

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

IN THE MATTER OF THE CLAIM OF

THOMAS G. O'NEIL

Claim No. CU-8227

Decision No. CU -2788

Under the International Claims Settlement  
Act of 1949, as amended

AMENDED PROPOSED DECISION

This claim, filed on March 29, 1968, was denied by Proposed Decision of August 14, 1968, for the reason that claimant failed to submit evidence concerning his United States nationality. Subsequent to the issuance of the Proposed Decision, claimant submitted additional evidence, including a photographic copy of his passport to establish that he was a national of the United States at all times pertinent to this claim. Based upon this additional evidence, it is now

ORDERED that the Proposed Decision be amended to read as follows:

This claim against the Government of Cuba, filed under Title V of the International Claims Settlement Act of 1949, as amended, was presented by THOMAS G. O'NEIL and is based upon the asserted loss of \$2,500.00 sustained in connection with the ownership of a stock interest in Central Violeta Sugar Company, S.A. Claimant has been a national of the United States since his birth.

The record contains stock certificate Nos. C05274 and C06212 issued to the claimant in 1958 for two (2) shares of capital stock in Central Violeta Sugar Company, S.A. On the basis of all the evidence of record, including the foregoing certificates, the Commission finds that the claimant owned, continuously from the date of loss to the presentation of this claim, two (2) shares of the capital stock issued by Central Violeta Sugar Company, S.A.

The record discloses that Central Violeta Sugar Company, S.A. was nationalized by the Government of Cuba on October 13, 1960, pursuant to Cuban Law 890. This corporation was organized under the laws of Cuba and does not qualify as a corporate "National of the United States", defined under Section 502(1)(B) of the Act as a corporation or other legal entity organized under the laws of the United States, or any State, the District of Columbia or the Commonwealth of Puerto Rico, whose ownership is vested to the extent of 50 per centum or more in natural persons who are citizens of the United States. Therefore, claimant is entitled to file this claim based upon his ownership interest therein.

The Act provides in Section 503(a) that in making determinations with respect to the validity and amount of claims and value of properties, rights, or interests taken, the Commission shall take into account the basis of valuation most appropriate to the property and equitable to the claimant, including but not limited to fair market value, book value, going concern value, or cost of replacement.

The question, in all cases, will be to determine the basis of valuation which, under the particular circumstances, is "most appropriate to the property and equitable to the claimant." The Commission has concluded that this phraseology does not differ from the international legal standard that would normally prevail in the evaluation of nationalized property and that it is designed to strengthen that standard by giving specific bases of valuation that the Commission shall consider; i.e., fair market value, book value, going concern value, or cost of replacement.

In determining the value of the interest owned by claimant in Central Violeta Sugar Company, S.A., the Commission has considered claimant's assertions, a 1959 consolidated balance sheet for the company, as published in Moody's Industrial Manual for 1961 (p.2029), as well as other data pertaining to the sales price of the stock.

In the absence of other evidence, the Commission concludes that the book value is the most appropriate basis of valuation.

The Commission therefore finds that a net book value of \$8,612,828 was available for distribution, at the time of loss among the 283,020 shares of capital stock issued by Central Violeta Sugar Company, S.A., and concludes that the dollar loss sustained in connection with the ownership of a capital stock interest in Central Violeta Sugar Company, S.A. was \$30.4318 per share of the capital stock issued and held at the time of loss. (See Claim of Huntley E. Cox, Claim No. CU-2944.)

Accordingly, in the instant claim, the Commission finds that claimant, THOMAS G. O'NEIL, as holder of two (2) shares of capital stock, suffered a loss in the amount of \$60.86 within the meaning of Title V of the Act, as a result of the nationalization of Central Violeta Sugar Company, S.A. by the Government of Cuba on October 13, 1960.

The Commission has decided that in certification of losses on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be included at the rate of 6% per annum from the date of loss to the date of settlement. (See Claim of Lisle Corporation, Claim No. CU-0644.)

The Commission therefore concludes that the amount of the loss sustained by claimant shall be increased by interest thereon at the rate of 6% per annum from October 13, 1960, the date on which the loss occurred, to the date on which provisions are made for the settlement thereof.

Accordingly, the following Certification of Loss will be entered and the remainder of the Proposed Decision is affirmed:

CERTIFICATION OF LOSS

The Commission certifies that THOMAS G. O'NEIL sustained 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 Sixty Dollars and Eighty-Six Cents (\$60.86) with interest thereon at 6% per annum from October 13, 1960 to the date of settlement.

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

SEP 4 1968

*Leonard v. B. Sutton*  
Leonard v. B. Sutton, Chairman

*Theodore Jaffe*  
Theodore Jaffe, Commissioner

*Sidney Freidberg*  
Sidney Freidberg, 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 for 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, 32 Fed. Reg. 412-13 (1967).)

CU- 8227

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Act of 1949, as amended

PROPOSED DECISION

This claim against the Government of Cuba, filed under Title V of the International Claims Settlement Act of 1949, as amended, in the amount of \$2,500.00, was presented by THOMAS G. O'NEIL and is based upon the asserted loss sustained in connection with the ownership of stock interests. Claimant stated that he has been a national of the United States since his 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).)

Claimant submitted two stock certificates representing two shares in the Central Violeta Sugar Company for which he makes claim herein. No evidence has been submitted to establish claimant's nationality. By Commission letter of April 1, 1968, claimant was advised to submit evidence of his United States nationality to establish this claim under the Act. Thereafter, by letter of May 6, 1968, the Commission made an additional suggestion to claimant concerning the submission of evidence of his nationality. However, no evidence in response to this correspondence has been received to date.

On June 20, 1968, claimant was invited to submit such evidence within 30 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 by a national of the United States 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

AUG 14 1968

*Leonard v. B. Sutton*  
Leonard v. B. Sutton, Chairman

*Theodore Jaffe*  
Theodore Jaffe, Commissioner

*Sidney Freidberg*  
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).)

CU- 8227