera Atlantica del Golfo

Counsel for Cia. Azucarera Atlantica del Golfo: Dewey, Ballantine, Bushby,
Palmer & Wood
By William C. Bush, Esq.

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, was presented by Atlantica del Golfo Sugar Company in behalf of the claimant, for an unspecified amount based upon the asserted loss of a stock interest in Atlantica del Golfo Sugar Company. Claimant, GILBERT FERNANDEZ, has been a citizen of the United States since his naturalization on March 17, 1961. Claimant states that he acquired some of the 320 shares of Atlantica prior to August 6, 1960, and some of it after that date.

Under Title V of the International Claims Settlement Act of 1949, as amended [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 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.

Section 502(1) of the Act defines the term "national of the United States" to mean "(A) a natural person who is a citizen of the United States, . . . The term does not include aliens."

Thus, in order for the Commission to favorably consider claims under Section 503(a) of Title V of the Act, it must be established (1) that the subject property was owned in whole or in part by a national of the United States on the date of nationalization or other taking; and (2) that the claim arising as a result of such nationalization or other taking has been continuously owned thereafter in whole or in part by a national or nationals of the United States to the date of filing with the Commission.

Claim is based on 320 shares of stock of Atlantica del Golfo Sugar Company, some of which claimant states he acquired subsequent to August 6, 1960, the date of loss for Atlantica.

The claimant became a national of the United States on March 17, 1961. It appears therefore that the portion of the claim which is based upon shares of stock in Atlantica acquired by claimant prior to March 17, 1961, were not owned by a national of the United States on August 6, 1960, the date when Atlantica was nationalized by the Government of Cuba, as required for certification under the above-mentioned provisions of Title V of the Act.

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).)

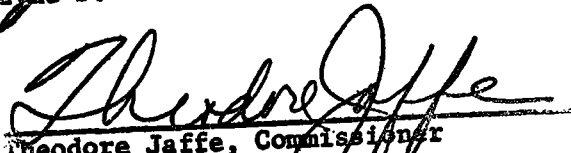
Moreover, although suggestions were made to claimant by letters of April 30, 1969 and October 23, 1969, no evidence has been received as to any of the stock claimed.

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, appropriated or otherwise taken by the Government of Cuba from a United States national. 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

MAY 6 1970


Lytle 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., 45 C.F.R. 531.5(e) and (g) as amended, 32 Fed. Reg. 412-13 (1967).)