

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

IN THE MATTER OF THE CLAIM OF

J. RUSSELL LUDWIG  
and  
VERNONICA LUDWIG

Claim No. CU-7674

Decision No. CU -5795

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.

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Appeal and objections from a Proposed Decision entered on October 7, 1970;  
no oral hearing requested.

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Hearing on the record held on October 7, 1971.

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FINAL DECISION

Under date of October 7, 1970, the Commission issued its Proposed Decision denying this claim for lack of proof. The record failed to establish the date claimants acquired their claim and the consideration paid therefor. Since claimants had acquired their claim after August 6, 1960, the date of loss applicable herein, favorable action depended upon proof of the actual consideration paid, pursuant to the express provisions of Section 507(b) of the Act. No such proof had been submitted.

Claimants objected to the Proposed Decision but submitted no evidence in support of their objections. On several occasions the Commission suggested to claimants that if other evidence of the consideration paid for the claim was not available, the Commission would give consideration to claimants' affidavit setting forth their purchase price and date thereof on the basis of their personal recollection. Claimants responded by requesting the Commission to advise them of the price range in effect at the time of their


purchase. The Commission informed claimants that no such information was available and indicated that in any event such information would not be appropriate because the statute limits the allowance in this case to the "amount of the actual consideration paid". It was again suggested that claimants submit their own affidavit in these respects.

No such evidence having been submitted and the entire record having been reviewed, the Commission finds no valid basis for altering the Proposed Decision. Accordingly, the Proposed Decision of October 7, 1970 is affirmed in all respects.

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

OCT 7 1971

  
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Lyle S. Garlock, Chairman

  
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Theodore Jaffe, Commissioner

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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 J. RUSSELL LUDWIG and VERONICA LUDWIG and is based upon the asserted loss of a stock interest. Claimants have been nationals 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.

Section 507 of the Act provides, as to assignment of claims, that

(b) The amount determined to be due on any claim of an assignee who acquires the same by purchase shall not exceed (or, in the case of any such acquisition subsequent to the date of the determination, shall not be deemed to have exceeded) the amount of the actual consideration paid by such assignee, or in case of successive assignments of a claim by any assignee.

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) (1969).)

Claim is based on loss in connection with 500 shares of stock of Atlantica del Golfo Sugar Co., acquired subsequent to August 6, 1960, the date of loss pertinent to Atlantica del Golfo.


By Commission letter of March 21, 1968, claimants were advised, through counsel, as to the type of evidence proper for submission to establish this claim under the Act. Thereafter, by letter of June 14, 1968, the Commission made additional suggestions to claimants concerning the submission of supporting evidence in this matter. Claimants have submitted copies of stock certificates issued apparently in July, 1963.

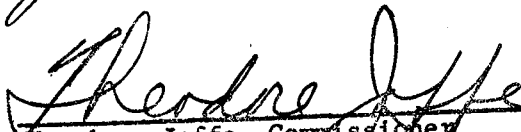
On February 3, 1969 and November 14, 1969, it was again suggested to claimants that they submit evidence of the date of purchase and price paid for the stock. No such evidence has since been submitted, however.

The Commission finds that claimants have not met the burden of proof in that they have failed to establish the date of acquisition and price paid for 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

OCT 7 1970

  
Lyle S. Garlock, 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-7674