

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

IN THE MATTER OF THE CLAIM OF

E. D. ALLMENDINGER, INC.

Under the International Claims Settlement  
Act of 1949, as amended

Claim No. CU-0162

Decision No. CU

206

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 \$1064.22, was presented by E.D. ALLMENDINGER, INC. and is based upon the asserted loss of payment for merchandise shipped to Cuba. Claimant asserts that it is a national of the United States.

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 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).)

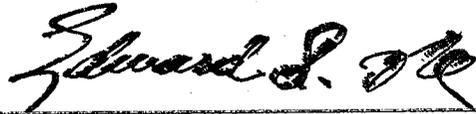
Claimant contends that it shipped goods to two Cuban firms but has not received payment for these goods by reason of the intervention of the Government of Cuba. By Commission letter of July 5, 1966, claimant was advised, as to the type of evidence proper for submission to establish this claim under the Act. Thereafter, by letter of October 13, 1966, the Commission made additional suggestions to claimant, concerning the submission of supporting evidence in this matter. However, no evidence in response to this correspondence has been received to date. On June 14, 1967, claimant was invited to submit any evidence available to it within 45 days from that date, and it 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 it has failed to establish ownership of rights and interests in property which has been nationalized, expropriated, intervened or 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 determination with respect to other elements of the claim.

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

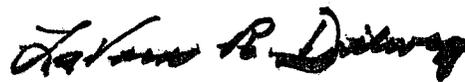
AUG 23 1967



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).)

**COMMUNICATION**

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

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

IN THE MATTER OF THE CLAIM OF

E. D. ALLMENDINGER, INC.

Under the International Claims Settlement  
Act of 1949, as amended

Claim No. CU - 0162

Decision No. CU - 206A

AMENDED PROPOSED DECISION

Under the date of August 23, 1967, the Commission issued its Proposed Decision denying this claim for claimant's failure to sustain the burden of proof. Claimant entered an objection to the Proposed Decision and submitted additional evidence. On the basis of the new evidence the Proposed Decision is amended to read as follows:

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, was presented by E. D. ALLMENDINGER, INC. in the amount of \$1,064.22 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 national 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 502(1) of the Act defines the term "national of the United States" as "(B) a corporation or other legal entity which is organized under the laws of the United States, or of any State, the District of Columbia, or the Commonwealth of Puerto Rico, if natural persons who are citizens of the United States own, directly or indirectly, 50 per centum or more of the outstanding capital stock or other beneficial interest of such corporation or entity."

An officer of the claimant corporation has certified that the claimant was organized in the State of New York and that at all times between 1946 and presentation of this claim on July 1, 1965, 100% of the outstanding capital stock of the claimant has been owned by United States nationals. The Commission holds that claimant is a national of the United States within the meaning of Section 502(1)(B) of the Act.

The record indicates that under claimant's invoice No. 8638-SJ/1533 of October 23, 1959 goods were sold to Jose Saladrigas of Havana, Cuba totalling \$207.43 and that under invoice No. 8746-SJ/15577 of December 11, 1959 goods were sold to Cia Riera Toro and Van Twistern, S. A. of Cuba, totalling \$856.79.

Additionally, the record includes a letter of March 7, 1960 from the Havana branch of the Bank of Nova Scotia, to claimant, in which it is stated that the collection of \$207.43 was paid by the consignee Jose Saladrigas and another letter dated July 12, 1961 from Irving Trust Co. of New York to claimant, stating that the collection of \$856.79 was paid by the consignee Cia Riera Toro and Van Twistern, S. A. to the Trust Company of Cuba, and that the Bank was awaiting a dollar reimbursement release from the National Bank of Cuba. Claimant states that it has not received the funds.

The Government of Cuba, on September 29, 1959, published its Law 568, concerning foreign exchange. Thereafter the Cuban Government effectively precluded transfers of funds, in this and similar cases, by numerous, unreasonable and costly demands upon the consignees, who were thus deterred from complying with the demands of the Cuban Government. The Commission holds that Cuban Law 568 and the Cuban Government's implementation thereof, with respect to the rights of the claimant herein, was not in reality a legitimate exercise of sovereign authority to regulate foreign exchange, but constituted an intervention by the Government of Cuba into the contractual rights of the claimant, which resulted in the taking of American-owned property within the meaning of Section 503(a) of the Act. (See The Claim of The Schwarzenbach Huber Company, FCSC Claim No. CU-0019.)

Accordingly, in the instant claim the Commission finds that claimant's property was lost as a result of intervention by the Government of Cuba and that, in absence of evidence to the contrary, the loss occurred on March 8, 1960 as to \$207.43, and on July 13, 1961 as to \$856.79, the days after the collection were acknowledged by the correspondent banks.

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

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

CERTIFICATION OF LOSS

The Commission certifies that E. D. ALLMENDINGER, INC. suffered 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 One Thousand Sixty-Four Dollars and Twenty-Two cents (\$1,064.22) with interest thereon at 6% per annum from the respective dates of loss to the date of settlement.

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

**SEP 20 1967**



Edward D. Re, Chairman



Theodore Jaffe, Commissioner



LaVern R. Dilweg, Commissioner

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