

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

IN THE MATTER OF THE CLAIM OF

H. SWOBODA & SON, INC.

Claim No. CU-0158

Decision No. CU -

348

Under the International Claims Settlement
Act of 1949, as amended

Counsel for claimant:

Schnader, Harrison, Segal & Lewis
by S. Jay Cooke, Esq.

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 \$1,353.34, was presented by H. SWOBODA & SON, INC. and is based upon the asserted loss of payment for merchandise shipped to Cuba.

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).)

On July 1, 1965, the Commission received H. SWOBODA & SON, INC.'S claim asserting the loss of payment for leather goods manufactured by claimant and shipped to a Cuban buyer on September 27, 1960. By Commission letter of June 30, 1966, claimant was advised as to the type of evidence proper for submission to establish this claim under the Act. Thereafter, by letter of November 8, 1966, the Commission made additional suggestions to claimant, through counsel, concerning the submission of supporting evidence in this matter. However, no evidence in response to this correspondence has been received to date.

On August 25, 1967, 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. By letter of September 11, 1967, counsel advised the Commission that: "...the ownership of H. SWOBODA & SON, INC., and its management has changed completely since the date when the claim was made and they have been unable to locate the additional information which you have requested. Accordingly, your office will have to proceed on the basis of the material now in hand."

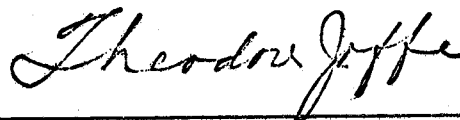
The Commission finds that claimant has not met the burden of proof in that it has failed to establish ownership by a national of the United States, of rights and interests in property which was nationalized, expropriated or otherwise taken by the Government of Cuba. Accordingly, this claim is denied. 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

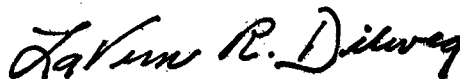
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Edward D. Re, Chairman



Theodore Jaffe, Commissioner



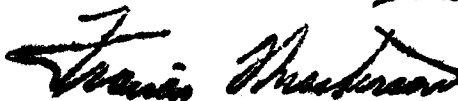
LaVern R. Dilweg, Commissioner

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).)

CERTIFICATION

CU-0158

**This is a true and correct copy of the decision
of the Commission which was entered as the final
decision on 20 OCT 1967**



Clerk of the Commission